



### Parties

3. The Respondent is Terra Express, Inc., a Delaware corporation doing business in the State of Iowa. The Respondent's business address is 600 4<sup>th</sup> Street, Sioux City, Iowa. The facility that is the subject of this Complaint is a tractor-trailer owned by Respondent that was carrying ammonia on November 9, 2004, and rolled into a ravine located near 2058 Tuma Trail, Woodbine, Iowa. There was a release of 14,000 pounds of ammonia over November 9-10, 2004 from that tractor-trailer.

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 109 of CERCLA, 42 U.S.C. § 9609, is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Air, RCRA and Toxics Division of EPA, Region VII (Complainant) to sign CWA Class II Consent Agreements and to the Regional Counsel for Consent Agreements under Section 109 of CERCLA.

### Statutory and Regulatory Framework

5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and the regulations set forth in 40 C.F.R. Part 110, prohibit the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (4), discharges of hazardous substances into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are discharges of hazardous substances in excess of the quantities listed in 40 C.F.R. Part 117.3.

7. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, to immediately notify the National Response Center of such release.

### Factual Background

8. Respondent is a person as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. Respondent was at all relevant times the "owner or operator," within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the tractor-trailer that rolled into a

ravine near Woodbine Iowa on November 9, 2004, (Respondent's facility) and that was removed from the ravine on November 10, 2004.

10. On November 9-10, 2004, Respondent discharged 1,400 pounds of ammonia, which is designated as a hazardous substance in 40 C.F.R. 116.4, from the facility into or upon Picayune Creek, which is a tributary of the Boyer River, which flows into the Missouri River.

11. Ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4.

12. Due to its location, Respondent's facility could reasonably be expected to discharge a hazardous substance in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

### Findings of Violation

#### Count 1

13. The facts stated in paragraphs 8 through 12 above are herein incorporated.

14. Respondent's facility (tractor-trailer) is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. Ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601 (14) with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4.

16. Beginning approximately 12:00 P.M., November 9, 2004, there was a release of ammonia from Respondent's facility that exceeded the reportable quantity designated by 40 C.F.R. § 302.4.

17. Respondent discovered the release referenced in the preceding paragraph at approximately 12:00 p.m. on November 9, 2004.

18. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

19. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

#### Count 2

20. The facts stated in paragraphs 8 through 19 above are herein incorporated.

21. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321 (a) (7), and 40 C.F.R. § 112.2.

22. Respondent is the owner or operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a facility located at Picayune Creek on November 9-10, 2004.

23. The facility at Picayune Creek is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

24. Picayune Creek, the Boyer River and the Missouri River are water bodies subject to the jurisdiction of Section 311 of the CWA as defined in 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

25. Section 311(b)(3) of the CWA prohibits the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

26. For purposes of Sections 311(b)(3) and (b)(4) of the CWA, discharges of hazardous substances into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are discharges of hazardous substances in excess of the quantities listed in 40 C.F.R. Part 117.3.

27. Respondent's discharge of ammonia, as described in the preceding Paragraphs, was in excess of the quantity of such substance established in 40 C.F.R. 117.3 and consequently was in a quantity that has been determined may be harmful under 40 C.F.R. 117.3, and therefore violated Section 311(b)(3) of the CWA.

### **CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement/Final Order addresses all civil administrative claims for the CWA and CERCLA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA, CERCLA or any other applicable law.

7. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a total penalty of \$18,000.00 as set forth in Paragraphs 1 and 2 of the Final Order.

10. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

## **FINAL ORDER**

### **A. Payment Procedures**

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated total civil penalty of \$18,000.00.

2. Payment of the total penalty shall be made as follows:

(i) Payment of \$7,700 of the penalty shall be by cashier or certified check made payable to the "Oil Spill Liability Trust Fund" and remitted to:

U.S. Coast Guard  
Civil Penalties  
P.O. Box 100160  
Atlanta, Georgia 30384.

Respondent shall reference the Docket Number, CWA-07-2005-0368, on the check.

(ii) Payment of \$10,300 of the penalty shall be made to the EPA Superfund via wire transfer as follows:

Transmit to: ABA 043000261 (wire transfer routing #)  
Deposit to: EPA Acct#910-9125  
For: EPA, Region VII  
Kansas City, Kansas  
Docket No. CERCLA-07-2005-0368; Remitter: Terra Express, Inc.

3. A copy of the check sent to the Oil Spill Liability Trust Fund required under 2(i) shall also be mailed to the below addresses, along with written confirmation that the wire transfer to the Superfund account required under 2(ii) was also completed:

James D. Stevens  
Office of Regional Counsel  
EPA Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
EPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **B. Parties Bound**

5. This Final Order portion of this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

### C. General Provisions

6. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement/Final Order by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and/or Section 109 of CERCLA, 42 U.S.C § 6903, and to seek penalties against Respondent or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and/or CERCLA and implementing regulations and to enforce the terms and conditions of this Consent Agreement/Final Order.

8. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.


9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

1/11/06  
Date

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Air, RCRA and Toxics Division

1-9-06  
Date

  
\_\_\_\_\_  
James D. Stevens, Assistant Regional Counsel

RESPONDENT:  
Terra Express, Inc.

01/05/2006  
Date

Name   
Mark A. Kalafut

Title Vice President



IN THE MATTER of Terra Express, Inc.  
Docket Nos. CWA-07-2005-0268 and CERCLA-07-2005-0368  
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IT IS SO ORDERED. This Order shall become effective immediately.



Robert L. Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

March 30, 2006  
Date

IN THE MATTER OF Terra Express, Inc., Respondent  
Docket No. CWA-07-2005-00368 and CERCLA-07-2005-0368

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement Final Order was sent this day to the following addressees:

Copy hand delivered to  
Attorney for Complainant:

James D. Stevens  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mark A. Kalafut  
Terra Express, Inc.  
600 Fourth Street  
Sioux City, Iowa 51101

Copy to:

US. Coast Guard  
Finance Center (OGR)  
1430A Kristina Way  
Chesapeake, Virginia 23326

3/30/06

Dated



Kathy Robinson  
Regional Hearing Clerk