

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

IN THE MATTER OF:	§	
	§	Consent Agreement and Final Order
UNITED PARCEL SERVICE, INC. AND	§	USEPA Docket No. RCRA-06-2021-0906
TFORCE FREIGHT, INC.	§	
	§	
RESPONDENTS	§	
	§	
	§	

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CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered by the United States Environmental Protection Agency (“EPA” or “Complainant”), Region 6, United Parcel Service, Inc., an Ohio corporation (“UPS”), and TForce Freight, Inc., a Virginia corporation (“TForce Freight”) (UPS and TForce Freight are each a “Respondent” and collectively referred to herein as “Respondents”) and concerns Respondents’ locations listed in Appendix I<sup>1</sup> to this CAFO (the “Facilities”).

2. Notice of the commencement of this action has been given to the States<sup>2</sup> of Texas, Louisiana, Arkansas, Oklahoma, and New Mexico, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).<sup>3</sup>

3. The relevant New Mexico Administrative Code, Title 20, Chapter 4, Part 1 has

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<sup>1</sup> Of the 183 Facilities listed in Appendix I to this CAFO, 22 are owned or leased by TForce Freight and are listed in Section B of Appendix I, the remaining 161 are owned or leased by UPS and are listed in Section A, Appendix I.

<sup>2</sup> Referenced and defined herein as: Texas Commission on Environmental Quality (“TCEQ”); Louisiana Department of Environmental Quality (“LDEQ”); Arkansas Department of Energy and Environmental Quality (“AR DEQ”); Oklahoma Department of Environmental Quality (“ODEQ”); and New Mexico Environmental Department (“NMED”).

<sup>3</sup> Current, final authorization for each of the referenced and relevant States are presented in Appendix II of this CAFO and incorporated herein by reference.

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incorporated by reference 40 Code of Federal Regulations (“C.F.R.”) Parts 260, 262, and 270, and for purposes of this CAFO, the relevant sections of the C.F.R. are cited for the violations that are alleged herein to have occurred in the State of New Mexico.

4. The relevant Oklahoma Administrative Code, Title 252, Chapter 205, has incorporated by reference 40 C.F.R. Parts 260, 262, and 270 and for purposes of this CAFO, the relevant sections of the C.F.R. are cited for the violations that are alleged herein to have occurred in the State of Oklahoma.

5. For purposes of this CAFO, the relevant Texas Administrative Code (“TEX.ADMIN.CODE”); Louisiana Administrative Code (“LAC”); and Arkansas Pollution Control and Ecology Commission has promulgated Rule 23 (“APC&EC Rule 23”) have been cited independently for each violation alleged herein this CAFO that occurred in each respective State.

6. For these proceedings, Respondents admit the jurisdictional allegations herein; however, Respondents neither admit nor deny the specific factual allegations and alleged violations of law contained in this CAFO.

7. The Respondents explicitly waive any right to contest the allegations and their right to appeal the final order contained in this CAFO and, for purposes of this proceeding, waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

8. The CAFO resolves all the violations which are alleged herein and for the Facilities. Further, this CAFO does not provide release for the storage of hazardous waste without a permit, the complete requirements of which are set forth at 30 TEX.ADMIN.CODE §§ 335.2 and 335.43; LAC 33: V.109; APC&EC Rule 23; and 40 C.F.R Parts 270 and 271.

9. This CAFO resolves all the violations alleged herein and for the specific period set forth in Section III (Factual Allegations and Alleged Violations) and for the time period covered by Section

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IV (Compliance Order) Paragraph 62 of this CAFO.

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

11. Respondents 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.

12. 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](mailto:Moncrieffe.Marcia@epa.gov) and for Respondents, [meaghan.boyd@alston.com](mailto:meaghan.boyd@alston.com) and [doug.arnold@alston.com](mailto:doug.arnold@alston.com).

## II. JURISDICTION

13. This CAFO is issued by EPA, Region 6, pursuant to Section 3008(a) of the 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).

14. Respondents agree 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, Respondents agree not to contest the authority or jurisdiction of the Regional Administrator of EPA, Region 6, to issue or enforce this CAFO, and agree not to contest the validity of this CAFO or its terms and conditions.

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III. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

15. UPS and TForce Freight are separate companies. Prior to April 30, 2021, they were affiliated because of their common ownership by the same parent company, United Parcel Service, Inc., a Delaware corporation. As of April 30, 2021, TForce Freight (formerly known as UPS Ground Freight, Inc.), is owned by a separate entity. Respondents are each corporations authorized to do business in the States of Texas, Louisiana, Arkansas, Oklahoma, and New Mexico.

16. At all times relevant to this CAFO, Respondents owned and/or operated each of the respective Facilities at the corresponding and respective addresses listed in Appendix I, which are the subjects of this CAFO.

17. UPS operates a small package distribution and transportation operation at 161 Facilities across the five States in EPA, Region 6, and TForce Freight operates a freight distribution and transportation operation at 22 Facilities across the five States in EPA, Region 6. 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.

18. 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.

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

20. 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.

21. Respondents' business is primarily shipping and receiving freight, with the NAICS codes 484122, 484121, 492210, and 49211, respectively General Freight, Trucking, Long-distance,

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Less than Truck load; General Freight, Trucking, Long-distance Truck Load; Local Messengers and Local Delivery; and Courier and Express Delivery Services. The Facilities may generate hazardous waste when a package is damaged, as well as a result of day-to-day operations, like automotive maintenance.

22. At all times relevant to this CAFO, Respondents 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),<sup>4</sup> a small quantity generator (“SQG”), or as a large quantity generator (“LQG”).

23. 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. 28<sup>th</sup> 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.

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

25. On or about May 1, 2020, EPA, Region 6 sent a Section 3007 RCRA information

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<sup>4</sup> On November 28, 2016, EPA published in the Federal Registry (“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 five Region 6 authorized States will not become effective in each respective State until each State has adopted the New Rule. It is also important to note, for purposes of this CAFO and specifically for the alleged violations cited herein, that the relevant period of the alleged violations is from 2015 through 2020 and there have been varying dates for the adoption of the New Rule in the five States in Region 6. For example, the State of Texas did not adopt the New Rule during the dates relevant to this CAFO, and actually, as of the effective date of this CAFO, Texas has not yet adopted the New Rules. Therefore, for four of the States in Region 6 (Louisiana, Arkansas, Oklahoma, and New Mexico) the violations alleged in this CAFO overlap with 40 C.F.R. Part 262 Standards Applicable to Generators of Hazardous Waste (the “Old Rule”) and provisions of the New Rule, and by contrast, all alleged violations for the State of Texas are not impacted by the New Rule. For ease of reference, the New Rule is not cited in this CAFO.

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request to Respondents for the Facilities listed in Appendix I of this CAFO.<sup>5</sup>

26. Subsequent to the review of AR DEQ's inspections, EPA also reviewed several State inspections for various Facilities in EPA, Region 6, reviewed the Respondents' records in the EPA RCRAInfo database, Texas STEERS data/Central Registry, EPA's Biennial Reports, and E-Manifests, for certain Facilities, as well as additional information voluntarily provided to EPA by Respondents ("EPA's Investigation" or the "Investigation").

27. Each Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); 30 TEX.ADMIN.CODE § 3.2(25); LAC 33: V.109; APC&EC Rule 23 Section 261.10; and 40 C.F.R. § 260.10.

28. At all times relevant to this CAFO, Respondents' Facilities listed in Appendix I to this CAFO were and continue to be a "Facility"<sup>6</sup> as defined under 30 TEX.ADMIN.CODE § 335.1(59); LAC 33:V.109; APC&EC Rule 23 Section 261.10; and 40 C.F.R. § 260.10.

29. At all times relevant to this CAFO, Respondents were and continue to be an "owner" and/or "operator" of its respective Facilities as defined under 30 TEX.ADMIN.CODE §§ 335.1(108) and (107); LAC 33:V.109; APC&EC Rule 23 Section 261.10; and 40 C.F.R. § 260.10.

30. From EPA, Region 6's review of several of the referenced States' individual and independent inspections and in conjunction with its Investigation, EPA, Region 6 has determined that Respondents generate several "solid waste" streams from certain of its Facilities within the meaning of Section 1004(28) of RCRA, 42 U.S.C. § 6903(28); 30 TEX.ADMIN.CODE § 335.1(138); LAC 33:V.109; APC&EC Rule 23 Section 261.10; and 40 C.F.R. § 260.10.

31. EPA determined that Respondents generated, accumulated, and offered for transport and

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<sup>5</sup> The referenced Section 3007 RCRA information request is terminated upon the termination date of this CAFO.

<sup>6</sup> For purposes of this CAFO, the term "Facility" means one of the Facilities listed in Appendix I of this CAFO.

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treatment and/or disposal, at a minimum, the following hazardous waste streams, generated from certain of its Facilities at different times during the period of 2015 through 2020:

- 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;
- 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.

32. The hazardous waste streams identified in Paragraph 31 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1(69); LAC 33:V.109 and 4903 B; APC&EC Rule 23 Sections 261.21, 261.22, 261.23, 261.24, 261.31, and 261.33; and 40 C.F.R. §§ 261.21, 261.22, 261.23, 261.24, 261.31, and 261.33.

33. From the Investigation, EPA, Region 6 determined that Respondents are a “generator” of “hazardous waste” at each of its Facilities, as those terms are defined in 30 TEX ADMIN.CODE §§ 335.1(65) & (69); LAC 33:V.109; APC&EC Rule 23 Section 260.10 and 40 C.F.R. § 260.10.

34. From the Investigation, EPA, Region 6 determined that during the time period of 2015 to early 2020, Respondents generated the hazardous waste streams identified in Paragraph 31 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, under 30 TEX.ADMIN.CODE, Chapter

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335, Subchapter C; LAC 33:V.1109.E.1 and/or 7; APC&EC Rule 23 Part 262 and 40 C.F.R. Part 262, for the period that such wastes remained onsite.

35. From the Investigation, EPA, Region 6 has determined that certain of Respondents' solid waste streams generated from its operations are determined to be hazardous waste and are the subject of this CAFO and must be managed pursuant to the applicable regulations at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C; LAC 33:V; APC&EC Rule 23 Parts 261 and 262; and 40 C.F.R. Parts 261 and 262, and all the applicable regulations referenced therein.

36. From the Investigation, EPA, Region 6 has determined that Respondents 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**

37. The relevant allegations in Paragraphs 1-36 are realleged and incorporated herein by reference.

38. Pursuant to 30 TEX.ADMIN.CODE §§ 335.78(a) and (b); LAC 33:V.108; APC&EC Rule 23 Sections 261.5(a) and (b) and Section 262.35; and 40 C.F.R. §§ 261.5(a) and (b), a generator is a CESQG in a calendar month if it generates no more than 100 kilograms of hazardous waste and complies with 30 TEX.ADMIN.CODE §§ 335.78(f), (g), and (j); LAC 33:V.108; APC&EC Rule 23 §§ 261.5(f), (g); and (j); and 40 C.F.R. §§ 261.5(f), (g), and (j).

39. Pursuant to 30 TEX.ADMIN.CODE § 335.69(f); LAC 33:V.1109.E.7; APC&EC Rule 23 Section 262.34(d); and 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



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30 TEX.ADMIN.CODE §§ 335.69(f)(1) through (5); LAC 33:V.1109.E.7; APC&EC Rule 23 Sections 262.34(d)(1) through (5); and 40 C.F.R. §§ 262.34(d)(1) through (5).

40. From the Investigation, EPA, Region 6 determined that some of the Facilities should have been operating as a LQG and other Facilities should have been operating as a SQG at certain times during the relevant period of this CAFO.

41. 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 authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

42. In some instances, for the relevant period of the Investigation and for this CAFO, Respondents did not file with the Administrator or the authorized and respective State an initial or subsequent notification of its hazardous waste activities for certain of its Facilities.

43. In other instances, for the relevant period of the Investigation and for this CAFO, Respondents did not file with the Administrator or the authorized and respective State subsequent notifications of its hazardous waste activities for certain of its Facilities:

- 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.

44. From the Investigation, EPA, Region 6 determined that for the relevant period of this CAFO, Respondents failed to comply fully with Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and are therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

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**Claim ii. Failure to meet the requirements for Large, Small, and Conditionally Exempt Small Quantity Generators**

45. The relevant allegations in Paragraphs 1-44 are realleged and incorporated herein by reference.

46. During the Investigation, EPA, Region 6 determined that some of the Facilities should have been operated as a LQG and some of the Facilities should have been operated as a SQG during the relevant period of this CAFO.

47. Pursuant to 30 TEX.ADMIN.CODE § 335.69; LAC 33:V.1109.E.1; APC&EC Rule No. 23 Sections 262.34(a) and (b); and 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.

48. During the Investigation and for the relevant period of this CAFO, Respondents did not fully comply with the required LQG conditions at some Facilities as set forth at 30 TEX.ADMIN.CODE § 335.69; LAC 33:V.1109.E.1; APC&EC Rule No. 23 Section 262.34(a); and 40 C.F.R. § 262.34(a), Respondents did not fully comply with the required SQG conditions at some Facilities as set forth at 30 TEX.ADMIN.CODE § 335.69(f); LAC 33:V.1109.E.7; APC&EC Rule 23 Section 262.34(d), and Respondents did not fully comply with the required CESQG conditions at some Facilities as set forth at 30 TEX.ADMIN.CODE § 335.78(a) and (b); LAC 33:V.108; APC&EC Rule 23 Sections 261.5(a) and (b) and Section 202.35; and 40 C.F.R. §§ 261.5(a) and (b).

49. From the Investigation, EPA determined that for the relevant period of this CAFO, Respondents did not fully comply with 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C; LAC 33:V.108 and 1109.E.1 and 7; APC&EC Rule. No. 23 Section 261.5, Section 262.34(a), (b) and (d);

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and 40 C.F.R. §§ 261.5, 262.34(a), (b), and (d), and are 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**

50. The relevant allegations in Paragraphs 1-49 are realleged and incorporated herein by reference.

51. Pursuant to 30 TEX.ADMIN.CODE § 335.431; LAC 33:V.2245; APC&EC Rule No. 23 Sections 268.7(a)(2) or 268.7(a)(3)(i); and 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 with its initial shipment of waste sent to each treatment, storage, or disposal facility must send a one-time written notice and place a copy in its file.

52. During the Investigation and for the relevant period of this CAFO, in some instances, Respondents 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 Respondents at some of its Facilities.

53. From the Investigation, EPA, Region 6 determined that for the relevant period of this CAFO, Respondents have therefore violated 30 TEX.ADMIN.CODE § 335.431; LAC 33:V.2245; APC&EC Rule No. 23 Section 268.7; and 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**

54. The relevant allegations in Paragraphs 1-53 are realleged and incorporated herein by reference.

55. Pursuant to 30 TEX.ADMIN.CODE § 335.71; LAC 33:V.1111.B.1(a) through (h); APC&EC Rule No. 23 Section 262.4; and 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

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Biennial Report to EPA's Regional Administrator, and to the respective States (here TCEQ, LDEQ, ODEQ, AR DEQ, and NMED) by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 TEX.ADMIN.CODE § 335.9; LAC 33:V.1111.B.1(a) through (h); APC&EC Rule No. 23 Section 262.41; and 40 C.F.R § 262.41.

56. During EPA's Investigation and for the relevant period of this CAFO, the EPA and/or the respective States did not receive Annual/Biennial Reports that Respondents were required to file for some of its Facilities.

57. From the Investigation, EPA determined that for the relevant period of this CAFO, Respondents failed to comply with 30 TEX.ADMIN.CODE § 335.7; LAC 33:V.1111.B.1(a) through (h); APC&EC Rule No. 23 Section 262.1; and 40 C.F.R. § 262.41 and are 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**

58. The relevant allegations in Paragraphs 1-57 are realleged and incorporated herein by reference.

59. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c); LAC 33:V.1107 and 1108; APC&EC Rule No. 23 Section 262.20(a); and 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 includes the respective State's waste code for each hazardous waste itemized on the manifest.

60. From the Investigation, EPA, Region 6 determined that Respondents did not prepare all the manifests for some of its Facilities as is required by the regulations. For instance, EPA, Region 6 identified Respondents' manifests with the following errors, irregularities, and/or inconsistencies:

- a. Incorrect generator identification number for specific Facilities;

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- b. Manifests without signatures;
- c. No identification number;
- d. Missing State's waste codes; and/or
- e. Incorrect addresses.

61. From the Investigation, EPA, Region 6 determined that for the relevant period of this CAFO, Respondents failed to comply with TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c); the LAC 33:V.1107 and 1108, which incorporates by reference 40 C.F.R. § 262.20(a)(1) and Appendix to 40 C.F.R. Part 262; APC&EC Rule No. 23 Section 262.20(a); and 40 C.F.R. § 262.20(a) and are therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

#### IV. COMPLIANCE ORDER

62. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and within twenty-four (24) months of the effective date of this CAFO, Respondents are hereby ordered to take the actions necessary to comply with the applicable RCRA laws and regulations, both State and federal. To demonstrate and achieve compliance with all applicable RCRA laws and regulations, both State and federal, Respondents have agreed to undertake the Work<sup>7</sup> set forth in Appendix III (The RCRA Narrative and Compliance Schedule)<sup>8</sup> of this CAFO pursuant to the description and schedules set forth therein. Such Work<sup>9</sup> under Appendix III (The RCRA Narrative and Compliance Schedule)

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<sup>7</sup> For purposes of this CAFO "Work" shall mean all activities, including those delineated in the Appendix III (The RCRA Narrative and Compliance Schedule) to be implemented by Respondents to demonstrate and achieve compliance with all applicable RCRA laws and regulations, both State and federal.

<sup>8</sup> If for any reason, there is a conflict with Appendix III (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.

<sup>9</sup> Prior to the Effective Date of this CAFO and its Appendices, and during the relevant time period, UPS and TForce Freight were affiliated companies owned by the same parent company. As of April 30, 2021, TForce Freight is owned by a separate entity. UPS and TForce Freight may allocate between themselves the responsibility for the performance of the compliance projects outlined herein and in Appendix III, though the specific details of TForce Freight's implementation of the compliance projects may require revisions to Appendix III that will be addressed between EPA, UPS, and/or TForce Freight. TForce Freight's obligations under this Appendix will be limited to the locations identified in Appendix IB.

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will include the implementation of mechanisms and procedures for accurate and complete performance of: (1) Hazardous waste determinations; (2) Section 3010 RCRA Notification; (3) Employee training; (4) Annual and biennial hazardous waste reporting; (5) Land Disposal Restriction requirements; (6) Management of Hazardous waste while on site, to include contingency plans and emergency procedures; and (7) Manifesting requirements. Further Respondents shall certify in writing:

- a) Within twenty-four (24) months of the effective date of this CAFO that the Facilities, which are the subject of this CAFO, are in compliance with all applicable federal and State requirements of RCRA and the implementing regulations;
- b) If Respondents cannot meet the timeline listed above and will need to delay compliance for less than ninety (90) calendar days, Respondents shall notify EPA, Region 6 and request an extension of time, including a timetable for compliance. EPA, Region 6 will grant an extension of up to ninety (90) calendar days. If Respondents determine that they need longer than the additional ninety (90) calendar days to come into compliance, then Respondents will need to initiate a conference call with EPA, Region 6 to discuss the rationale for the delay, before the extension will be granted;
- c) If Respondents remain noncompliant with the terms of this CAFO including Appendix III (RCRA Compliance Narrative and Schedule) after a ninety (90) day extension period, then for as long as Respondents remain noncompliant with the terms of this CAFO and are unable to certify their full compliance with all applicable RCRA laws and regulations, both State and federal, and pursuant to Subparagraph d) of this Section, Section V.ii (Stipulated Penalties) of this CAFO will be applicable; and
- d) In all instances in which this CAFO requires written submission to EPA, Region 6, the submittal made by Respondents shall be signed by an owner or officer or officer's designee of the respective 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 may be sent to the following:

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U.S. EPA, Region 6  
Enforcement and Compliance Assurance Division  
RCRA Enforcement Section (“ECDSR”)  
1201 Elm St., Suite 500  
Dallas, TX 75270  
Attn: Mr. Fred Deppe

In the alternative and as set forth in Subsection iv of Section V of this CAFO (Notification), documents required by this CAFO may be sent to Fred Deppe via email at [Deppe.Fred@epa.gov](mailto:Deppe.Fred@epa.gov).

## V. TERMS OF SETTLEMENT

### i. Penalty Provisions

63. 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 Respondents’ good faith efforts to comply with the applicable regulations, which includes Respondents’ cooperation throughout the negotiation and information provided to EPA, Region 6 subsequent to the inspections, it is ordered that Respondents be assessed a civil penalty of Three Million Eight Hundred Thousand Dollars (\$3,800,000.00) that shall be paid by Respondents within thirty (30) days of the effective date of this CAFO.

64. If Respondents should decide to sell or in any way relinquish ownership of any of the Facilities before this CAFO is terminated, Respondents are still responsible for full payment of the full Three Million Eight Hundred Thousand Dollars (\$3,800,000.00) made payable to the Treasurer of the United States. The payments shall be made by UPS by one of the following methods:

- a) By mailing 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

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P.O. Box 979077  
St. Louis, MO 63197-9000

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

c) By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone: 314-418-1028

“In the matter of United Parcel Service, Inc., and TForce Freight, Inc., Docket No. RCRA-06-2021-0906” shall be clearly marked on the check or other remittance, to ensure proper credit.

65. The Respondents shall send a simultaneous notice of such payment to the following:

Ms. Lorena S. Vaughn  
Regional Hearing Clerk (ORCD)  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75202-2733  
[Vaughn.Lorena@epa.gov](mailto:Vaughn.Lorena@epa.gov)

Margaret Osbourne, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270  
Attn: Mr. Fred Deppe  
[Deppe.Fred@epa.gov](mailto:Deppe.Fred@epa.gov)

Your adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.



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66. 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).

67. 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.

**ii. Stipulated Penalties**

68. In addition to any other remedies or sanctions available to EPA, Region 6, if the Respondents fail or refuse to comply with any provision of this CAFO and within the agreed upon time period, then the Respondents 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>
------------------------------------	--------------------------------------

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1st through 15th day	\$1,500.00
16th through 30th day	\$2,000.00
31st day and beyond	\$10,000.00

69. 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, Region 6. TForce Freight's obligations under Paragraph 68 above will be limited to failure at locations identified in Appendix 1B.

70. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection Vi. (Penalty Provisions) of this CAFO.

71. The Respondents shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn  
Regional Hearing Clerk (ORCD)  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270  
[Vaughn.Lorena@epa.gov](mailto:Vaughn.Lorena@epa.gov)

Margaret Osbourne, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270  
Attn: Mr. Fred Deppe  
[Deppe.Fred@epa.gov](mailto:Deppe.Fred@epa.gov)

Chief, RCRA Legal Branch (ORCER)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270  
Attn: Ms. Marcia E. Moncrieffe  
[Moncrieffe.Marcia@epa.gov](mailto:Moncrieffe.Marcia@epa.gov)

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

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73. If Respondents dispute 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**

74. If Respondents object to any decision or directive of EPA, Region 6 regarding Section IV (Compliance Order) or Subsection VII. (Stipulated Penalties), then Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Margaret Osbourne, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270  
Attn: Mr. Fred Deppe  
[Deppe.Fred@epa.gov](mailto:Deppe.Fred@epa.gov).

Chief, RCRA Legal Branch (ORCER)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270  
Attn: Ms. Marcia E. Moncrieffe  
[Moncrieffe.Marcia@epa.gov](mailto:Moncrieffe.Marcia@epa.gov).

75. The Waste Enforcement Branch Chief ("Branch Chief") or his/her designee and the Respondents shall then have an additional fifteen (15) calendar days from EPA, Region 6's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Chief and the Respondents, the agreement shall be reduced to writing and signed by the Branch Chief and the Respondents and incorporated by reference into this CAFO.

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76. If no agreement is reached between the Branch Chief and the Respondents within that time, then the dispute shall be submitted to the Director of the Enforcement and Compliance Assurance Division (“Division Director”) or his/her designee. The Division Director and the Respondents shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, then the resolution shall be reduced to writing and signed by the Division Director and Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second fifteen (15)-day period, then the Division Director shall provide a written statement of EPA, Region 6’s decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

77. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to the Subsection on Modification, below.

#### **iv. Notification**

78. 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: Margaret Osbourne, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270

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Attn: Mr. Fred Deppe  
[Deppe.Fred@epa.gov](mailto:Deppe.Fred@epa.gov)

Respondents: Randy Hunley  
Director - Global Environmental Affairs  
Buildings & Systems Engineering  
55 Glenlake Pkwy  
Atlanta, GA 30328-3474  
[rhunley@ups.com](mailto:rhunley@ups.com)

Tod Webster  
Senior Vice President Operations  
TForce Freight, Inc.  
1000 Semmes Ave  
Richmond, VA 23224  
[todwebster@tforcefreight.com](mailto:todwebster@tforcefreight.com)

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

Louis Gagnon  
Executive Vice President  
TFI International Inc.  
8801 Trans-Canada Highway, Suite 500  
Saint-Laurent, Quebec H4S 1Z6  
[LGagnon@tfintl.com](mailto:LGagnon@tfintl.com)

**v. Modification**

79. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**vi. Retention of Enforcement Rights**

80. EPA, Region 6 does not waive any rights or remedies available to EPA for any other

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violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

81. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States 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 Respondents' Facilities. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**vii. Indemnification**

82. 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 Respondents, 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 Respondents in carrying out the activities required by this CAFO.

**viii. Record Preservation**

83. Each 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 relates to Respondent's completion of the projects described in Appendix III (The RCRA Narrative and Compliance Schedule) of this CAFO regardless of any document retention policy to the contrary.

**ix. Cost**

84. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal

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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**

85. When Respondents believe that they have complied with all the requirements of this CAFO, including compliance with Section IV (Compliance Order) and payment of the Subsection Vi. (Civil Penalty), Respondents shall certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 62 of this CAFO. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondents' certification, this CAFO will be terminated based on EPA's receipt of Respondents' certification.

Notwithstanding the foregoing, either Respondent may certify compliance to EPA at any time and terminate its obligations under this CAFO, even if the other Respondent has not yet certified.

86. This CAFO resolves all claims and violations that are alleged herein this CAFO to have occurred between January 1, 2015 through the termination of the CAFO as set forth in Section III, Factual Allegations and Alleged Violations. Further, Respondents are released from all liability for Federal civil penalties for the violations alleged in this CAFO that relate to the Facilities listed in Appendix I of this CAFO through the termination of this CAFO as provided in 40 C.F.R. § 22.18(c).

**xi. Effective Date of Settlement**

87. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

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

Date: 6/4/2021 | 12:10 PM PDT

DocuSigned by:  
*Ray Magrans*  
92918AB40366401  
Ray Magrans, Vice President  
Buildings & Systems Engineering  
55 Glenlake Pkwy  
Atlanta, GA 30328-3474



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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT TForce Freight, Inc., a Virginia corporation:

Date: \_\_\_\_\_

Tod F.  
Webster

Digitally signed by Tod F.  
Webster  
Date: 2021.06.03  
11:35:53 -04'00'

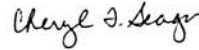
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Tod Webster  
Vice President  
TForce Freight, Inc.  
1000 Semmes Ave  
Richmond, VA 23224

Docket No. RCRA-06-2021-0906

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER (con't):**

FOR THE COMPLAINANT:



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental Protection  
Agency, cn=CHERYL SEAGER,  
#1234519200300100.1.1+d4001003651793  
Date: 2021.06.07 17:17:40 -0500

Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA, Region 6

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

**Rucki,  
Thomas**

Digitally signed by Rucki,  
Thomas  
DN: cn=Rucki, Thomas,  
email=Rucki.Thomas@epa.gov  
Date: 2021.06.08 09:20:56 -05'00'

Regional Judicial Officer  
Thomas Rucki

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**CERTIFICATE OF SERVICE**

I hereby certify that on the day and year seen below, the original of the foregoing Consent Agreement and Final Order (“CAFO”) was emailed to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270. Also, a true and correct copy of the RCRA CAFO, Docket No. RCRA-06-2021-0906 CAFO was transmitted via email to counsel for Respondents at [meaghan.boyd@alston.com](mailto:meaghan.boyd@alston.com) and [doug.arnold@alston.com](mailto:doug.arnold@alston.com).

MARCIA  
MONCRIEFFE

Digitally signed by MARCIA MONCRIEFFE  
DN: c=US, ou=U.S. Government, ou=Environmental  
Protection Agency, cn=MARCIA MONCRIEFFE,  
o=US EPA, email=marcia.moncrieffe@epa.gov  
Date: 2021.06.09 08:28:21 -0500

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Name and Date: Marcia E. Moncrieffe  
Counsel for EPA  
Office of Regional Counsel  
U.S. EPA, Region 6  
1201 Elm St., Suite 500  
Dallas, TX 75270