



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 30 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel Boxerman
Sidley Austin LLP
1501 K. Street, NW
Washington, DC 20005

Re: Consent Agreement and Final Orders

Docket No. RCRA-04-2015-4006(b)
Con-Way Freight, Inc. – Charlotte, North Carolina

Docket No. RCRA-04-2015-4007(b)
Con-Way Freight, Inc. – Chattanooga, Tennessee

Docket No. RCRA-04-2015-4008(b)
Con-Way Freight, Inc. – Saraland, Alabama

Dear Mr. Boxerman:

Enclosed are copies of the fully executed Consent Agreement and Final Orders (CA/FOs) filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CA/FOs were effective upon filing with the RHC. Payment of the civil penalty is to be made within thirty (30) calendar days of the effective date of each CA/FO.

If you have any questions, please feel free to contact Teresa Mann at (404) 562-9572.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata".

César A. Zapata
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|---------------------------------|---|---|
| IN THE MATTER OF: |) | DOCKET NO.: RCRA-04-2015-4006(b) |
| |) | |
| Con-Way Freight, Inc. |) | |
| 6701 Old Statesville Road |) | Proceeding Under Section 3008(a) of the |
| Charlotte, North Carolina 28269 |) | Resource Conservation and Recovery Act, |
| EPA ID No.: NC0991302940 |) | 42 U.S.C. § 6928(a) |
| |) | |
| Respondent |) | |
| _____ |) | |

RECEIVED
MAY 15 2015
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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the North Carolina Solid Waste Management Law (NCSWML), North Carolina General Statute (N.C.G.S.) §§ 130A-17 to -28 and 130A-290 to -310.22 [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at North Carolina Hazardous Waste Management Rules (NCHWMR), 15A North Carolina Administrative Code (NCAC) 13A .0101 to .0119 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, and 273]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925] and 15A NCAC 13A .0101 to .0119 [40 C.F.R. Parts 260 through 270, and 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 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) and (3).
3. Complainant and Respondent have conferred 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, Enforcement and Compliance Branch, Resource Conservation & Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Con-Way Freight, Inc., a corporation incorporated under the laws of Delaware. Respondent is the owner and operator of a freight transportation company that operates a network of 295 freight service centers to provide freight shipping services throughout North America. Respondent has a facility located at 6701 Old Statesville Road, Charlotte, North Carolina (the Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found N.C.G.S. §§ 130A-17 to -28 and 130A-290 to -310.22 and 15A NCAC 13A .0101 to .0119.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. North Carolina has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the 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). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. 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 before issuance of this CA/FO.
11. Section 130A-294(c) of the NCSWML, N.C.G.S. § 130A-294(c) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15A NCAC 13A .0107 [40 C.F.R. Part 262].
12. Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations

for this requirement are found at 15A NCAC 13A .0109 (permitted) and 15A NCAC 13A .0110 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by NCHWMR 15A NCAC 13A .0106(a) [40 C.F.R. § 261.4(b)].
15. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.20], solid waste that exhibits any of the characteristics identified in 15A NCAC 13A .0106(c) [40 C.F.R. §§ 261.21-24] is characteristic hazardous waste and is provided with the EPA Hazardous Waste Numbers D001 through D0043.
16. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
18. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity due to the concentration level of Methyl Ethyl Ketone is a hazardous waste and is identified with the EPA Hazardous Waste Number D035.
19. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in 15A NCAC 13A .0106 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.”
20. Pursuant to 15A NCAC 13A .0102(c) (1) (A) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operations units (e.g., one or more landfills, surface impoundments, or combinations of them).”
21. Pursuant to 15A NCAC 13A .0102(b), which references N.C.G.S. § 130A-290(22) [40 C.F.R. § 260.10], a “person” includes a corporation.
22. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”

23. Pursuant to 15A NCAC 13A .0102(b), which incorporates N.C.G.S. § 130A-290(41), “storage” means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
24. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)], a generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is a Small Quantity Generator (SQG) and may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, as required by N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(1)-(5)] (hereinafter referred to as the “SQG Permit Exemption”).
25. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(2)], which incorporates 15A NCAC 13A .0110(i) [40 C.F.R. § 265.174], and is a condition of the SQG Permit Exemption, a generator is required to, at least weekly, inspect areas where containers are stored looking for leaking containers and for deterioration of containers caused by corrosion or other factors. In addition, pursuant to 15A NCAC 13A .0107(c), which incorporates 15A NCAC 13A .0110(i), the owner or operator shall keep records and results of required inspections for at least three years from the date of the inspection.
26. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. §§ 262.34(d)(5)(i), (ii)(A), and (iii)], which is a condition of the SQG Permit Exemption, a generator is required to: (a) designate at least one employee as the emergency coordinator; (b) post next to the telephone the name and phone number of the emergency coordinator, the location of fire extinguishers and spill control material, and the telephone number of the fire department (unless the facility has a direct alarm); and (c) ensure that all employees are familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.
27. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(4)], which incorporates 15A NCAC 13A .0110(c) [40 C.F.R. § 265.37], and is a condition of the SQG Permit Exemption, a generator is required to make arrangements with local authorities identified, as appropriate for the type of waste handled at the facility and the potential need for the services of these authorities.
28. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “manifest” means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in 40 C.F.R. Part 262 and the applicable requirements of 40 C.F.R. Parts 262 through 265.
29. Pursuant to 15A NCAC 13A .0107(b) [40 C.F.R. § 262.20(a)(1)], a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal must prepare a “manifest” on EPA Form 8700-22, and if necessary, EPA Form 8700-22A, according to the instructions included in the regulations.
30. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required in Section 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-

294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 15A NCAC 13A .0107 [40 C.F.R. §§ 262.34(a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).

31. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(a)(4)], which incorporates 15A NCAC 13A .0112(a) [40 C.F.R. §§ 268.7(a)(1) and (a)(3)(i)], and is a condition of the LQG Permit Exemption, a generator of hazardous waste must determine if the waste must be treated before it can be land disposed in accordance with standards set forth in 15A NCAC 13A .0112(c) [40 C.F.R. §§ 268.40, 268.45 and 268.49] and if the waste meets the treatment standard at the original point of generation, with the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the wastes with the information required in the regulations, and place a copy in the file.
32. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(4)], which incorporates 15A NCAC 13A .0112(a) [40 C.F.R. §§ 268.7(a)(1) and (a)(3)(i)], and is a condition of the SQG Permit Exemption, a generator of hazardous waste must determine if the waste must be treated before it can be land disposed in accordance with standards set forth in 15A NCAC 13A .0112(c) [40 C.F.R. §§ 268.40, 268.45 and 268.49] and if the waste meets the treatment standard at the original point of generation, with the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the wastes with the information required in the regulations, and place a copy in the file.
33. Pursuant to 15A NCAC 13A .0107(d) [40 C.F.R. § 262.41(a)], a LQG who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States is required to submit a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial report must be submitted on EPA Form 8700-13A and must cover generator activities during the previous year and include the information set forth in 15A NCAC 13A .0107(d) [40 C.F.R. §§ 262.41(a)(1)-(8)].
34. Pursuant to 15A NCAC 13A .0119(a) [40 C.F.R. § 273.9], a “small quantity handler of universal waste” (SQHUW) is a universal waste handler who does not accumulate 5,000 kilograms or more of universal wastes at any time. “Universal waste” means any of the hazardous waste listed in 15A NCAC 13A .0119(a) [40 C.F.R. § 273.1], including hazardous waste lamps.
35. Pursuant to 15A NCAC 13A .0119(b) [40 C.F.R. § 273.13(d)(1)] a SQHUW must contain universal waste lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with 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.
36. Pursuant to 15A NCAC 13A .0119(b) [40 C.F.R. § 273.13(d)(2)], a SQHUW must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage,

or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack of evidence of leakage, spillage or damage that could cause leakage or releases of mercury of other hazardous constituents to the environment under reasonable foreseeable conditions.

37. Pursuant to 15A NCAC 13A .0119(b) [40 C.F.R. § 273.14(e)], a SQHUW must label or mark each lamp or container of lamps clearly with one of the following phrases: “Universal Waste-Lamp(s),” or “Waste Lamp(s),” or “Used Lamps.”
38. Pursuant to 15A NCAC 13A .0119(b) [40 C.F.R. §§ 273.15(a) and (c)], a SQHUW may accumulate universal waste no longer than one year and must be able to demonstrate the length of time that the universal waste has accumulated from the date that it became a waste or was received.

IV. EPA ALLEGATIONS AND DETERMINATIONS

39. Respondent is a “person” as defined in 15A NCAC 13A .0102(b), which references N.C. Gen. Stat. § 130A-290 [40 C.F.R. § 260.10].
40. Respondent is the “owner” and “operator” of a “facility” located at 6701 Old Statesville Road, Charlotte, North Carolina, as those terms are defined in 15A NCAC 13A .0102(b) and 15A NCAC 13A.0102(c) (1) [40 C.F.R. § 260.10].
41. Respondent is a “generator” of “hazardous waste” as those terms are defined in 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10] and 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3].
42. Respondent is a “SQG” of hazardous waste and a “SQHUW” as those terms are defined in 15A NCAC 13A .0107(c) and .0119(a) [40 C.F.R. §§ 262.34(d) and 273.9].
43. From June 25, 2009 to July 24, 2009, and Respondent’s generator status changed, and it became a “LQG” of hazardous waste as that term is defined in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(a)].
44. Respondent generates various types of hazardous waste when products containing hazardous materials are damaged during shipment and no longer considered product.
45. On April 19, 2010, the EPA and the North Carolina Department of Environment and Natural Resources (NCDENR) conducted a compliance evaluation inspection (CEI) at the Respondent’s Facility. The findings of the CEI were documented in the CEI Report that was mailed to Respondent on June 11, 2010.
46. During the CEI, the EPA and NCDENR observed that Respondent had not conducted adequate weekly inspections of the hazardous waste containers stored in the Facility’s less than 180-day Hazardous Waste Accumulation Area and that Respondent did not have records documenting the weekly inspections.

47. The EPA therefore alleges Respondent violated Section 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SQG Permit Exemption set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(2)], by not complying with the inspection requirements of 15A NCAC 13A .0110(i) [40 C.F.R. § 265.174], and by not keeping records and the results of the inspections for at least three years from the date of the inspection, as required by 15A NCAC 13A .0110(i).
48. During the CEI, the EPA and NCDENR observed that Respondent had not designated an emergency coordinator and therefore had not posted next to the telephone the name and telephone number of the emergency coordinator. The EPA and NCDENR also observed that Respondent had not demonstrated that it had ensured that all employees were familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal Facility operations and emergencies.
49. The EPA therefore alleges that Respondent violated Section 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SQG Permit Exemption by not complying with the emergency preparedness requirements of 15A NCAC 13A .0107(c) [40 C.F.R. §§ 262.34(d)(5)(i), (ii)(A), and (iii)].
50. During the CEI, the EPA and NCDENR learned that the Respondent had not made arrangements with local authorities identified, as appropriate for the type of waste handled at the Facility and the potential need for the services of these authorities.
51. The EPA therefore alleges Respondent violated Section 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SQG Permit Exemption set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(4)], by not complying with the local authorities requirements of 15A NCAC 13A .0110(c) [40 C.F.R. § 265.37].
52. During the CEI, EPA and NCDENR observed that the Respondent had offered for transportation hazardous waste on three (3) non-hazardous waste manifests, instead of the required EPA Form 8700-22 Manifest as follows:
 - a. Manifest Number G2736 included five (5) gallons of Aerosol (D001), 2.1 UN1950, 55 gallons of Corrosive Liquids (D002), and was signed by the Respondent on June 25, 2009 and signed by the Designated Facility on June 25, 2009;
 - b. Manifest Number G2455 included five (5) pounds of Aerosol (D001) and was signed by Respondent on March 5, 2009 and signed by the Designated Facility on March 6, 2009; and
 - c. Manifest Number G2695 included 55-gallons of Aerosol (D001) and 85-gallons of Ethyl Methyl Ketone (or) Methyl Ethyl Ketone (D035) and was signed by the Respondent on August 24, 2009 and signed by the Designated Facility on August 24, 2009.

53. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(b) [40 C.F.R. § 262.20(a)(1)] by failing to ship hazardous waste on a hazardous waste manifest, EPA Form 8700-22, and if necessary, EPA Form 8700-22A, according to the instructions included in the regulations.
54. During the CEI, the EPA and NCDENR learned that on March 5, 2009, Respondent had offered for transportation the hazardous waste identified on Manifest No. G2455, which included five (5) pounds of Aerosol (D001) for disposal, and that on August 24, 2009, Respondent offered for transportation the hazardous waste identified on Manifest Number G2695, which included 55-gallons of Aerosol (D001) and 85-gallons of Ethyl Methyl Ketone (or) Methyl Ethyl Ketone (D035) for disposal. The EPA and NCDENR observed that Respondent did not send a written notice with each shipment to the Designated Facility stating that the wastes met treatment standards and therefore did not have a copy of the notice at the Facility.
55. The EPA therefore alleges Respondent violated Section 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SQG Permit Exemption set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(4)], by not submitting the written notices to the Designated Facility that the wastes meet treatment standards and therefore failing to keep a copy of the notice at the Facility, as required by the Land Disposal Requirements of 15A NCAC 13A .0112(c) [40 C.F.R. § 268.7(a)(3)(i)].
56. During the CEI, the EPA and NCDENR learned that on June 25, 2009, Respondent had offered for transportation the hazardous waste identified on Manifest Number G2736, which included five (5) gallons of Aerosol (D001) 55 gallons of Corrosive Liquids (D002) for disposal. The EPA and NCDENR observed that Respondent did not send a written notice with the shipment to the Treatment, Storage and Disposal facility stating that the wastes met treatment standards and therefore did not have a copy of the notice at the Facility.
57. The EPA therefore alleges Respondent violated Section 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 15A NCAC 13A .0107 [40 C.F.R. § 262.34(a)(4)], by not submitting a written notice to the Treatment, Storage and Disposal facility that the wastes meet treatment standards and therefore failing to keep a copy of the notice at the Facility, as required by the Land Disposal Requirements of 15A NCAC 13A .0112(c) [40 C.F.R. § 268.7(a)(3)(i)].
58. During the CEI, the EPA and NCDENR observed that Respondent was a LQG of hazardous waste From June 25, 2009 to July 24, 2009, but did not submit a Biennial Report in the form of EPA Form 8700-13A to NCDENR by March 1, 2010.
59. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(d) [40 C.F.R. § 262.41(a)] for failing to submit a Biennial Report to NCDENR by March 1, 2010.

60. During the CEI, the EPA and NCDENR observed that the Respondent had three (3) open boxes of broken fluorescent lamps stored in the Overshort & Damaged Storage (OS&D Bay).
61. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0119(b) [40 C.F.R. § 273.13(d)(1)] by failing to contain universal waste lamps in closed containers or packages that are structurally sound and adequate to prevent breakage, and compatible with contents of the lamps under reasonably foreseeable conditions.
62. During the CEI, the EPA and NCDENR observed broken fluorescent lamps in an open box stored in the OS&D Bay.
63. The EPA therefore alleges that Respondent violated NCAC 13A .0119(b) [40 C.F.R. § 273.13(d)(2)] by failing to immediately clean up and place in a closed structurally sound and compatible container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other constituents to the environment under reasonable foreseeable conditions.
64. During the CEI, the EPA and NCDENR observed that the Respondent had three (3) boxes of broken fluorescent lamps, stored in the OS&D Bay that were not properly labeled with one on the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”
65. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0119(b) [40 C.F.R. § 273.14(e)] by failing to label or mark each lamp or container of lamps clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”
66. During the CEI, the EPA and NCDENR observed that Respondent was unable to provide documentation to demonstrate the length of time that the three (3) boxes of broken fluorescent lamps stored in the OS&D Bay had accumulated from the date that it became a waste or was received.
67. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0119(b) [40 C.F.R. §§ 273.15(a) and (c)] by failing to demonstrate the length of time universal waste lamps have been accumulated from the date that the universal waste became a waste or was received.

V. TERMS OF AGREEMENT

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

68. 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.
69. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

- 70. For purposes of this CA/FO, Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the CA/FO.
- 71. 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, 44 U.S.C. § 3501 *et seq.*
- 72. 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.
- 73. 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.
- 74. Respondent states that it has corrected the alleged violations cited in Paragraphs 39 through 67 of this CAFO.
- 75. Compliance with this CA/FO constitutes a full and complete settlement by EPA of all claims for civil liability and penalties, pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for all violations of RCRA specifically alleged herein.
- 76. Each party will pay its own costs and attorneys' fees.

VI. PAYMENT OF CIVIL PENALTY

- 77. Respondent consents to the payment of a civil penalty in the amount of FIFTY-NINE THOUSAND DOLLARS (\$59,000), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
- 78. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (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 Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

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

U.S. Bank
 Government Lockbox 979077
U.S. EPA Fines & Penalties

1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If paying by EFT, 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, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

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

79. Respondent shall submit a copy of the payment to the following individuals:

Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

And to:

Larry Lamberth, Chief
Hazardous Waste Enforcement and Compliance Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

80. If Respondent fails to remit the civil penalty as agreed to herein, the 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 or, if paying in installments, not paid in accordance with the installment schedule provided above. 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 or stipulated 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 40 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated 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).

81. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

82. This CA/FO shall be binding on the EPA and on 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.
83. 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.
84. Each undersigned representative of the parties to this CA/FO certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

VIII. RESERVATION OF RIGHTS

85. 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.

86. 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.
87. 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 storage, 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.

IX. OTHER APPLICABLE LAWS

88. 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

89. 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 this proceeding:

Teresa Mann
Associate Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9572

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

Samuel Boxerman
Sidley Austin LLP
1501 K. Street, NW
Washington, DC 20005
(202) 736-8000

XI. SEVERABILITY

91. 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.

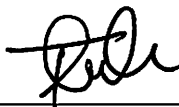
XII. EFFECTIVE DATE

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

In the matter of Con-Way Freight, Inc., Docket No. RCRA-04-2015-4006(b):

AGREED AND CONSENTED TO:

Con-Way Freight, Inc.

By: 

Tom W. Clark
Senior Vice President of Operations
Con-way Freight, Inc.

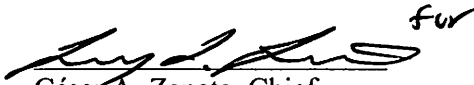
Dated: 9/24/15

[Continued On Next Page]

In the matter of Con-Way Freight, Inc., Docket No. RCRA-04-2015-4006(b):

AGREED AND CONSENTED TO:

United States Environmental Protection Agency

By:  ^{for} Dated: 9/28/15
César A. Zapata, Chief
Enforcement and Compliance Branch
Resource Conservation and Restoration Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

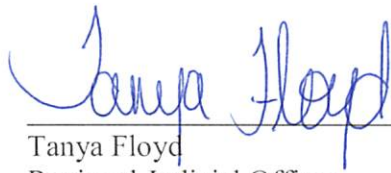
IN THE MATTER OF:) DOCKET NO.: RCRA-04-2015-4006(b)
)
Con-Way Freight, Inc.)
6701 Old Statesville Road)
Charlotte, North Carolina 28269) Proceeding Under Section 3008(a) of the
EPA ID No.: NC0991302940) Resource Conservation and Recovery Act,
) 42 U.S.C. § 6928(a)
)
Respondent)
_____)

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 29th day of September, 2015.

BY:



Tanya Floyd
Regional Judicial Officer
EPA Region 4

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-04-2015-4006(b), and have served the parties listed below in the manner indicated:

Teresa Mann
Associate Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Larry Lamberth, Chief
Hazardous Waste Enforcement and Compliance Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

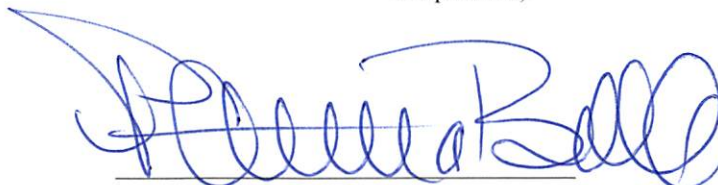
Quantindra Smith
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Samuel Boxerman
Sidley Austin LLP
1501 K. Street, NW
Washington, DC 20005

(Via Certified Mail - Return Receipt Requested)

Date: 9-30-15



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9511