



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 MAR 12 AM 8:21

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2010-0005

IN THE MATTER OF:)

FEDEX FREIGHT, INC.)

788 22nd Road)

Grand Junction, CO 80309-0413)

RESPONDENT)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 11th DAY OF March, 2010

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 MAR 12 AM 8:25

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)

FedEx Freight Inc.)

788 22nd Road)

Grand Junction, CO 80309-0413)

Respondent.)

COMPLAINT AND CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and FedEx Freight Inc. (Respondent) by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent for violating sections 311(b)(3), 33 U.S.C. §1321(b)(3), 311(b)(6)(A), 33 U.S.C. §1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. §1321(j)(1)(C) of the Clean Water Act (CWA) as amended by the Oil Pollution Act of 1990, and the implementing regulations at 40 C.F.R. part 112.
2. The Administrator has properly delegated this authority to the undersigned EPA officials.
3. This section authorizes EPA to bring an action under section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
4. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. part 22.

5. This CASA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules.

6. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein.

7. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this CASA.

8. This CASA, upon incorporation into a final order, applies to and is binding upon Complainant and Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

9. This CASA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATIONS

10. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

11. Respondent is the owner and/or operator within the meaning of section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of a facility located at 788 22nd Road, Grand Junction, CO (facility).

12. Hydraulic oil, transformer oil, lubricating oil, bearing oil, gasoline, diesel, and fuels are oils within the meaning of "oil" as defined at section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

13. Respondent stores, transfers, distributes, uses or consumes oil or oil products at its facility.
 14. The Persigo Wash is located adjacent to the Respondent's property and is a tributary that flows to the Colorado River.
 15. The Persigo Wash and the Colorado River are navigable water(s) of the United States within the meaning of 40 C.F.R. § 112.2, as amended at 73 Fed. Reg. 71,944 (November 20, 2008), and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
 16. The Respondent's facility has an aggregate above-ground storage capacity of 24,275 gallons, which is greater than the required minimum of 1,320 gallons of oil found at 40 C.F.R. § 112.1(d)(2)(ii).
 17. The facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
 18. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
 19. The facility is therefore a non-transportation-related, onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").
-
20. Respondent's non-transportation onshore facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. §1321(j), and its implementing regulations.
 21. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare and implement a written SPCC plan in accordance with 40 C.F.R. §§ 112.7, and 112.8.

22. On or about June 16, 2009, a pipe used to unload diesel fuel broke and approximately 180 gallons of diesel fuel flowed into Persigo Wash a tributary to the Colorado River.

23. Section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3), provides that "the discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States...is prohibited."

24. Section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (i) from which oil is discharged in violation of Section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3) or (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

25. Respondent's release of approximately 180 gallons of diesel fuel on June 16, 2009, into navigable waters of the United States constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

26. Respondent failed to prepare and implement its SPCC plan in writing in accordance with 40 C.F.R. §§ 112.7, and 112.8 as is required by 40 C.F.R. § 112.3, which constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

C. CIVIL PENALTY

27. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$37,500 for all violations.

28. Respondent, herein certifies to EPA that Respondent is in compliance with each of the relevant provisions of the CWA that formed the basis of the Complaint.

29. Based on the foregoing alleged violations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of thirteen thousand dollars (\$13,000).

30. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation; the economic benefit to the violator, if any, resulting from the violation; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require.

31. Respondent, by signing this CASA, consents to the issuance of a final order and consents for the purposes of settlement to the payment of the civil penalty in the amount of thirteen thousand dollars (\$13,000).

32. **Payment is due within 30 calendar days from the date written on the Final**

Order, issued by the Regional Judicial Officer, that incorporates this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM. EST are processed on the same day; those received after 11:00 AM are processed on the next business day.

33. The payment in paragraph 29 shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
Tel: 314-418-4087

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency "

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

Donna K. Inman (8ENF-UFO)
U.S. EPA Region 8
Technical Enforcement Program
1595 Wynkoop St.
Denver, CO 80202-1129

and Tina Artemis
Regional Hearing Clerk
Office of Regional Counsel
1595 Wynkoop St.
Denver, CO 80202-1129

34. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

35. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

36. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

D. TERMS AND CONDITIONS

37. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

38. Nothing in this CASA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CASA.

39. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.

40. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

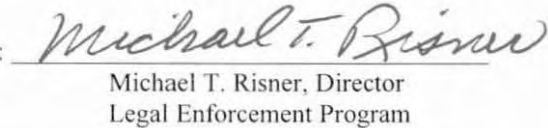
41. This CASA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.

42. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

In The Matter of : FedEx Freight Inc.
Continued

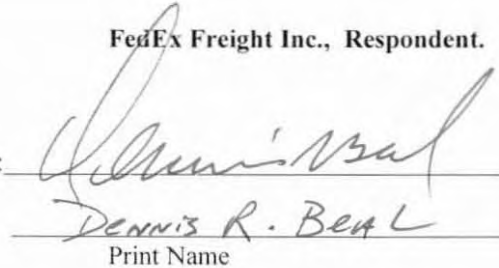
**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant.**

Date: 12/28/2009 By: 
Mark A. R. Chalfant, Director
Technical Enforcement Program

Date: 12/30/09 By: 
Michael T. Risner, Director
Legal Enforcement Program

Date: ~~12~~ 1-20-10 By: 
Brenda L. Morris, Attorney
Legal Enforcement Program

FedEx Freight Inc., Respondent.

Date: 11-12-09 By: 
Dennis R. Beal
Print Name

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT CONSENT AGREEMENT/FINAL ORDER** in the matter of **FEDEX FREIGHT, INC.; DOCKET NO.: CWA-08-2010-0005**. The documents were filed with the Regional Hearing Clerk on March 12, 2010.


Further, the undersigned certifies that a true and correct copy of the documents were delivered Brenda L. Morris, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on March 12, 2010.

Diana Woods
Senior Paralegal
FedEx Freight System
3425 Victor Street, 2nd Floor
Santa Clara, CA 95054

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

March 12, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

