



ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:
United Parcel Service, Inc.
Docket No. RCRA-06-2022-0942

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: October 17, 2022

By: Mary Kay Lynch
Environmental Appeals Judge

1 The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Wendy L. Blake, and Mary Kay Lynch.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF:	§	EPA Docket No.
	§	RCRA-06-2022-0942
UNITED PARCEL SERVICE, INC.	§	
	§	
RESPONDENT	§	Proceeding Under Section 3008(a) of the
	§	Resource Conservation and Recovery Act
	§	42 U.S.C. § 6928(a)
	§	
	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and the attached proposed Final Order (collectively, the “CAFO”) is entered into by the United States Environmental Protection Agency (“EPA” or “Complainant”), and United Parcel Service, Inc., an Ohio corporation (“UPS” or “Respondent”) and concerns Respondent’s locations listed in Appendix I to this CAFO (the “Facilities”).

2. Pursuant to Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2), notice of the commencement of this action has been given to each state listed in Appendix I with an authorized RCRA program (“Authorized States”).¹ EPA also informed Iowa, Alaska, the Commonwealth of Puerto Rico, and affected federally-recognized Indian tribes for which EPA generally administers the RCRA program.

3. Each of the Authorized States listed in Appendix I administers the base RCRA hazardous waste program requirements imposed by the Solid Waste Disposal Act (prior to the

¹ Appendix I represents all UPS locations that currently exist in all of EPA’s regions, except locations in EPA Region 6. Each state listed in Appendix I to this CAFO has an authorized RCRA program, except Alaska, Iowa, and the Commonwealth of Puerto Rico.

Hazardous and Solid Waste Amendments of 1984) in lieu of the federal government's program. Thus, where applicable, citation to the Code of Federal Regulations ("C.F.R.") is a citation to the corresponding regulations contained within the State's authorized RCRA hazardous waste program.

4. For this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and alleged violations of law contained in this CAFO.

5. The Respondent explicitly waives any right to contest the allegations set forth in this CAFO and any right to appeal the proposed Final Order set forth herein. 40 C.F.R. § 22.18(b)(2). Further, for purposes of this proceeding, Respondent waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

6. Respondent consents to the issuance of this CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific time period and requirements stated in Section IV (Compliance Order).

7. Respondent and Complainant (the "Parties"), by the execution and filing of this CAFO, have agreed to resolve the potential violations and claims alleged in this CAFO for the Facilities.

8. By their signatures to this CAFO, the Parties agree to the use of electronic signatures for this matter. The Parties further agree to electronic service of this CAFO, pursuant to 40 C.F.R. § 22.6, by email to the following addresses: EPA, Moncrieffe.Marcia@epa.gov and for Respondent, meaghan.boyd@alston.com.

II. JURISDICTION

9. This CAFO is issued by EPA, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). The Director of the Waste and Chemical Enforcement Division, Office of Enforcement and Compliance Assurance, Gregory Sullivan, is authorized by lawful delegation, to initiate and settle civil administrative actions brought pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

10. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the Administrator of EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms and conditions.

III. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

11. UPS is a corporation authorized to do business in all the states in which Appendix I facilities are located that are subject to this CAFO.

12. From 2018 and continuing through the date of the filing of this CAFO, Respondent owned and/or operated each of the Facilities at the corresponding and respective addresses listed in Appendix I, which are the subject of this CAFO.

13. UPS operates a small package distribution and transportation operation at 1,158 Facilities listed in Appendix I of this CAFO. The volume of small packages and freight that pass through the Facilities on a daily basis varies and depends on many factors, including time of year, weather, and location of each Facility.

14. Some Facilities are large hubs that accommodate over the road semi-trucks and trailers and/or air freight, which are then sorted and redistributed categorically to smaller hubs for packages to make their way to designated destinations.

15. Some Facilities have loading docks for receipt and redistribution of packages, including spaces for fleet maintenance and various storage structures.

16. Many of these Facilities operate 24 hours a day, seven days a week (in multiple 5.5-hour shifts). Some Facilities employ more than 200 employees per shift.

17. Respondent's business is primarily delivering small packages, with the NAICS codes 49211, 492210, 484121, and 484122, respectively, Local Messengers and Local Delivery; Courier and Express Delivery Services; General Freight, Trucking, Long-distance, Less than Truck Load; and General Freight, Trucking, Long-distance Truck Load. The Facilities may generate hazardous waste when a package is damaged, as well as a result of day-to-day operations, like automotive maintenance.

18. From 2018 and continuing through the date of the filing of this CAFO, Respondent submitted various Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), notifications for the Facilities listed in Appendix I to this CAFO, which identified the Facilities as conditionally exempt small quantity generator or very small quantity generator ("CESQG" or "VSQG"),² a small quantity generator ("SQG"), or as a large quantity generator ("LQG").

² On November 28, 2016, EPA published in the Federal Register ("Fed. Reg") the Hazardous Waste Generator Improvement Rule (the "New Rule"), which became effective on May 30, 2017. 81 Fed. Reg. 85732 (November 28, 2016). However, provisions of the New Rule that are more stringent than current rules in the Authorized States will become effective in each state when each state has adopted the New Rule. Further, since the New Rule was issued under Non-HSWA authority, EPA will enforce the New Rule when it is authorized in states that have authorization for the Base RCRA Programs. EPA will also enforce the New Rule in Indian country, as appropriate. Further, the New Rule no longer uses the term CESQG but instead uses Very Small Quantity Generator ("VSQG"). As the timeframe for some of the allegations in this CAFO applies across the New Rule and the previous Rule, this CAFO, where applicable to the issue of CESQG or VSQG, cites both rules.

19. On or about February 7, 2019, and November 15, 2019, the Arkansas Department of Environmental Quality (“AR DEQ”) conducted RCRA inspections at the Fort Smith facility, which is located at 6715 S. 28th Street, Fort Smith, Arkansas and concluded that certain waste streams generated during the facility’s operations are subject to Arkansas Pollution Control and Ecology Commission’s promulgated Rule 23, Part 262 and 40 C.F.R. Part 262.

20. Subsequent to the inspections, AR DEQ referred the case to EPA, Region 6 for further investigation.

21. Subsequent to the review of AR DEQ’s inspections, EPA, Region 6 also reviewed several state inspections for various facilities in EPA, Region 6, reviewed the Respondent’s records in the EPA RCRAInfo database, Texas STEERS data/Central Registry, EPA’s Biennial Reports, and E- Manifests, for certain Region 6 facilities, as well as additional information voluntarily provided to EPA by Respondent (“Investigation”).

22. As a result of the Investigation, EPA, Region 6 issued to UPS a Section 3007 Information Request in May 2020.

23. Between May of 2020 and June 2021, EPA, Region 6 and UPS participated in settlement discussions and arrived at a settlement for all of UPS’s active facilities in EPA, Region 6 by the filing of an EPA, Region 6 CAFO on June 8, 2021.

24. Following the EPA, Region 6 settlement, EPA expanded the Investigation beyond the facilities located in EPA, Region 6. From its further investigation, EPA identified similar claims to those alleged in EPA, Region 6’s settlement (“Investigation-2”). With this additional information, EPA contacted UPS and the Parties engaged in further discussions that led to them agreeing to enter into a similar settlement for the Facilities listed in Appendix I of this CAFO.

25. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

26. From 2018 and continuing through the date of the filing of this CAFO, each of Respondent’s Facilities listed in Appendix I to this CAFO was and continues to be a “Facility”³ as defined under 40 C.F.R. § 260.10.

27. From 2018 and continuing through the date of the filing of this CAFO, Respondent was and continues to be an “owner” and/or “operator” of the Facilities as defined under 40 C.F.R. § 260.10.

28. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that Respondent generates several “solid waste” streams from certain of its Facilities within the meaning of Section 1004(28) of RCRA, 42 U.S.C. § 6903(28) and 40 C.F.R. § 260.10.

29. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, Respondent generated, accumulated, and offered for transport and treatment and/or disposal, at a minimum, the following hazardous waste streams, generated from certain of its Facilities:

- i. Ignitable, corrosive, and reactive characteristic wastes with the hazardous waste codes, respectively, D001, D002, and D003;
- ii. Toxicity characteristic wastes with the hazardous waste codes D004, D005, D006, D007, D008, D009, D010, D016, D018, D019, D021, D026, D027, D028, D029, D035, D039, D040, which correspond respectively to arsenic, barium, cadmium, chromium, lead, mercury, selenium, 2,4-D, benzene, carbon tetrachloride, chlorobenzene, cresol, 1,4-dichlorobenzene, 1,2-dichloroethane, 1,1-dichloroethylene, methyl ethyl ketone, tetrachloroethylene, and trichloroethylene;

³ For purposes of this CAFO, the term “Facility” means one of the Facilities listed in Appendix I of this CAFO.

- iii. Listed hazardous wastes, with the hazardous waste codes F002, F003, F005, U002, U003, U044, U056, U080, U111, U112, U117, U118, U122, U125, U154, U159, U161, U165, U210, U220, U228, U238, U239; and
- iv Acute hazardous waste, with the hazardous waste codes P075 and P105.

30. The hazardous wastes identified in Paragraph 29 are “hazardous waste” as defined in 40 C.F.R. §§ 261.21, 261.22, 261.23, 261.24, 261.31, and 261.33.

31. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that Respondent is a “generator” of “hazardous waste” at each of its Facilities, as those terms are defined in 40 C.F.R. § 260.10.

32. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, Respondent generated the hazardous wastes identified in Paragraph 29 in quantities that exceeded in some instances the threshold amount of 100 kg of hazardous waste per month and in other instances the threshold amount of 1000 kg of hazardous waste per month or 1 kg of acute hazardous waste per month at certain of its Facilities in one or more calendar months, and that waste generation would have triggered SQG status or LQG status, respectively, pursuant to 40 C.F.R. Part 262, for the period that such wastes remained onsite.

33. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined those solid wastes generated at Respondent’s Facilities are hazardous wastes and those hazardous wastes are the subject of this CAFO and must be managed pursuant to the applicable regulations at 40 C.F.R. Parts 261 and 262, and all the applicable regulations referenced therein.

34. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation EPA has determined that Respondent did not fully comply with several of

the applicable generator standards in violation of the laws and regulations of RCRA promulgated at Sections 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924, and 6925.

RCRA ALLEGATIONS

Claim i. Failure to File an Adequate, Accurate Initial or Subsequent Notification

35. The relevant allegations in Paragraphs 1-34 are realleged and incorporated herein by reference.

36. Pursuant to 40 C.F.R. §§ 261.5(a) and (b), a generator is a CESQG or VSQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 40 C.F.R. §§ 261.5(f), (g), and (j) or 40 C.F.R. § 262.14.

37. Pursuant to 40 C.F.R. § 262.34(d), a generator is a SQG if it generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and complies with 40 C.F.R. §§ 262.34(d)(1) through (5).

38. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that some of the Facilities in Appendix I should have been operating as a LQG and other Facilities should have been operating as a SQG at certain times from 2018 and continuing through the date of the filing of this CAFO.

39. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or with states having authorized hazardous waste permit programs a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

40. In some instances, from 2018 and continuing through the date of the filing of this CAFO, Respondent did not file with the Administrator or the authorized state an initial or

subsequent notification of its hazardous waste activities for certain of its Facilities in Appendix I.

41. In other instances, from 2018 and continuing through the date of the filing of this CAFO Respondent did not file with the Administrator or the authorized state subsequent notifications of its hazardous waste activities for certain of its Facilities, including:

- a) Identifying itself as a LQG or SQG;
- b) Identifying the contact person; and
- c) Indicating its generation of all hazardous waste streams at its LQG and SQG Facilities, including its P and U listed Hazardous wastes at certain LQG Facilities.

42. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of filing of this CAFO, Respondent failed to comply fully with Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim ii. Failure to Meet the Requirements for Large, Small, and Conditionally Exempt Small Quantity Generators or Very Small Quantity Generators

43. The relevant allegations in Paragraphs 1-42 are realleged and incorporated herein by reference.

44. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that some of the Facilities should have been operated as LQGs and some of the Facilities should have been operated as SQGs from 2018 and continuing through the date of the filing of this CAFO.

45. Pursuant to 40 C.F.R. §§ 262.34(a) and (b), a generator of 1000 kilograms or greater of hazardous waste in a calendar month or greater than one (1) kilogram of acute hazardous waste in a calendar month, may accumulate hazardous waste or acute hazardous waste on-site for 90 days or

less without a permit or without having interim status, provided that certain conditions are met.

46. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO: (1) Respondent did not fully comply with the required LQG conditions at some Facilities as set forth at 40 C.F.R. § 262.34(a) and (b); (2) Respondent did not fully comply with the required SQG conditions at some Facilities as set forth at 40 C.F.R. § 262.34(d); and (3) Respondent did not fully comply with the required CESQG or VSQG conditions at some Facilities as set forth at 40 C.F.R. §§ 261.5(a) and (b) or 40 C.F.R. § 262.14.

47. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, Respondent did not fully comply with 40 C.F.R. §§ 261.5, 262.14, 262.34(a), (b), and (d), and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim iii. Failure to Perform Land Disposal Determination

48. The relevant allegations in Paragraphs 1-47 are realleged and incorporated herein by reference.

49. Pursuant to 40 C.F.R. §§ 268.7(a)(2) or 268.7(a)(3)(i), and in accordance with all applicable requirements of the Land Disposal Restrictions (“LDR”) found at 40 C.F.R. Part 268, at a minimum, a generator must send a one-time written notice and place a copy in its file documenting either that the waste does not meet treatment standards, or that the generator chooses not to make the determination as to whether the waste must be treated, with its initial shipment of waste sent to each treatment, storage, or disposal facility.

50. Based on the information EPA gathered during its Investigation-2, and without a

nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, in some instances, Respondent did not send the one-time written notice to each treatment, storage, and/or disposal facility and, in other instances, the written notice that was sent did not include all waste codes for the associated waste streams generated by Respondent at some of its Facilities.

51. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, Respondent has violated 40 C.F.R. § 268.7 of the LDR regulations and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim iv. Failure to Submit Annual/Biennial Report

52. The relevant allegations in Paragraphs 1-51 are realleged and incorporated herein by reference.

53. Pursuant to 40 C.F.R § 262.41, a large quantity generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA's Regional Administrator by March 1 of each even-numbered year, in addition to any reporting required by the states.⁴

54. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, the EPA and/or the respective states did not receive Annual/Biennial Reports that Respondent was required to file for some of its Facilities.

55. Based on information EPA gathered during its Investigation-2, EPA determined that from 2018 and continuing through the date of the filing of this CAFO, Respondent failed to comply

⁴ In some states, SQGs are required to submit annual reports.

with 40 C.F.R. § 262.41 and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Claim v. Failure to Comply with the Manifest Requirements

56. The relevant allegations in Paragraphs 1-55 are realleged and incorporated herein by reference.

57. Pursuant to 40 C.F.R. § 262.20(a), a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) and, where applicable, includes the respective state's waste code for each hazardous waste itemized on the manifest.

58. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that Respondent did not prepare all the manifests for some of its Facilities as required by the regulations. For instance, EPA identified Respondent's manifests with the following errors, irregularities, and/or inconsistencies:

- a. Incorrect generator identification number for specific Facilities;
- b. Manifests without signatures;
- c. No EPA identification number;
- d. Missing state's waste codes; and/or
- e. Incorrect addresses.

59. Based on the information EPA gathered during its Investigation-2, and without a nationwide investigation, EPA has determined that from 2018 and continuing through the date of the filing of this CAFO, Respondent failed to comply with 40 C.F.R. § 262.20(a) and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

IV. COMPLIANCE ORDER

60. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and within thirty-six (36) months from the Effective Date of this CAFO (the “Compliance Period”), Respondent is hereby ordered to take the actions necessary to correct the violations alleged in Section III of this CAFO. To correct the alleged violations, Respondent has agreed to undertake the Work⁵ set forth in Appendix II (The RCRA Narrative and Compliance Schedule)⁶ of this CAFO pursuant to the description and schedules set forth therein. Such Work under Appendix II (The RCRA Narrative and Compliance Schedule) will include the implementation of mechanisms and procedures for accurate and complete performance for: (1) hazardous waste determinations; (2) Section 3010 RCRA Notification submissions; (3) Employee training; (4) Annual and/or biennial hazardous waste reporting; (5) Land Disposal Restrictions; (6) management of hazardous waste while on site, to include contingency plans and emergency procedures; and (7) manifesting requirements.

Further, Respondent shall certify in writing:

- a) Within the Compliance Period that it has corrected the violations at its Facilities as alleged in Section III of this CAFO;
- b) If Respondent cannot meet the timeline listed above and will need to delay compliance for less than ninety (90) calendar days, Respondent shall notify EPA and request an extension of time, including a timetable for compliance. EPA will grant an extension of up to ninety (90) calendar days. If Respondent determines that it needs longer than the additional ninety (90) calendar days to come into compliance, then Respondent will need to initiate a conference call with EPA to discuss the rationale for the delay, before the extension will be granted;
- c) If Respondent remains noncompliant with the terms of this CAFO including Appendix II (RCRA Compliance Narrative and Schedule) after a ninety (90) day extension period, then for as long as Respondent remains noncompliant with the terms of this CAFO and is unable to certify its full compliance with all applicable RCRA laws and regulations, state and/or federal, and pursuant to Subparagraph d) of this Section, Section V.ii (Stipulated Penalties) of this CAFO will be applicable; and

⁵ For purposes of this CAFO, “Work” shall mean the activities, including those delineated in the Appendix II (The RCRA Narrative and Compliance Schedule) to be implemented by Respondent to correct the RCRA violations at its Facilities.

⁶ If for any reason, there is a conflict with Appendix II (The RCRA Narrative and Compliance Schedule) and this CAFO or any applicable Federal and/or state laws or regulations, the CAFO and the Federal and/or state law shall control.

- d) In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer or officer's designee of the Respondent and shall include the following certification:

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

- e) Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
Fred Deppe via email at Deppe.Fred@epa.gov.

V. TERMS OF SETTLEMENT

i. **Penalty Provisions**

61. Pursuant to the authority granted in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and upon consideration of the entire record herein, including the above referenced Factual Allegations and Alleged Violations, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, which includes Respondent's cooperation throughout the negotiation, it is ordered that Respondent be assessed a civil penalty of Five Million Three Hundred Twenty-Three Thousand and Eight Dollars (\$5,323,008.00) that shall be paid by Respondent within thirty (30) days of the Effective Date of this CAFO.

62. If Respondent should decide to sell or in any way relinquish ownership of any of the Facilities before this CAFO is terminated, Respondent remains responsible for full payment of the Five Million Three Hundred Twenty-Three Thousand and Eight Dollars (\$5,323,008.00) made payable to the **Treasurer of the United States**. The payments shall be made by Respondent by one

of the following four (4) methods:

- a) By standard mail: a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

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

Or:

For signed receipt confirmation (Fedex, DHL, UPS, USPS certified, registered, etc.)

a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b) By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

- c) By automatic clearing house (ACH) payment through Vendor Express using:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical Location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

- d) Through www.pay.gov using a credit or debit card (Visa, MasterCard, American Express, and Discover) or checking account information.

“In the matter of United Parcel Service, Inc., Docket No. RCRA-R6-2022 0942” shall be clearly marked on the check or other remittance, to ensure proper credit.

63. The Respondent shall send a simultaneous notice of such payment to the following:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W. (MC 1103M)
Washington, D.C. 20460-0001

Marcia E. Moncrieffe, Attorney-Advisor
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Moncrieffe.Marcia@epa.gov

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

64. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the Effective Date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the thirty (30)-day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30)-day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%)

per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b).

65. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply. Further, penalties paid pursuant to this CAFO are not deductible for federal purposes under 26 U.S.C. § 162(f).

ii. Stipulated Penalties

66. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of this CAFO and within the agreed upon time period, then the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$1,500.00
16th through 30th day	\$2,000.00
31st day and beyond	\$10,000.00

67. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected and/or compliance is achieved, as determined by EPA. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection Vi. (Penalty Provisions) of this CAFO.

68. The Respondent shall send simultaneous notices of such payments to the following:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W. (MC 1103M)
Washington, D.C. 20460-0001

Marcia E. Moncrieffe, Attorney-Advisor
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Moncrieffe.Marcia@epa.gov

69. Adherence to these procedures in addition to Respondent's compliance with the provisions of Section V, concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.

70. If Respondent disputes the basis for imposition of stipulated penalties, then the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

iii. Dispute Resolution

71. The dispute resolution procedures set forth in this Section shall be the exclusive mechanism to resolve any disputes arising under or with respect to this CAFO.

72. The Parties agree to meet and confer informally and in good faith to resolve all disputes arising from this CAFO. If Respondent disagrees, in whole or in part, with any decision by EPA regarding this CAFO, Respondent agrees to notify EPA, through the Chief of the Waste Enforcement Branch, and the Parties agree to use best efforts to informally and in good faith resolve their dispute. If EPA disagrees, in whole or in part, with any action or inaction taken by Respondent under this CAFO, EPA agrees to notify Respondent, and the Parties agree to use their best efforts to informally and in good faith resolve their dispute within thirty (30) days. If the Parties agree that they have been unable to resolve their dispute informally, and the Parties agree they have reached an impasse, they shall submit the dispute to a neutral third-party mediator selected and agreed upon by

the Parties and the Parties shall participate in non-binding mediation consistent with 40 C.F.R. § 22.18(d). Following the non-binding mediation, either Party may avail itself of legal or equitable remedies to resolve the dispute, if necessary.

iv. Notification

73. Unless otherwise specified elsewhere in this CAFO, whenever written notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the email addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

EPA: Mr. Fred Deppe
Deppe.Fred@epa.gov

Respondent: Randy Hunley
Director - Global Environmental Affairs
Buildings & Systems Engineering
55 Glenlake Pkwy
Atlanta, GA 30328-3474
rhunley@ups.com

With Copy to: Meaghan Boyd
Partner
Alston & Bird LLP
One Atlantic Center
1201 W. Peachtree Street
Suite 4900
Atlanta, GA 30309-3424
meaghan.boyd@alston.com

v. Modification

74. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approved by the Environmental Appeals Board (the "EAB"), and such modification or amendment being filed

with the Clerk of the EAB.

vi. Retention of Enforcement Rights

75. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of federal or state laws, regulations, or permitting conditions.

76. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from each of Respondent's Facilities. Furthermore, nothing in this CAFO or Region 6 CAFO issued previously to Respondent shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, tribal, or local agencies or departments, to obtain penalties or injunctive relief under other federal, state, tribal, or local laws or regulations.

vii. Indemnification

77. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by a Respondent in carrying out the activities required by this CAFO.

viii. Record Preservation

78. Respondent shall preserve, during the pendency of this CAFO, all records in its possession or in the possession of its employees, agents, contractors, or successors, which relate to Respondent's completion of the projects described in Appendix II (The RCRA Narrative and

Compliance Schedule) of this CAFO regardless of any document retention policy to the contrary.

ix. Cost

79. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

x. Termination and Satisfaction

80. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with Section IV (Compliance Order) and payment of the Subsection Vi. (Civil Penalty), Respondent shall certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 60 of this CAFO. Unless the EPA objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, this CAFO will be terminated based on EPA's receipt of Respondent's certification.

MGB
81. Respondent's liability for federal civil penalties only is resolved for all claims and violations alleged in Section III, Factual Allegations and Alleged Violations of this CAFO, as those claims and violations relate to the Facilities listed in Appendix I. This CAFO does not affect the right of EPA or the United States from taking action as provided by 40 C.F.R. § 22.18(c). 

xi. Other Matters

82. Notwithstanding any other provision of this CAFO, nothing in this CAFO shall be construed to limit the authority of EPA to take any action against Respondent to address conditions that may present an imminent and substantial endangerment to human health or the environment.

83. EPA and Respondent agrees that Respondent has no obligations under this Consent Agreement should it be rejected by the EAB; provided, however, in the event that the EAB expresses

any objections to, or its intent to reject this Consent Agreement, the Parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections. The Parties shall have the right to withdraw from this CAFO in the event they are unable to reach agreement on the EAB's proposed changes or objections.

84. The terms of this CAFO bind the Parties and their successors and assigns.

85. The undersigned representative of each party to this CAFO certifies that each is duly authorized by the party whom he or she represents to enter into these terms and conditions and to legally bind that party to this CAFO.

86. The headings in this CAFO are for convenience of reference only and shall not affect the interpretation of this CAFO.

87. Appendix II is marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

88. This CAFO and the attached proposed Final Order shall become effective upon execution of the Final Order by the EAB and filing with the Clerk of the EAB ("Effective Date"). 40 C.F.R. §§ 22.18(b)(2) and 22.31(b).

THE UNDERSIGNED PARTIES AGREED AND CONSENTED TO:

FOR THE RESPONDENT: United Parcel Service, Inc., an Ohio corporation:

Date: 9/13/2022

**Ray
Magrans**

Digitally signed by: Ray Magrans
DN: CN = Ray Magrans email =
magrans@ups.com C = AD
Date: 2022.09.13 14:43:47 -
05'00'

Ray Magrans, Vice President
Buildings & Systems Engineering
55 Glenlake Pkwy
Atlanta, GA 30328-3474

[SIGNATURES CONTINUE ON NEXT PAGE]

FOR THE COMPLAINANT:

Date: _____

Sullivan , Greg Digitally signed by Sullivan , Greg
Date: 2022.09.22 15:12:46 -04'00'

Gregory Sullivan, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: _____

**MARCIA
MONCRIEFFE** Digitally signed by MARCIA MONCRIEFFE
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=MARCIA MONCRIEFFE,
0.9.2342.19200300.100.1.1=680010036555
40
Date: 2022.09.19 12:06:02 -05'00'

Marcia E. Moncrieffe
Attorney-Advisor
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of United Parcel Service, Inc., Docket No. RCRA-06-2022-0942, were sent to the following persons in the manner indicated:

By Email

Marcia E. Moncrieffe
Attorney-Advisor
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
moncrieffe.marcia@epa.gov

Lauren Stroyeck
Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. EPA
1200 Pennsylvania Ave. NW
MC-2249A
Washington DC 20460
stroyeck.lauren@epa.gov

Meaghan Boyd
Counsel for Respondent
Alston & Bird LLP
One Atlantic Center
1201 W. Peachtree Street, Suite 4900
Atlanta, GA 30309-3424
meaghan.boyd@alston.com

Dated: Oct 17, 2022

Emilio Cortes

Emilio Cortes
Clerk of the Board