



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 04 2008

Daniel W. Egeler  
Assistant General Counsel  
Con-way Inc.  
2211 Earhart Road  
Ann Arbor, Michigan 48105

Re: Executed Consent Agreement/Final Order, Docket No. RCRA-04-2008-4016(b), Con-way Freight Inc.

Dear Mr. Egeler:

Please find enclosed a copy of the fully executed Consent Agreement/Final Order (CA/FO), Docket No. RCRA-04-2008-4016(b), for Con-way Freight Inc. The CA/FO was effective upon signature of the Final Order, and payment of the civil penalty of \$11,744.00 is due within thirty (30) days of this date.

Per your request, I have also e-mailed a copy of this fully executed agreement to you. Please feel free to contact me with any questions concerning this matter at 404-562-9539.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie Sawyer".

Bonnie Sawyer  
Associate Regional Counsel

Enclosure

cc: Mark Smith, GAEPD

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| IN THE MATTER OF:        | ) | Docket Number: RCRA-04-2008-4016(b) |
|                          | ) |                                     |
| Con-way Freight Inc.     | ) | Proceeding under Section 3008(a)    |
| 2800 Forrest Park Road   | ) | of the Resource Conservation and    |
| Atlanta, GA 30354        | ) | Recovery Act, 42 U.S.C. § 6928(a)   |
|                          | ) |                                     |
| EPA ID No.: GAD984288977 | ) |                                     |
|                          | ) |                                     |
| Respondent.              | ) |                                     |
| <hr/>                    |   |                                     |

2009 SEP -4 AM 8:30  
HEARING CLERK  
EPA REGION IV

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, brought under the authority of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 *et seq.*, and the Georgia Hazardous Waste Management Act (GHWMA), 12-8-60 through § 12-8-83, of the Official Code of Georgia Annotated (OCGA). This action seeks civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and GHWMA and regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Parts 260 through 270 and 273, and the Georgia Hazardous Waste Management Rules (GHWMR) at Chapter 391-3-11 of the Georgia Department of Natural Resources Rules.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred solely for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## **II. THE PARTIES**

4. Complainant is the Chief, RCRA & OPA Enforcement & Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Con-way Freight Inc., a corporation incorporated under the laws of Delaware and doing business in the State of Georgia. The facility is located at 2800 Forrest Park Road, Atlanta, Georgia 30354.

## **III. PRELIMINARY STATEMENTS**

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 21, 1984, the State of Georgia (the State) received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in the GHWMA, § 12-8-60 through § 12-8-83, and regulations set forth at Chapter 391-3-11 of the GHWMR. For purposes of this Order, citations herein to the requirements of RCRA shall constitute a citation to the equivalent requirements of the GHWMA and citations herein to the requirements of 40 C.F.R. Parts 124 and 260 through 268, and Parts 270 and 273 shall constitute a citation to the equivalent requirements of the GHWMR. The use of the 40 C.F.R. citations is also appropriate since the GHWMR incorporated by reference the requirements of 40 C.F.R. Parts 124 and 260 through 268, and Parts 270 and 273.
7. Although EPA has granted the State of Georgia authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State of Georgia.
8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Georgia before issuance of this CA/FO.
9. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a) and Section 12-8-66 of the GHWMA authorizes the regulation of facilities that generate hazardous waste. The implementing regulations for these requirements are found in 40 C.F.R. Part 262 (Section 391-3-11-.08 of the GHWMR).
10. Pursuant to 40 C.F.R. § 260.10 (Section 391-3-11-.02 of the GHWMR), a "generator" is any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to be subject to regulation.
11. Pursuant to 40 C.F.R. § 262.20 (Section 391-3-11-.08 of the GHWMR), a generator must enter its EPA identification number on hazardous waste manifests.
12. Pursuant to 40 C.F.R. § 262.34(d)(5)(iii) (Section 391-3-11-.08 of the GHWMR), a generator who generates greater than 100 kilograms but less than 1000 kilograms in a

calendar month must ensure that employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities.

13. Pursuant to 40 C.F.R. § 262.34(d)(5) (Section 391-3-11-.08 of the GHWMR), a generator who generates greater than 100 kilograms but less than 1000 kilograms in a calendar month must develop and maintain a basic contingency plan for the facility.
14. Pursuant to 40 C.F.R. § 273.13 (Section 391-3-11-.08 of the GHWMR), handlers of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
15. Pursuant to 40 C.F.R. § 273.15 (Section 391-3-11-.08 of the GHWMR), a handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes waste or is received. The handler may make this demonstration by placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received.

#### **EPA ALLEGATIONS AND DETERMINATIONS**

16. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
17. Respondent is the "owner" and "operator" of a "facility" located in Atlanta, Georgia as those terms are defined in 40 C.F.R. § 260.10.
18. On February 11, 2008, a representative of EPA performed a RCRA compliance evaluation inspection (CEI) of Respondent's Facility.
19. During the CEI, the EPA representative noted the following:
  - a. Respondent did not have a permit or interim status authorizing the storage of hazardous waste at the Facility.
  - b. Respondent had generated greater than 100 but less than 1000 kilograms of hazardous waste in a month.
  - c. Respondent failed to enter its EPA identification number on hazardous waste manifests.
  - d. Respondent failed to demonstrate that employees were familiar with proper waste handling and emergency procedures, relevant to their responsibilities.
  - e. Respondent failed to develop and maintain a basic contingency plan for the facility.
  - f. Respondent failed to place universal waste lamps in containers or packages that were structurally sound, adequate to prevent breakage, and compatible with contents of the lamps.

- g. Respondent failed to demonstrate the length of time that universal waste had been accumulated.

20. EPA therefore alleges the following:

- a. Respondent violated 40 C.F.R. § 262.20 (Section 391-3-11-.08 of the GHWMR) by not entering its EPA identification on hazardous waste manifests for hazardous waste generated at the facility.
- b. Respondent violated 40 C.F.R. § 262.34(d)(5)(iii) (Section 391-3-11-.08 of the GHWMR) by not properly training its employees that handle hazardous waste.
- c. Respondent violated 40 C.F.R. § 262.34(d)(5) (Section 391-3-11-.08 of the GHWMR) by not developing and maintaining a basic contingency plan for the facility.
- d. Respondent violated 40 C.F.R. § 273.13 (Section 391-3-11-.08 of the GHWMR) by not placing waste lamps in containers or packages that are structurally sound.
- e. Respondent violated 40 C.F.R. § 273.15 (Section 391-3-11-.08 of the GHWMR) by failing to demonstrate the length of time the waste lamps had been accumulated.

#### **V. TERMS OF AGREEMENT**

Based on the foregoing Allegations and Determinations, the parties agree to the following:

- 21. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
- 22. The Respondent neither admits nor denies the factual allegations or alleged violations set out in this CA/FO.
- 23. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
- 24. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
- 25. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
- 26. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.

27. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
28. Respondent by signing this CA/FO also certifies that all violations alleged in this CA/FO have been corrected.
29. Each party will pay its own costs and attorney's fees.

#### **VI. PAYMENT OF CIVIL PENALTY**

30. Respondent consents to the payment of a civil penalty in the amount of ELEVEN THOUSAND SEVEN HUNDRED FORTY FOUR DOLLARS (\$11,744.00) within thirty (30) calendar days of the effective date of this CA/FO.
31. Payment shall be made by check with good and sufficient funds, by electronic funds transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

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

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington, DC 20074  
Contact: Jesse White, 301-887-6548

Respondent shall submit a copy of the payment to the following addressees:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and to:

Frank Ney, Acting Chief  
South Enforcement & Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

32. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- (a) **Interest.** Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
  - (b) **Monthly Handling Charge.** Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
  - (c) **Non-Payment Penalty.** On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent

(6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

33. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

#### **VII. PARTIES BOUND**

34. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
35. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
36. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

#### **VIII. RESERVATION OF RIGHTS**

37. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the 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 or the environment.
38. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
39. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the 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.
40. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

#### **IX. OTHER APPLICABLE LAWS**

41. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.



Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **X. SERVICE OF DOCUMENTS**

42. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Bonnie Sawyer  
Associate Regional Counsel  
OEA - 13<sup>th</sup> Floor  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9539

43. A copy of any documents that Complainant files in this action shall be sent to the following attorney who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:


Daniel W. Egeler  
Assistant General Counsel  
Con-way Inc.  
2211 Old Earhart Road  
Ann Arbor, MI 48105

#### **XI. SEVERABILITY**

44. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

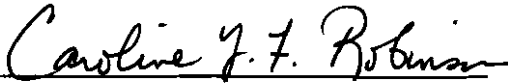
#### **XII. EFFECTIVE DATE**

45. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

By:   
Daniel Egeler  
Assistant General Counsel

Dated: 8-20-08

**U.S. Environmental Protection Agency**

By:   
Caroline Y.F. Robinson, Chief  
RCRA & OPA Enforcement & Compliance Branch  
RCRA Division

Dated: 8/26/08

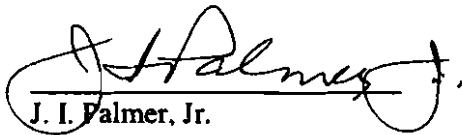
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

|                             |   |                                     |
|-----------------------------|---|-------------------------------------|
| IN THE MATTER OF:           | ) | Docket Number: RCRA-04-2008-4016(b) |
|                             | ) |                                     |
| Con-way Freight Inc.        | ) | Proceeding under Section 3008(a)    |
| 2800 Forrest Park Road      | ) | of the Resource Conservation and    |
| Atlanta, Georgia 30354      | ) | Recovery Act, 42 U.S.C. § 6928(a)   |
|                             | ) |                                     |
| EPA ID No.: GAD 984 288 977 | ) |                                     |
| Respondent.                 | ) |                                     |
| _____                       | ) |                                     |

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 29 day of August, 2008.

BY:   
J. I. Palmer, Jr.  
Regional Administrator  
EPA Region 4

In the Matter of Con-way Freight Inc.  
Docket Number: RCRA-04-2008-4016(b)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Con-way Freight Inc., Docket Number: RCRA-04-2008-4016(b), on SEP 04 2008 2008, and on SEP 04 2008 2008, served the parties listed below in the manner indicated:

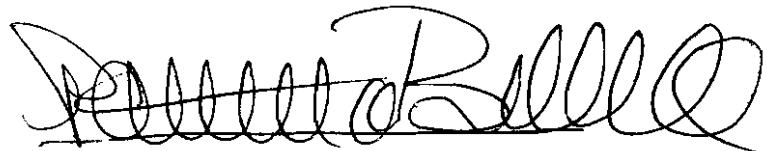
Bonnie Sawyer  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Daniel W. Egeler  
Assistant General Counsel  
Con-way Inc.  
2211 Old Earhart Road  
Ann Arbor, MI 48105

(Via Certified Mail- Return Receipt Requested)

Date: 9-4-08



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511