

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

United Parcel Service, Inc.)
14650 West Santa Fe Trail Drive)
Lenexa, Kansas 66215)
RCRA ID: KSD981702392)

Respondent.)

Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery Act)
as amended, 42 U.S.C. § 6928(a) and (g))

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2009-0011

A. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and United Parcel Service, Inc., 14650 West Santa Fe Trail Drive, Lenexa, Kansas 66215 (UPS or Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). Accordingly, without adjudicating or admitting any issue of fact or law herein and for the purpose of settling Respondent's liability for the violations alleged in Count I below, EPA and Respondent have agreed to the execution of this Consent Agreement and Final Order.

Section I

Jurisdiction

2. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

3. This Consent Agreement and Final Order (CA/FO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 Of RCRA, 42 U.S.C. § 6925.

Section II

Parties

4. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of the EPA Region 7, as duly delegated from the Administrator of the EPA.

5. The Respondent is United Parcel Service, Inc., a company organized under the laws of Delaware and licensed to do business in the state of Kansas.

Statutory and Regulatory Framework

6. The state of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the state of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When the EPA determines that any person

has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004 though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

B. ALLEGATIONS

7. The Respondent, United Parcel Service, Inc. is a corporation in good standing and is authorized to conduct business within the State of Kansas. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

8. Respondent's facility (the facility) is located at 14650 West Santa Fe Trail Drive, Lenexa, Johnson County, Kansas. The facility provides general freight delivery to industrial and consumer markets. The facility handles approximately 400,000 units of freight on a daily basis. It contains 277,735 square feet of freight processing space and 23,073 square feet of office space. Approximately 2,000 people are employed at the facility, which operates 24 hours a day, seven days a week, in three eight hour shifts.

9. On February 26-28, 2007, EPA representatives conducted an inspection of the facility. Violations of RCRA were noted during that inspection.

10. Respondent generates hazardous and non-hazardous solid waste at the facility as a result of its operations. These wastes are generated through breakage, leakage and spillage from packages which occurs in the regular ordinary course of handling freight at the facility. The waste is a "hazardous waste" if it meets the definition of "hazardous waste" set forth in K.A.R. 28-31-3 (incorporating all of 40 CFR Part 261 by reference, except for 261.5).

11. UPS most recently filed a notification of hazardous waste activity on April 14, 2006, stating that the facility was a "Kansas Generator" of hazardous waste pursuant to K.A.R. 28-31-2(d), a small quantity generator under federal regulations. However, it was determined during the inspection that the facility had accumulated sufficient quantities of hazardous waste to be classified as an "EPA –Generator" of hazardous waste pursuant to K.A.R. 28-31-2(c). No further waste notifications have been filed.

12. Hazardous waste is generated at the facility when freight is damaged, becoming a solid waste and when such solid waste meets the definition of "hazardous waste" pursuant to K.A.R. 28-31-3, incorporating 40 CFR Part 261.

COUNT I
OPERATION OF A HAZARDOUS WASTE TREATMENT, STORAGE OR
DISPOSAL FACILITY WITHOUT A PERMIT

13. Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437 state that operation of a hazardous waste treatment, storage or disposal facility without a permit is prohibited.

Failure to Comply with Generator Requirements

14. The regulations at K.A.R. 28-31-4(g) state that EPA generators may accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without interim status, provided certain conditions are met. The regulations at K.A.R. 28-31-4(g) state that an "EPA Generator" may accumulate waste on-site provided certain conditions are met. In both instances, these conditions require compliance with other hazardous waste regulatory requirements.

15. At the time of the inspection, Respondent was classified as an "EPA Generator", but was not complying with the following requirements:

Failure to Update Hazardous Waste Notification

16. K.A.R. 28-31-4(c)(1) requires that hazardous waste generators must keep their hazardous waste notification current.

17. On April 12006, the Respondent submitted its most recent hazardous waste notification to the State of Kansas. At that time, it identified the facility as being a "Kansas Generator", meaning that the facility accumulated less than 2,200 pounds of non-acute hazardous waste during a month. At the time of the inspection, the EPA inspector determined that the facility had accumulated more than 2,200 pounds per month of non-acute hazardous waste during at least 11 different months between June 2005 and January 2007, making the facility an "EPA Generator" under K.A.R. 28-31-2(c)(2).

Failure to document weekly inspections

18. K.A.R. 28-31-4(k) requires that generators of hazardous waste document weekly inspections of hazardous waste storage areas.

19. At the time of the inspection, Respondent could not produce documents of all weekly inspections of hazardous waste storage areas.

**Failure to submit a biennial report to the
Kansas Department of Health and Environment**

20. K.A.R. 28-31-4(f)(2)(A) requires an EPA Generator to submit a biennial report to KDHE.

21. At the time of the inspection, Respondent had not submitted a biennial report to the Kansas Department of Health and Environment (KDHE).

Failure to familiarize local authorities with the facility

22. KAR 28-31-4(g)(4) incorporating 40 CFR 265.37(a)(1) requires Kansas generators to make arrangements with local fire departments, police and other emergency response agencies for responding to emergencies at their facilities.

23. At the time of the inspection, the Respondent had not properly familiarized the local emergency response agencies with information necessary to respond to emergencies at the facility.

Failure to familiarize the local hospitals with waste at the facility

24. KAR 28-31-4(g)(4) incorporating 40 CFR 265.37(a)(4) requires an EPA Generator to familiarize the local hospitals with the properties of hazardous wastes handled and types of injuries which could result from fires, explosions, or releases at the facility.

25. At the time of the inspection, Respondent had not familiarized the local hospitals with the properties of hazardous wastes handled and types of injuries which could result from fires, explosions, or releases at the facility.

Failure to train employees on an annual basis

26. KAR 28-31-1(a)(6) incorporating 40 CFR.265.16(c) requires that an EPA Generator must provide hazardous waste management training to employees on an annual basis after their initial training.

27. At the time of the inspection, Respondent had not provided hazardous waste management training to at least one employee at the facility.

Failure to maintain and provide employee job title for each position related to hazardous waste management and the name of the employee filling each job

28. KAR 28-31-4(g)(4) incorporating 40 CFR 265.16(d)(1) requires that an EPA Generator must maintain records of the job titles for each position relating to hazardous waste management and the name of the employee filling each job.

29. At the time of the inspection, Respondent could not provide all of these records as required.

Failure to provide a written job description of each position related to hazardous waste management

30. KAR 28-31-4(g)(4) incorporating 40 CFR 265.16(d)(2) requires that an EPA Generator must maintain a written job description of each position related to hazardous waste management.

31. At the time of the inspection, Respondent could not provide all of these records as required.

Failure to provide documentation of description of training

32. K.A.R. 28-31-4(g)(4) requires EPA generators to maintain certain documentation of their personnel training plans as set forth in 40 C.F.R. § 265.16(d).

33. At the time of the inspection Respondent did not have documentation of a personnel training plan that included the required information.

Failure to have a contingency plan that complied with regulations

34. K.A.R. 28-31;4(g)(4) requires EPA generators of hazardous waste to have a contingency plan that complies with the requirements of 40 C.F.R. Part 265, Subpart D.

35. At the time of the inspection, Respondent did not have a contingency plan that complied with the regulations. Specifically the plan did not describe emergency actions personnel must take to respond to a hazardous waste release; the plan did not include a list of all emergency equipment or the location and capabilities of the equipment; and the facility's contingency plan had not been provided to local authorities.

36. The facility does not have a permit to store, treat or dispose of hazardous waste.

37. Respondent's failure to comply with applicable generator requirements and its operation of a hazardous waste treatment facility without a permit are violations of Section 3005 of RCRA, 42 U.S.C. § 6925, and K.S.A. 65-3437.

CONSENT AGREEMENT

1. Respondent and Complainant agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO

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

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

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

5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

6. This CA/FO resolves Respondent's liability for all civil administrative claims at the facility for the RCRA violations identified in Count I above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

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

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$53,931 (Fifty-Three Thousand Nine-Hundred Thirty-One Dollars) as set forth in Paragraph 1 of the Final Order,

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

11. Respondent understands that failure to adequately perform the Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties of up to \$37,500 per day of non-compliance. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, for violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

12. This CA/FO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. By signing this CA/FO, Respondent certifies that, to best of its knowledge, Respondent's facility is currently in compliance with the requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

14. The effect of this settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in this CA/FO.

15. This CA/FO shall remain in full force and effect until the Complainant provides Respondent with written notice, in accordance with the Consent Agreement, that all requirements hereunder have been satisfied.

Reservation of Rights

16. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by

law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R, Part 19, penalties of up to \$32,500 per day are now authorized for each violation of Subchapter III of RCRA that occurs after March 15, 2004 though January 12, 2009, For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day per violation are now authorized.

17. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

18. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to or taken from Respondent's facility.

19. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

20. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

21. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of \$53,931 (Fifty-Three Thousand Nine-Hundred Thirty-One Dollars). Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

2. 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"

3. A copy of the payment documentation shall also be mailed to EPA's representative identified in Paragraph 7 below, and to:

Regional Hearing Clerk
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

And to:

Raymond C. Bosch
Office of the Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

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

B. Compliance Actions

5. IT IS ALSO HEREBY ORDERED that:

a. Within forty-five (45) days after the effective date of this CA/FO, the Respondent shall provide copies of all job descriptions outlining the specific requisite skills, education, or other qualifications;

b. Within forty-five (45) days after the effective date of this CA/FO, the Respondent shall provide documentation of the physical description and capabilities of the emergency equipment within the Contingency Plan; and

c. For the thirty (30) days following the effective date of this CA/FO, the Respondent shall provide documentation that hazardous waste determinations are being conducted in a manner consistent with all applicable legal requirements. The documentation shall:

i. identify the waste generated;

- ii. provide the amount of waste generated;
- iii. provide the date such waste was generated;
- iv. state whether the waste is a hazardous waste or not, list all applicable EPA hazardous waste codes, and provide a detailed discussion of how the hazardous wastes determination was conducted (i.e., MSDS, analytical testing, etc.); and
- v. the date that the waste determination was completed.

The documentation of hazardous waste determinations shall be provided within forty-five (45) days after the effective date of this CA/FO and may be comprised of forms and other documents maintained by UPS and waste profile information provided by outside hazardous waste service providers.

C. Submittals

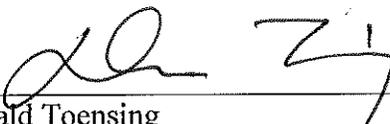
6. All documents required to be submitted to EPA pursuant to this Final Order shall be sent to:

Deborah Bredehoft, AWMD/RESP
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101
E-mail: Bredehoft.Deborah@epa.gov

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

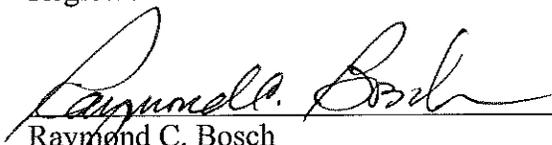
FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

2/17/2010
Date



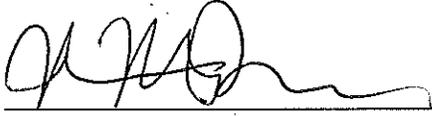
Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

2/16/2010
Date



Raymond C. Bosch
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT
UNITED PARCEL SERVICE, INC.



Signature

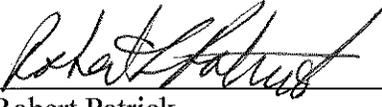
2-5-10

Date

Norman M. Brothers, Vice President
Printed Name and Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

Feb 20, 2010
Date



Robert Patrick
Regional Judicial Officer

IN THE MATTER OF United Parcel Service, Inc., Respondent
Docket No. RCRA-07-2009-0011

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Seth D. Bruckner, Attorney
United Parcel Service
Corporate Legal Department
55 Glenlake Parkway, NE
Atlanta, Georgia 30328

Dated: 2/23/10


Kathy Robinson
Hearing Clerk, Region 7