

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

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REGIONAL HEARINGS
OFFICE

In The Matter of:

Boasso America Corporation
Newark, New Jersey
NJD 986644375

Respondent.

Proceeding Under Section 3008 of the
Solid Waste Disposal Act, as amended

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No.: **RCRA-02-2015-7106**

PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is Boasso America Corporation.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There have been changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the

regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). EPA is authorized to enforce regulations comprising the authorized State Program. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about September 29, 2015. The Complaint alleged that Respondent failed to comply provisions of RCRA and federally authorized New Jersey regulations concerning the management of hazardous waste at its New Jersey facility. Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent and Its Regulatory Status

1. Respondent is Boasso America Corporation, previously incorrectly identified as Quala Systems, Inc. (hereinafter "Boasso" or "Respondent").
2. Respondent is a wholly owned subsidiary of Quality Distribution LLC, which is a wholly owned subsidiary of Quality Distribution, Inc.
3. Respondent owns and operates a terminal for the transport, cleaning and maintenance of International Organization for Standardization (ISO) tank containers in Newark, New Jersey.
4. Respondent's New Jersey terminal's tank wash operations have been discontinued since March 9, 2015, the date of a fire and explosion at that terminal.
5. Respondent is and has been a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).
6. Prior to March 9, 2015, Respondent cleaned ISO container tanks by removing residue material (the heel) from the tanks and then steaming or rinsing the tanks.
7. Some of the waste material generated during Respondent's tank washing operations

constituted "hazardous waste" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

8. Prior to at least March 9, 2015, Respondent was a "generator" of hazardous waste, as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

9. Prior to at least March 9, 2015, Respondent generated 1000 kilograms or greater of non-acute hazardous waste in a calendar month and/or greater than one kilogram of acute hazardous waste in a calendar month (often referred to as a "large quantity generator").

10. The requirements for generators are set forth in 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).

11. Respondent's New Jersey terminal is and was a "facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

12. Respondent is and has been the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

13. In December 1992, Respondent (then identified as Quala Systems, Inc.) notified EPA of hazardous waste activity at the facility. This notification was made pursuant to Section 3010 of RCRA. In response to the notification, EPA issued EPA Identification Number NJD988644375 to the facility.

14. Respondent did not submit a Part A or a Part B of a Hazardous Waste Permit Application to EPA or the State of New Jersey.

15. Respondent did not receive "interim status" or a hazardous waste permit to treat, store or dispose of hazardous waste at its Newark, New Jersey facility.

Failure to Prepare and/or Submit Biennial Reports

16. Pursuant to 40 C.F.R. § 262.41, as incorporated by reference by NJAC 7:26G-6.1(a), a generator who ships hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a biennial report to the New Jersey Department of Environmental Protection (NJDEP) by March 1 of each even-numbered year. The report must cover generator activities during the previous year and include specified information.

17. Respondent manifested and shipped hazardous waste off-site to a treatment, storage or disposal facility within the United States during the years 2011 and 2013.

18. Respondent failed to prepare and/or submit a biennial report to NJDEP by March 1, 2012 and March 1, 2014 covering its 2011 and 2013 generator activities, respectively. (On or about March 3, 2015, Respondent submitted a biennial report to NJDEP covering its 2013 generator activities.)

19. Respondent's failure to timely prepare and/or submit biennial reports in 2012 and 2014 is a violation of 40 C.F.R. § 262.41, as incorporated by reference by NJAC 7:26G-6.1(a).

Storage of Hazardous Waste Without a Permit

20. Prior to at least March 9, 2015, Respondent stored hazardous waste at its facility for a finite period, at the end of which the hazardous waste was treated, disposed of or stored elsewhere. This storage occurred in various areas of the facility including the hazardous waste container storage area and satellite accumulation areas.

21. Prior to at least March 9, 2015, Respondent's facility was a "storage" facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).

22. Pursuant to 40 C.F.R. § 270.1 as incorporated by reference by NJAC 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925, a RCRA permit or interim status is required for the storage of hazardous waste.

23. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a), a generator may accumulate hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided it complies with all applicable conditions identified therein, including but not limited to the requirements set forth in Subparts C, D and I of 40 C.F.R. Part 265, as incorporated by reference by NJAC 7:26G-9.1(a).

Failure to Comply with Time Limits

Set Forth in 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a)

24. Respondent stored hazardous waste on-site for longer than 90 days on at least two occasions. Specifically, Respondent stored five drums of hazardous waste (Drums 0901, 0902, 0903, 0904 and 0920) at its facility from September 10, 2014 through at least January 23, 2015, and one drum of hazardous waste (Drum 1005) from October 9, 2014 through at least January 23, 2015.

Failure to Comply with Accumulation Conditions

Set Forth in 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a)

25. Pursuant to 40 C.F.R. § 262.34(a)(2), as incorporated by reference in NJAC 7:26G-6.1(a), generators accumulating hazardous waste without a permit must, among other requirements, clearly mark the accumulation date on each container.

26. As of at least January 30, 2014, Respondent failed to mark the accumulation date on one drum of hazardous waste located in the facility's container storage area.

Failure to Comply with Conditions Set Forth in Subpart D of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.50-.56), as incorporated by reference by NJAC 7:26G-9.1(a)

27. Forty C.F.R § 265.51, as incorporated by reference by NJAC 7:26G-9.1(a), requires facility owners or operators to have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.
28. Forty C.F.R §§ 265.52(b) and (e), as incorporated by reference by NJAC 7:26G-9.1(a), require contingency (or other emergency) plans to contain, among other things a list of all emergency equipment at the facility and the location and physical description of each item on the list.
29. Respondent had an Emergency Response and Evacuation Plan, dated May 2012, which it used in lieu of a contingency plan.
30. From May 2012 through at least January 30, 2014, Respondent's Emergency Response and Evacuation Plan did not identify the location of its emergency response equipment.

Failure to Satisfy Conditions for Generators which, if Complied With, Would Have Exempted Respondent from Permitting Requirements

31. During various periods of time between at least January 30, 2014 and January 23, 2015, Respondent failed to satisfy all the conditions identified in 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a), including but not limited to the time and accumulation conditions set forth therein and conditions in Subparts C and D of 40 C.F.R. Part 265, as incorporated in the authorized State Program provisions, which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 90 days.

Storage of Hazardous Waste Without a Permit

32. Respondent's storage of hazardous waste during various periods of time between at least January 30, 2014 and January 23, 2015 without interim status or a permit was a violation of 40 C.F.R. § 270.1(c) as incorporated by reference by NJAC. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Within twenty (20) days of the resumption of hazardous waste management activities at Respondent's New Jersey facility or the effective date of this CA/FO, whichever is later, Respondent shall:

- a. prepare and submit a biennial report to the NJDEP by March 1 of each even numbered year reflecting any hazardous waste generated at the facility and shipped off-site to a treatment, storage or disposal facility within the United States during the previous year, as required by 40 C.F.R. § 262.41, as incorporated by reference by NJAC 7:26G-6.1(a);
- b. comply with all applicable and appropriate provisions for the short term accumulation of hazardous waste by generators including:
 - i. the provisions for generators set forth in 40 C.F.R. § 262.34(a), as incorporated by reference by NJAC 7:26G-6.1(a), provided hazardous waste is accumulated on site for 90 days or less; or
 - ii. the provisions for small quantity generators set forth in 40 C.F.R. § 262.34 (mainly at 40 C.F.R. § 262.34(d)), as incorporated by reference by NJAC 7:26G-6.1(a), during each calendar month in which the Respondent generates greater than 100 kilograms but less than 1000 kilograms of non-acute hazardous waste, provided Respondent neither accumulates hazardous waste in quantities exceeding more than 6000 kilograms nor accumulates hazardous waste for more than 180 days (the rules for acute hazardous waste are more stringent and should be complied with if applicable);
- c. as an alternative to compliance with the generator provisions identified in Paragraph 1.b.i. – ii. of this Consent Agreement, obtain and comply with a hazardous waste storage permit from the New Jersey State Department of Environmental Protection pursuant to applicable provisions set forth in 40 C.F.R. Part 270, as incorporated by reference by NJAC. 7:26G-12.1(a). However, Respondent must comply with the appropriate requirements cited in Paragraph 1.b. above until such permit is obtained.

2. Within thirty (30) calendar days of the resumption of hazardous waste management activities at the New Jersey terminal or the effective date of this CA/FO, whichever is later, Respondent shall submit a Compliance Report to EPA detailing its present compliance with the requirements set forth in Paragraph 1 of this Consent Agreement. The Compliance Report shall include a written statement indicating if Respondent is operating its New Jersey facility as a small quantity generator, a generator generating more than 1000 kilograms of non-acute hazardous waste in a calendar month or greater than one kilogram of acute hazardous waste (often referred to as a “large quantity generator”) or as a permitted facility. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to:

Mr. Charles Zafonte
Compliance Assistance and Program Support Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

3. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint applicable to it and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.

4. Respondent shall pay a civil penalty to EPA in the total amount seventeen thousand and six hundred dollars (\$17,600). Such payment shall be paid in full within forty-five (45) days of the effective date of this CA/FO. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payment is made by check(s), then the check(s) shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check(s) shall be identified with a notation thereon: **In the Matter of Boasso American Corporation** and shall bear thereon the Docket Number: **RCRA-02-2015-7106**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Boasso American Corporation**.
- 7) Case Number: **RCRA-02-2015-7106**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

5. Payment must be received pursuant to the provisions above.
 - a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the deadline described in Paragraph 4 above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the deadline through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the deadline in which a balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the deadline in Paragraph 4.
 - c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understand its terms, find it to be reasonable and consent to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent further agrees that all the terms of the settlement are set forth herein.
6. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
7. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.
8. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law set out above.
9. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it

be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.

10. Each party shall bear its own costs and fees in this matter.

11. The representative of the Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

12. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

13. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

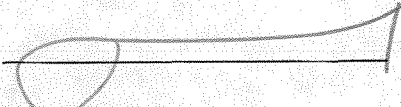
RESPONDENT:

Boasso America Corporation

BY: Boasso America Corp.
NAME: Tony Morosillo
TITLE: President
DATE: 1/28/16

COMPLAINANT:

United States Environmental Protection
Agency – Region 2

BY: 
NAME: Dore LaPosta
TITLE: Director, Division of
Enforcement & Compliance
Assistance
DATE: February 9, 2016

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
EPA-Region 2

DATE: February 11, 2016

CERTIFICATE OF SERVICE

I hereby certify that on the 16 Day of Feb. I caused a copy of the Consent Agreement and Final Order entered in In the Matter of Boasso America Corporation, Docket No.: RCRA-02-2015-7106 to be sent to the following persons in the manner indicated:


By United States First Class Mail – Return Receipt Requested:

Bonni Kaufman, Esq.
Partner
Holland & Knight LLP
800 17th Street N.W., Suite 1100
Washington, DC 20006

By Hand Delivery:

Karen Maples
Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007

Date: 2/16/16


Yolanda Majette