

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Borinquen Container, Corp
Hatillo, Puerto Rico

Respondent

In a proceeding under Section 113(a)(3)
of the Clean Air Act, 42 U.S.C. § 7413(a)(3)

NOTICE OF VIOLATION
CAA-02-2024-1303

SUMMARY

The United States Environmental Protection Agency (“EPA”) Region 2 Director of the Caribbean Environmental Protection Division (“CEPD Director”) issues this Notice of Violation (“NOV”), consistent with Section 113(a)(1) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(a)(1), to Borinquen Container, Corp. (“BCC” or “Respondent”), the owner and operator of a corrugated cardboard and fiber drum manufacturing facility located at State Road PR-2 Km. 85.2, in the municipality of Hatillo, Puerto Rico. EPA alleges that Respondent violated certain requirements of the Puerto Rico Regulations for the Control of Atmospheric Pollution (“RCAP”), and the applicable requirements in 40 C.F.R. Part 63, Subpart JJJJJ – National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources (“Subpart JJJJJ”) and 40 C.F.R. Part 63, Subpart ZZZZ – National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (“Subpart ZZZZ”).

STATUTORY, REGULATORY AND PERMITTING BACKGROUND

1. Section 302(e) of the Act, 42 U.S.C. § 7602(e), provides that the term “person” includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
2. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides, in relevant part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of a State Implementation Plan (“SIP”), the Administrator shall notify the person and the state in which the SIP applies of such finding. Section 113(a)(1) further provides that 30 days after providing such notice, the EPA Administrator may take various actions to address the violation(s).
3. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to, among other actions, issue an administrative penalty order or bring a civil action against any person whenever, on the basis of any information available to EPA, the Administrator finds that such person has violated or is in violation of any requirement or prohibition of Title I of the Act, or of any regulation promulgated pursuant to Section 112 of the Act, 42 U.S.C. § 7412.
4. Section 114 of the Act, 42 U.S.C. § 7414, authorizes the EPA Administrator to require sampling of emissions, monitoring, record-keeping, and reporting of information, among other things, to enable them to carry out any provision of the Act (except certain provisions in Title II) and to assess compliance with, among other requirements, any regulations promulgated under Section 112 of the Act, 42 U.S.C. § 7412.

5. The CEPD Director is authorized by the EPA Administrator through the EPA Region 2 Regional Administrator to make findings of violations, issue notices thereof, and gather information, pursuant to Sections 113 and 114 of the Act. *See* EPA Delegation of Authority 7-6-A; EPA Region 2 Delegation of Authority 7-6-A; EPA Delegation of Authority 7-8; EPA Region 2 Delegation of Authority 7-8.

CAA Section 112

6. Section 112(a) of the Act, 42 U.S.C. § 7412(a), contains the following relevant definitions:
 - a. “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10-tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. CAA Section 112(a)(1), 42 U.S.C. § 7412(a)(1).
 - b. “area source” means any stationary source of hazardous air pollutants that is not a major source. CAA Section 112(a)(2), 42 U.S.C. § 7412(a)(2).
 - c. “stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. CAA Section 112(a)(3), 42 U.S.C. § 7412(a)(3).
 - d. “new source” means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source. CAA Section 112(a)(4), 42 U.S.C. § 7412(a)(4).
 - e. “hazardous air pollutant” means any air pollutant listed pursuant to Section 112(b)

of the Act. CAA Section 112(a)(6), 42 U.S.C. § 7412(a)(6).

f. “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source. CAA Section 112(a)(9), 42 U.S.C. § 7412(a)(9).

g. “existing source” means any stationary source other than a new source. CAA Section 112(a)(10), 42 U.S.C. § 7412(a)(10).

7. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (“HAPs”), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory. 42 U.S.C. § 7412(c)(1), (2), and (3).
8. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. 40 C.F.R. Part 63 NESHAPs are sometimes known as maximum achievable control technology (“MACT”) standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the MACT. 42 U.S.C. § 7412(d)(2).

NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources

9. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the standards for “Industrial, Commercial, and Institutional Boiler Area Sources” which are codified at 40 C.F.R. Part 63, Subpart JJJJJ, §§ 63.11193 *et seq.* (“Subpart JJJJJ”). *See* 78 Fed. Reg. 15591 (March 21, 2012) (as amended).
10. 40 C.F.R. § 63.11193 provides that Subpart JJJJJ applies to owners and operators of an

industrial, commercial, or institutional boiler, as defined in § 63.11237, and is located at, or part of an area source of HAPs.

11. 40 C.F.R. § 63.11194 (a) provides that Subpart JJJJJ applies to each new, reconstructed, or existing affected source.
12. 40 C.F.R. § 63.11194 (b) provides that an affected source is an existing source if construction or reconstruction was commenced on or before June 4, 2010.
13. 40 C.F.R. § 63.11194 (c) provides that an affected source is a new source if construction was commenced after June 4, 2012, and if the boiler meets the applicability criteria at the time construction commences.
14. 40 C.F.R. § 63.11194 (d) provides that an affected source is a reconstructed source if the boiler meets the reconstruction criteria as defined in § 63.2, reconstruction was commenced after June 4, 2010, and if the boiler meets the applicability criteria at the time reconstruction commences.
15. 40 C.F.R. § 63.11201 (a) provides that an owner or operator of an affected source must comply with each emission limit specified in Table 1 of Subpart JJJJJ that applies to their boiler.
16. 40 C.F.R. § 63.11201 (b) provides that an owner or operator of an affected source must comply with each work practice standard, emission reduction measure, and management practice specified in Table 2 of Subpart JJJJJ that applies to their boiler.
17. 40 C.F.R. § 63.11201 (c) provides an owner or operator of an affected source shall comply with each operating limit specified in Table 3 of Subpart JJJJJ.
18. 40 C.F.R. § 63.11201 (d) provides that these standards apply at all times when the affected boiler is operating, except during periods of startup and shutdown as defined in §

63.11237, during which time an owner and operator of an affected source must comply only with Table 2 of Subpart JJJJJ.

19. 40 C.F.R. § 63.11205 (a) provides that an owner or an operator of an affected source must, at all times operate and maintain any affected source, including air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.
20. 40 C.F.R. § 63.11210 (a) provides that an owner or operator of an affected source must demonstrate initial compliance with each emission limit specified in Table 1 of Subpart JJJJJ by either conducting performance (stack) tests, as applicable, according to § 63.11212 and Table 4 of Subpart JJJJJ or, for mercury, conducting fuel analyses, as applicable, according to § 63.11213 and Table 5 of Subpart JJJJJ.
21. 40 C.F.R. § 63.11210 (d) provides that an owner or operator of a new or reconstructed affected boiler that has applicable emission limits, must demonstrate initial compliance with the applicable emission limits no later than 180-days after March 21, 2011, or within 180-days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).
22. 40 C.F.R. § 63.11210 (g) provides that an owner or operator of a new or reconstructed affected boiler that has applicable work practice standards or management practices, is

not required to complete an initial performance tune-up, but is required to complete the applicable biennial or 5-year tune-up as specified in § 63.11223 no later than 25-months or 61-months, respectively, after the initial startup of the new or reconstructed affected source.

23. 40 C.F.R. § 63.11211 (a) provides that an owner or operator of an affected boiler who demonstrates compliance with any of the emission limits of this subpart through performance (stack) testing, has initial compliance requirements that include conducting performance tests according to § 63.11212 and Table 4 of Subpart JJJJJJ.
24. 40 C.F.R. § 63.11212 (a) provides that an owner or operator of an affected boiler must conduct all performance tests according to § 63.7(c), (d), (f), and (h). An owner or operator must also develop a site-specific test plan according to the requirements in § 63.7(c).
25. 40 C.F.R. § 63.11212 (b) provides that an owner or operator of an affected boiler must conduct each stack test according to the requirements in Table 4 of Subpart JJJJJJ.
26. 40 C.F.R. § 63.11214 (b) provides that an owner or operator of a new oil-fired boiler, must conduct a performance tune-up according to § 63.11210 (g), and § 63.11223 (b).
27. 40 C.F.R. § 63.11223 (b) provides that an owner and operator of affected sources must conduct a tune-up of the boiler biennially to demonstrate continuous compliance as specified in Subpart JJJJJJ § 63.11223 (b)(1) through (7). Each biennial tune-up must be conducted no more than 25-months after the previous tune-up. For a new or reconstructed boiler, the first biennial tune-up must be conducted no later than 25-months after the initial startup of the new or reconstructed boiler.
28. 40 C.F.R. § 63.11225 (a)(3) provides that an owner or operator of an affected source is

required to conduct a performance stack test and must submit a Notification of Intent to conduct a performance test at least 60-days before the performance stack test is scheduled to begin.

29. 40 C.F.R. § 63.11225 (a)(4) provides that an owner or operator of an affected source must submit the Notification of Compliance Status no later than 120-days after the applicable compliance date specified in § 63.11196 and in accordance with the established requirements in § 63.11225 (a)(4)(i) and (vi).
30. 40 C.F.R. § 63.11225 (b) provides that an owner or operator of an affected source must prepare, by March 1 of each year, and submit to the delegated authority upon request, an annual compliance certification report for the previous calendar year containing the information specified in § 63.11225 (b)(1) through (4) of Subpart JJJJJ.

NESHAP for Stationary Reciprocating Internal Combustion Engines

31. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the standards for “Stationary Reciprocating Internal Combustion Engines” (“RICE”) which are codified at 40 C.F.R. Part 63, Subpart ZZZZ, §§ 63.6580 *et seq.* (“Subpart ZZZZ”). *See* 73 Fed. Reg. 3603 (Jan. 18, 2008) (as amended).
32. 40 C.F.R. § 63.6580 provides that Subpart ZZZZ established national emission limitations and operating limitations for HAPs emitted from stationary RICE located at major and area sources of HAP emissions. Subpart ZZZZ also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations and operating limitations.
33. 40 C.F.R. § 63.6585 (c) provides that an area source of HAP emissions is a source that is not a major source.

34. 40 C.F.R. § 63.6590 (a) (1) (iii) provides that a stationary RICE located at an area source of HAP emissions is existing if construction or reconstruction of the stationary RICE commenced before June 12, 2006.
35. 40 C.F.R. § 63.6590 (a) (2) (iii) provides that a stationary RICE located at an area source of HAP emissions is new if construction of the stationary RICE commenced on or after June 12, 2006.
36. 40 C.F.R. § 63.6675 defines the term “area source” as meaning any stationary source of HAP that is not a major source, as defined in part 63.
37. 40 C.F.R. § 63.6640 (f) provides that owners and operators of an emergency stationary RICE must operate the emergency stationary RICE according to the requirements in paragraphs (f) (1) through (4) of this section. For an engine to be considered an emergency stationary RICE under Subpart ZZZZ, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50-hours per year, as described in paragraphs (f) (1) through (4), is prohibited. If the owner or operator of the engine does not operate it according to the requirements in paragraphs (f) (1) through (4), the engine will not be considered an emergency engine under Subpart ZZZZ and must meet all requirements for non-emergency engines.
38. 40 C.F.R. § 63.6675 defines the term “emergency stationary RICE” to mean any stationary reciprocating internal combustion engine that meets all the criteria in paragraphs (1) through (3) of this definition. All emergency stationary RICE must comply with the requirements specified in § 63.5540 (f) in order to be considered emergency stationary RICE. If the engine does not comply with the requirements specified in § 63.6640 (f), then it is not considered to be an emergency stationary RICE

under subpart ZZZZ. Paragraphs (1) through (3) of the definition in 40 C.F.R. § 63.6675 provide as follows:

- a. (1) The stationary RICE is operated to provide electrical power or mechanical work during emergency situations. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc.
- b. (2) The stationary RICE is operated under limited circumstances for situations not included in paragraph (1) of the definition, as specified in § 63.6640 (f).
- c. (3) The stationary RICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of the definition only as allowed in § 63.6640 (f) (4) (i) or (ii).

39. 40 CFR 63.6625 (f) provides that an owner and operator of an existing emergency stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing emergency stationary RICE located at an area source of HAP emissions, must install a non-resettable hour meter if one is not already installed.

40. 40 CFR 63.6655 (f) provides that an owner and operator of an existing emergency stationary RICE located at an area source of HAP emissions that does not meet the standards applicable to non-emergency engines, must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. The owner or operator must document how many hours are spent for emergency operation, including

what classified the operation as emergency and how many hours are spent for non-emergency operation.

Commonwealth of Puerto Rico Regulations for the Control of Atmospheric Pollution

41. Pursuant to the Puerto Rico Environmental Public Policy Act Law No. 9 of June 18, 1970¹, the Puerto Rico Environmental Quality Board (“EQB”) developed the Puerto Rico Regulations for the Control of Atmospheric Pollution (“RCAP”).
42. By virtue of Law 122 of December 18, 2017, EQB’s functions, services, programs and/or powers were transferred to the Puerto Rico Department of Natural and Environmental Resources (“DNER”).²
43. On January 22, 1997, EPA approved DNER’s RCAP, as submitted to EPA on September 29, 1995, as part of the federally approved State Implementation Plan (“SIP”) for the Commonwealth of Puerto Rico. 62 Fed. Reg. 3211.
44. RCAP Rule 203 (A) (Permit to construct a source or modification) establishes that no person shall construct or modify a source without a permit from DNER.
45. RCAP Rule 203 (B) (Standards for granting a permit to construct) establishes that a permit to construct or modify a source shall be granted only if the applicant demonstrates, among other things, that, to the satisfaction of DNER, the source shall be able to comply with all applicable rules and regulations; and that air pollutant emissions from the source will be limited in accordance with applicable rules and regulations. *See* RCAP, Rule 203 (B)(1) and (4).
46. RCAP Rule 203 (C) (Application for a permit to construct) establishes that each application for a permit to construct or modify a source shall include, among other things,

¹ Repealed and superseded by Act No. 416 of September 22, 2004.

² All actions taken by the EQB prior to December 18, 2017, will be referenced as actions taken by the DNER.

detailed plans and specifications of the emissions and of any air pollution control equipment or measures proposed to be installed and constructed to achieve compliance with applicable rules and regulations; a layout plan of the source (projected and existing), indicating all air pollutant discharge, ventilation, exhaust and release points; and detailed plans and specifications of the source including: location, height of the emissions points, fuel used, process details, concentration and duration of emissions. *See* RCAP, Rule 203 (C) (1) (a), (c), and (h).

47. RCAP Rule 204 (A) (1) (Permit to operate a source; Permit required) establishes that no person shall operate or cause the operation of a source or air pollution control equipment without a permit to operate or a temporary permit to operate from DNER.
48. RCAP Rule 204 (A) (3) establishes that no person shall operate or cause the operation of an existing source without an operation permit or without the required application of renewal provided that the operation conditions previously approved by DNER are the same or are unchanged.

FINDINGS OF FACT

The following findings of fact are based on a review of Facility records and a site visit of the Facility:

49. Respondent owns and operates a corrugated cardboard and fiber drum packaging manufacturing facility (the “Facility”) located at State Road PR 2 Km 85.2 in the municipality of Hatillo, Puerto Rico, which was constructed in 1969.
50. After receiving complaints, along with images, from representatives of the community adjacent to the Facility about black smoke being emitted from BCC boilers, on June 15,

2023, EPA Region 2 sent an Information Request Letter to Respondent pursuant to Section 114 of the Act, 42 U.S.C. § 741 (“114 Letter”).

51. The 114 Letter requested information related to 19 separate areas of inquiry, including but not limited to the following:
- a. Item 1: Detailed information about the Facility’s air emission source construction and operating permits, including any modifications or pending applications under evaluation by DNER.
 - b. Item 7: A detailed list of all current air emissions sources and control devices (if applicable) including a description of each emission source providing relevant information such as capacity, fuel consumption, date of construction, brand, and serial and model numbers.
 - c. Item 15: Information regarding all emission control devices, including but not limited to subsections (a) date of construction; (d) evidence of required inspections; and (e) records indicating the date of required inspections, verified parameters, and the operational ranges recommended by the manufacturer.
 - d. Item 16: Information regarding any boilers used at the Facility, including but not limited to subsections: (a) brand, model and series number, manufacturing date, fuel type and heat input capacity (MMBtu/hr); (b) date of construction; (c) date of initial startup; (e) annual fuel consumption limit, in gallons; (f) monthly fuel consumption records from 2018 through May 2023; (h) monthly fuel analysis reports from 2018 through May 2023; (i) copy of the two (2) most recent tune-ups conducted for all boilers as specified in 40 C.F.R. §§ 63.11214 and 63.11223(b); (j) copy and evidence of submittal to EPA of the Notification of Compliance

Status as specified in 40 C.F.R. § 63.11225(a)(4); (k) copy of the initial compliance performance test conducted as specified in 40 C.F.R. §§ 63.11210, 63.11212, and 63.11214(c); and (l) copy of energy assessment as specified in 40 C.F.R. 63.11214(c).

- e. Item 18: For all fuel products used in the facility, provide quality analysis certificates and purchase receipts for 2021 through the date of this Information Request.
 - f. Item 19: Information for all emergency power engines and fire control pump engines onsite at the Facility, including but not limited to subsections: (a) a detailed inventory including annual hours of operation, monthly fuel consumption from 2008 through May 2023, and the type of operation (emergency/non-emergency); (b) maximum hours of operation a year; and (c) copies of required annual report and evidence of submittal to DNER indicating hours of operation, monthly fuel consumption and fuel sulfur content in percent by weight for all emergency engines and fire control pumps.
52. On July 14, 2023, Respondent answered the 114 Letter by emailing a responsive document which seeks to address each of the 114 Letter's 19 inquiries and includes additional enclosures with detailed responsive information.
53. On July 10, 2023, and July 26, 2023, EPA received videos and additional images showing a significant black and dark gray plume of smoke being emitted from BCC's boilers that reached the neighboring residential area.

54. On August 1, 2023, and August 2, 2023, EPA requested, via email, supplemental clarifications on Respondent's July 14, 2023 answer to the 114 Letter. Specifically, EPA requested clarification regarding:
- a. the correct specifications for the onsite boilers' respective heat input capacity;
 - b. the start-up dates and/or years for the onsite boilers; and
 - c. whether the boilers' latest biennial tune-up was conducted in July 2023.
55. On August 3, 2023, BCC provided the additional information that EPA requested.
56. Respondent's answer to item 1 of the 114 Letter indicates that the Facility had a permit in 2008, which expired in 2013. Respondent provided a copy of its 2008 permit as part of their answer to the 114 Letter. Additionally, Respondent claims that in December 2020, it submitted a request to DNER to legalize the renewal of the Facility's existing, but expired, 2013 air emissions source operating permit. In its reply, Respondent further states that in January 2021, it applied to DNER for a construction permit, and that this application is still under evaluation with DNER's Regional Office in Arecibo. BCC also provided this 2021 permit application as an attachment in its reply.
- a. Based upon the information contained in BCC's application, the Facility emits HAPs consistent with that of an area source.
57. Respondent's answer to item 7 of the 114 letter indicates that it has six emission sources onsite at the Facility; specifically, three emergency power generators/engines, two boilers and one fire control pump engine. Respondent's reply further indicates that none of these listed emission sources are currently covered by an operating permit. None of the power generators listed in Respondent's answer match the description of the engines listed in

Respondent's 2008 permit. Respondent's onsite fire control pump engine was also not included in its 2008 permit.

58. Respondent's answer to item 15 of the 114 letter indicates that it has no control devices onsite for the air emissions sources listed in response to item 7 of the 114 Letter.
59. Respondent's answer to item 16 of the 114 letter indicates that it maintains two boilers onsite ("Boiler #1 and Boiler #2). Both boilers are manufactured by Cleaver Brooks. As clarified and confirmed by BCC's supplemental answer on August 3, 2023, Boiler #1 is 600 Hp and has a heat input capacity of 20.085 MM BTU/hr, and Boiler #2 is 400 Hp and has a heat input capacity of 13.390 MM BTU/hr.
 - a. During the site visit on August 4, 2023, EPA's environmental engineer noted that the Facility's onsite boilers, as described above, each have their own emissions stack (hereinafter referred to as "Stack 1" and "Stack 2," respectively).
60. Respondent's answer to item 16 further specifies that neither Boiler #1 or Boiler #2 were subject to its expired 2008 permit. As clarified and confirmed by BCC's supplemental answer on August 3, 2023, Boiler #1 was constructed in 2020, with an initial start-up date of June 28, 2020, and Boiler #2 was constructed in 2012 and started-up in late 2012; BCC could not provide an exact start-up date for Boiler #2.
 - a. In its answer to item 16 of the 114 Letter, BCC did not (1) submit any notification of compliance status to EPA for its boilers, (2) submit a notification of intent to conduct a performance test at least 60-days before the performance stack test is scheduled to begin, and (3) conduct and provide an initial compliance performance stack test on its boilers.

- b. Respondent's answer and enclosed document responding to item 16 of the 114 Letter did not include all the monthly fuel quality and consumption reports for its onsite boilers from 2018 through 2022. In response to item 16 (f), Respondent provided a series of monthly fuel consumption and sulfur content reports for Stack 1, from 2018 through May 2023, but did not provide any monthly fuel consumption and sulfur content reports for Stack 2. Moreover, in response to item 16 (h) BCC claimed that records from 2018 to May 2023 are not available and instead provided a single analysis report from 2022.
 - c. Finally, Respondent's answer to item 16 demonstrates that BCC did not conduct the required biennial tune-up on its onsite boilers in a timely manner. A tune-up for boilers was due on July 15, 2020, but was conducted on February 4, 2021. This was a delay of over six months. The following biennial tune-up was due on March 4, 2023. Based on Respondent's supplemental answer from August 4, 2023, BCC conducted this tune-up on August 3, 2023.
61. Respondent's answer to item 19 of the 114 Letter provides information about the three emergency power generator engines and one fire control pump engine. Based on BCC's response to the 114 Letter, the fire control pump engine is used for emergency purposes. Respondent's answer to item 19 is missing the following information:
- a. Respondent's answer to item 19 includes a table of fuel consumption records for these sources from 2019 to 2023. However, this table that BCC has provided states that no data is available for the fire control pump engine.
 - b. Item 19 also requested that BCC provide copies of its annual and monthly fuel quality reports and evidence of submittal to DNER. However, Respondent's

answer provides a single letter dated June 1, 2023, on which Respondent submitted the monthly fuel quality and consumption report for May 2023 to DNER.

- c. Lastly, BCC did not provide the hours of operation for the fire control pump's engine in its response to item 19 of the 114 Letter.

62. On August 1, 2023, and August 10, 2023, EPA received another series of images and videos showing a significant black and dark gray plume of smoke being emitted from BCC's boilers and reaching the neighboring residential area.

63. On August 4, 2023, an EPA environmental engineer and a DNER representative conducted a site visit at the Facility, with the purpose of investigating the alleged black smoke emissions from BCC's boilers. BCC was represented by Mr. Milton Rosa, Manufacturing Officer.

- a. During the site visit Mr. Rosa acknowledged and informed the EPA environmental engineer and DNER representative that the Facility boilers have been generating events of high opacity due to issues with the fuel metering pump in the Facility's boilers. Mr. Rosa discussed the BCC's efforts to repair and resolve the issue. Lastly, Mr. Rosa told the EPA environmental engineer that the Facility's onsite boilers burn Fuel No. 5 with a usual sulfur content of around 0.37%.

64. On August 15, 2023, EPA's environmental engineer shared a site visit report documenting the August 4, 2023, visit with BCC via email.

CONCLUSIONS OF LAW

Based on the Findings of Facts set forth above, EPA reaches the following conclusions of law:

65. Respondent is a “person” within the meaning of Section 302(e) of the Act.
66. Respondent is an “area source” pursuant to 40 C.F.R. § 63.2.
67. Respondent is the owner and operator of the Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and 40 C.F.R. § 63.2.
68. Based on BCC’s response to item 16 in the 114 Letter, the Facility boilers are affected sources subject to the applicable requirements in NESHAP Subpart JJJJJJ.
69. Based on BCC’s response to item 16 in the 114 Letter, both of its onsite boilers are considered “new sources” pursuant to 40 C.F.R. § 63.11194 (c).
70. Respondent is in violation of 40 C.F.R. §§ 63.11210 (g), 63.11223, and 63.11225 for failing to conduct the applicable biennial tune-up for Boilers #1 and #2 to show continuous compliance with Subpart JJJJJJ.
71. Respondent is in violation of 40 C.F.R. § 63.11225 (a) (4) for failing to submit the required Notification of Compliance Status.
72. Respondent is in violation of 40 C.F.R. § 63.11225 (a) (3) for failing to submit a notification of intent to conduct a performance stack test.
73. Respondent is in violation of 40 C.F.R. §§ 63.11210(d), 63.11211(a), and 63.11212, for failing to conduct the required initial compliance performance stack test and applicable procedures.
74. Respondent is in violation of 40 C.F.R. 40 C.F.R. § 63.11225 (b) for failing to submit the annual compliance certification reports corresponding to years 2018 through 2022.

75. Based on BCC's response to item 19 in the 114 Letter, the Facility fire control pump engine is an affected source subject to the applicable requirements in NESHAP Subpart *ZZZZ*.
76. Respondent is in violation of 40 C.F.R. § 63.6655 (f) for failing to keep records of the hours of operation related to the fire control pump engine to demonstrate continuous compliance with Subpart *ZZZZ*.
77. Respondent is in violation of RCAP Rule 203 as approved into the SIP on January 22, 1997, 62 Fed. Reg. 3211, by failing to apply for a permit to construct or modify an air emission source prior to the construction and installation of Boiler #1 (600 Hp), Boiler #2 (400 Hp), Fire Control Pump Engine (571 Hp), Power Generator (380 Hp), Power Generator (1509 Hp), and Power Generator (2514 Hp).
78. Respondent is in violation of RCAP Rule 204(A)(1) as approved into the SIP on January 22, 1997, by operating the Facility without an air emission source operation permit.

ENFORCEMENT

Section 113(a)(1) and (3) of the CAA, provides that the Administrator may bring a civil action whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement rule or permit issued under the provisions of Section 113 of the CAA. The Administrator shall notify the person and the State in which the plan applies of such a finding. At any time after the expiration of thirty (30) days following the date this Notice of Violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28):

- a. issue an order requiring such person to comply with the requirements or prohibitions of a SIP or permit;

- b. issue an administrative penalty order in accordance with CAA Section 113(d); or
- c. bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered, for violations such as those discussed above, under the CAA and its implementing regulations is set by statute at not more than \$25,000 per day for each violation, but has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). Civil penalties for violations that occurred after November 2, 2015, and are assessed on or after January 6, 2023, this daily penalty maximum is adjusted to \$117,468 for judicial actions, and \$55,808 for administrative actions. *See* 40 C.F.R. Part 19, Table 2.

Furthermore, for any person who knowingly violates any requirements or prohibition of an applicable SIP and permit for more than 30-days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be

assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

OPPORTUNITY FOR A CONFERENCE

Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent with an opportunity to advise the Agency of any further information the EPA should consider with respect to the alleged violations and to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within 10-days of receipt of this NOV. A request for a conference or other inquiries concerning the NOV should be made via electronic mail or in writing to:

Nancy Rodríguez, Chief
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II – Suite 7000
#48 Road. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8073
Attn: Alex Rivera, Enforcement Officer
rivera.alex@epa.gov

If you are represented by counsel, your counsel may contact:

Cassandra Basile
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway Floor 16
New York, NY 10007
(212) 637-3234
basile.cassandra@epa.gov

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the CAA. Also, notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

For United States Environmental Protection Agency, Region 2:

Date: _____

CARMEN
GUERRERO PEREZ
Digitally signed by CARMEN
GUERRERO PEREZ
Date: 2023.10.26 11:09:43 -04'00'

Carmen R. Guerrero
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2

To: Livette González
President
Borinquen Container, Corp.
livette@borinquengroup.com

Milton Rosa
Manufacturing Officer
Borinquen Container Corp.
mrosa@borinquengroup.com

cc: Amarilys Rosario, Chief
DNER Air Inspection and Compliance Division
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bcc: N. Rodríguez, CEPD-MPCB
R. Buettner, ECAD-ACB
H. Patel, ECAD-ACB
A. Rivera, CEPD-MPCB
G. Diaz-Galarza, CEPD-MPCB
C. Basile, ORC-AIR
L. Villatora, ORC-AIR
H. Vélez, ORC-CT
CEPD MPCB Air File
ORC Air Chron File