

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

2015 SEP 30 AM 11:46

REGIONAL
HEARING
CLERK

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

**COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING**

Docket No.: RCRA-02-2015-7106

I. COMPLAINT

This is a civil administrative proceeding 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 ("HSWA"), 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA's") preliminary determination that Boasso America Corporation has violated provisions of RCRA and federally authorized New Jersey regulations concerning the management of hazardous waste at its New Jersey facility.

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 in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

JURISDICTION

1. This administrative Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a), 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

NOTICE

2. EPA has given notice of this action to the State of New Jersey.

RESPONDENT

3. Respondent is Boasso America Corporation, previously identified as Quala Systems, Inc. (hereinafter "Boasso" or "Respondent").

4. Respondent is a wholly owned subsidiary of Quality Distribution LLC, which is a wholly owned subsidiary of Quality Distribution, Inc.

5. Respondent owns and operates a terminal for the transport, cleaning and repair of International Organization for Standardization (ISO) tank containers in Newark, New Jersey.

6. 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.

GENERAL ALLEGATIONS

7. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 et seq. The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270, 273 and 279.

8. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA.
9. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for any violation after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.
10. New Jersey's authorized hazardous waste program incorporates by reference, with minor modifications, the federal program set forth in 40 C.F.R. Parts 124, 260-266, 268 and 270. (Citations to the authorized State Program below will cite the applicable regulation of the federal program incorporated by reference, followed by the New Jersey regulation which incorporated said federal regulation by reference.)
11. 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).
12. Prior to March 9, 2015, Respondent cleaned ISO container tanks by removing residue material (the heel) from the tanks and then flushing the tanks with diesel fuel and other solvents.
13. 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).
14. 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).
15. 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").
16. 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).
17. 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).
18. Respondent is and has been the "owner" 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).
19. 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).

20. 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.

21. Respondent never submitted a Part A or a Part B of a Hazardous Waste Permit Application to EPA or the State of New Jersey.

22. Respondent never received "interim status" or a hazardous waste permit to treat, store or dispose of hazardous waste at its Newark, New Jersey facility.

EPA Investigative and Initial Enforcement Activities

23. On or about January 30, 2014, a duly designated representative of EPA conducted an inspection of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations ("the inspection").

24. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about March 23, 2015, EPA issued Respondent an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its facility.

25. On or about May 29, 2015, Respondent submitted its response to EPA's March 2015 IRL/NOV. This submission was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.

COUNTS

Count 1

Failure to Prepare and/or Submit Biennial Reports

26. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.

27. 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.

28. 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.

29. Respondent failed to prepare and/or submit a biennial report to NJDEP on 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.)
30. 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).
31. Respondent's failure to comply with 40 C.F.R. § 262.41, as incorporated by reference by NJAC 7:26G-6.1(a), subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

Count 2
Storage of Hazardous Waste Without a Permit

32. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
33. 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.
34. 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).
35. 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.
36. 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)

37. 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)

38. 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.

39. 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)

40. 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.

41. 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.

42. Respondent had an Emergency Response and Evacuation Plan, dated May 2012, which it used in lieu of a contingency plan.

43. 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

44. 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

45. 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.

46. Respondent's failure to comply with 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, subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act.

II. PROPOSED CIVIL PENALTY

The Complainant proposes that, subject to the receipt and evaluation of further relevant information, Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1: \$3,000

Count 2: \$16,600

Total Proposed Penalty for Counts 1 and 2 Rounded to the Nearest Hundredth and Incorporating the December 2013 Adjustment of Calculated Penalty is: \$19,600

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

<http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to: the December 29, 2008 document entitled "Amendments to the EPA Civil Penalty Policies to Implement the 2008 Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)"; the November 16, 2009 document entitled Adjustment Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule" and the memorandum entitled "Amendments to the U.S. Environmental

Protection Agency's Civil Penalties Policies to Account for Inflation" (Effective December 6, 2013.) This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. *See* Paragraph 9 *supra*, and 40 C.F.R. Part 19.

Subject to receipt and evaluation of further relevant information from the Respondent, the Complainant proposes that the Respondent be assessed the civil penalty referenced above for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues Respondent the following Compliance Order:

1. Within twenty (20) days of the resumption of hazardous waste management activities at Respondent's New Jersey facility or effective date of this Compliance Order, 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 Compliance Order, 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 Compliance Order, whichever is later, Respondent shall submit to EPA: a) a written statement indicating if it plans to operate 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 a permitted facility; and b) a statement indicating its compliance with this Compliance Order, and all documentation demonstrating such compliance. Respondent’s submission may reference information already submitted to EPA. If earlier submitted information is referenced, dates, and other identifying aspects, of these prior submissions should be indicated. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

3. All responses, documentation, and evidence submitted in response to this Compliance Order 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

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. §6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability for any violations at the facility. Further, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provisions of law regarding the facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

The rules of procedure governing civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, “CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS” and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint, Compliance Order and Notice of Opportunity for Hearing.”

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in “D” below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has

any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, and/or (2) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Amy R. Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, NY 10007-1866

Telephone (212) 637-3213

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To

conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent entering into a settlement through the signing of such consent agreement and its complying with the terms and conditions set forth in the such consent agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VII. RESOLUTION OF THIS PROCEEDING
WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: SEPTEMBER 29, 2015
New York, New York

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

To: Scott Giroir, President
Boasso America Corporation
100 Intermodal Drive
Chalmette, LA 70043

cc: Christian Backhouse
Facility Manager
Boasso America Corporation
80 Doremus Avenue
Newark, New Jersey 07105

Michael Hastry, Bureau Chief
Bureau of Hazardous Waste and UST Compliance and Enforcement
New Jersey Department of Environmental Protection
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ATTACHMENT 1

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT Penalty Computation Worksheet (Count 1)

Respondent: Boasso

Facility Address: Newark, New Jersey

Requirement Violated:

40 C.F.R. § 262.41, as incorporated by reference by NJAC 7:26G-6.1(a).

Respondent failed to timely prepare and/or timely submit biennial reports in 2012 and 2014.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$1,420
(a) Potential for Harm.	MINOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$1,420
3. Multiply line 2 by number of violations minus 1 (2-1=1).	\$1,420
4. Add line 1 and line 3.	\$2,840
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	\$2,840
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10, adjust for inflation and round to nearest hundred, for penalty amount to be inserted into the complaint.	\$3,000*

* Matrix penalty amount (\$1,710) adjusted for inflation using a multiplier of 1.0487 = \$2,978

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1. Gravity Based Penalty

a. Potential for Harm – The Potential for Harm was determined to be MINOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure, and the adverse impact of the noncompliance on the regulatory scheme. Biennial Reports provide regulators with a summary of the amount and types of hazardous waste generated during a year's time period. The facility however did prepare manifests and provide copies to NJDEP during the applicable time periods.

b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE since one of the two biennial reports was filed late.

The applicable cell ranges from \$710 to \$2,130. The mid-point of the cell matrix was selected.

c. Multiple/Multi-day – Respondent failed to timely submit biennial reports covering the years 2011 and 2013, so a multiple factor has been applied.

2. Adjustment Factors

a. Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.

b. Willfulness/Negligence - Not applicable

c. History of Compliance – This adjustment is reflected in 1.c. above.

d. Ability to Pay - Not applicable

e. Environmental Project - Not applicable

f. Other Unique Factors – Not applicable

3. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit for this count is *de minimis*.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

Respondent: Boasso
 Facility Address: Newark, New Jersey

Requirement Violated:

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.

Respondent stored hazardous waste at its facility without interim status or a permit. Respondent did not meet all of the conditions set forth in 40 C.F.R. § 262.34, as incorporated by reference by NJAC 7:26G-6.1(a) which, if complied with, would have authorized the facility to accumulate hazardous waste on site for a limited period of time.

PENALTY AMOUNT FOR REFERRAL

1. Gravity based penalty from matrix	\$9,210
(a) Potential for Harm.	MODERATE
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$ 150
3. Multiply line 2 by number of days of violation minus 1 (45-1 =44)	\$ 6,600
4. Add line 1 and line 3.	\$ 15,810
5. Percent increase/decrease for good faith.	Not applicable
6. Percent increase for willfulness/negligence.	Not applicable
7. Percent increase for history of noncompliance.	Not applicable
8. Total lines 5 through 7.	Not applicable
9. Multiply line 4 by line 8.	Not applicable
10. Calculate economic benefit.	Not applicable
11. Add lines 4, 9 and 10 for penalty amount, adjust for inflation* and round to nearest hundred, for penalty amount to be inserted into the complaint.	\$ 16,600*

*Matrix penalty amount (\$15,960) adjusted for inflation using a multiplier of 1.0487 = \$16,580

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1. Gravity Based Penalty

- a. Potential for Harm – The potential for harm present in this violation was determined to be MODERATE. Operating a treatment, storage, or disposal facility without a permit (and compliance therewith) is a serious violation with the potential to result in harm to human health and the environment. Although non-compliance with the requirements of 40 C.F.R. § 262.34, as incorporated by reference by NJAC 7:26G-6.1(a) poses a major potential for harm to the program, the containers at the time of inspection were in good condition, stored in a manner that did not pose a threat of release.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Hazardous waste was stored at the facility without a permit or interim status. EPA determined the deviation however was moderate because although Respondent stored hazardous waste for greater than 90 days, the cornerstone accumulation requirement set forth in requirements 40 C.F.R. § 262.34, as incorporated by reference by NJAC 7:26G-6.1(a), it exceeded this limit for a relatively short duration of time, and Respondent had not violated all of the storage conditions set forth in the above referenced regulations.

The applicable cell ranges from \$7,090 to \$11,330. The mid-point for the cell matrix was selected.

- c. Multiple/Multi-day – The facility was generating and accumulating/storing waste at its facility during various periods of time from at least January 30, 2014 to January 15, 2015 and failed to have interim status or a permit for this entire period. Using its discretion, EPA assessed a multiday penalty using a period of forty-five days (December 9, 2014 to January 23, 2015), reflecting the number of days Respondent exceeded the accumulation limit set forth in 40 C.F.R. § 262.34, as incorporated by reference by NJAC 7:26G-6.1(a), for multiple drums of waste.

EPA determined that both the Potential for Harm and Extent of Deviation for the multiday component of the penalty were MINOR since the containers at the time of inspection were in good condition, stored in a manner that did not pose a threat of release, and there was a low incremental potential for harm for each additional day of storage. The Minor/Minor cell matrix sets forth an assessment of \$150 per day, which was selected.

2. Adjustment Factors
 - a. Good Faith - Based upon presently available information, no adjustment has been made at this time.
 - b. Willfulness/Negligence - Not applicable
 - c. History of Compliance – Not applicable
 - d. Ability to Pay - Not applicable
 - e. Environmental Project - Not applicable
 - f. Other Unique Factors - Not applicable
3. Economic Benefit – Based on presently available information, EPA has determined that the economic benefit for this count is *de minimis*.

ATTACHMENT II

**Gravity-Based Penalty Matrix
to Supplement the RCRA Civil Penalty Policy
for Violations that Occur after January 12, 2009***

Extent of Deviation from Requirement

Potential for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
MODERATE	\$15,580 to \$11,330	\$11,330 to \$7,090	\$7,090 to \$4,250
MINOR	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

* All penalties calculated in this action have been rounded to the nearest \$100.

Multi-Day Matrix of Minimum Daily Penalties
 To Supplement the RCRA Civil Penalty Policy
 For Violations That Occur After January 12, 2009*

Extent of Deviation from Requirement

Potential
for
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
MODERATE	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
MINOR	\$850 to \$150	\$430 to \$150	\$150

* All penalties calculated in this action have been rounded to the nearest \$100

In re: Boasso America Corporation
Docket Number: RCRA-02-2015-7106

CERTIFICATE OF SERVICE

This is to certify that on 9/30, 2015, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2015-7106 hereinafter referred to as the "Complaint"), together with Attachments I and II and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to

Scott Giroir, President
Boasso America Corporation
100 Intermodal Drive
Chalmette, LA 70043;

Christian Backhouse
Facility Manager
Boasso America Corporation
80 Doremus Avenue
Newark, New Jersey 07105

On said day, I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Name: _____

Yolanda Majette

