

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

United Parcel Service, Inc.,

Respondent,

Proceeding Under Section 3008 of the
Solid Waste Disposal Act, as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2023-7106

PRELIMINARY STATEMENT

This is an administrative enforcement proceeding instituted pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928(a), by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the “Act” or “RCRA”).

The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling, management and disposal of hazardous waste that are codified at Title 40 of the Code of Federal Regulations (“C.F.R.”) Parts 260-273 and 279. Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program).

The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. *See* 40 C.F.R. Part 272, Subpart HH, and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002, and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005, and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized State program (while EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA).

Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

EPA has given notice of this action to the State of New York in compliance with 42 U.S.C. § 6928(a)(2).

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent United Parcel Service (“Respondent” or “UPS”) is an Ohio corporation that has existed at all times mentioned below and continues to exist today.
2. Respondent’s business is primarily delivering small packages, with the NAICS codes 49211, 492210, 484121, and 484122, respectively, Local Messengers and Local Delivery; Courier and Express Delivery Services; General Freight, Trucking, Long-distance, Less than Truck Load; and General Freight, Trucking, Long-distance Truck Load.
3. At all times relevant to the matters alleged below, Respondent has been, and continues to be, a “person” within the meaning of Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and 6 New York Code of Rules and Regulations (“6 NYCRR”) § 370.2(b).
4. At all times relevant to the matters alleged below, Respondent has operated, and continues to operate, the following two facilities in Brooklyn (Kings County), New York (in the 11236 zip code): (a) one located at 104-01 Foster Avenue (“the 104-01 facility”); and (b) one located at 10615 Foster Avenue (the “10615 facility”).
5. Each of the 104-01 facility and the 10615 facility constitutes a “facility” within the meaning of 6 NYCRR § 370.2(b)(73). Each aforementioned facility is considered a separate and distinct facility under RCRA because their respective properties are non-contiguous and do not have access driveways immediately across from each other separated by a public roadway.
6. In the course of its package sorting and delivery operations at the 10615 facility and 104-01 facility, Respondent has, for all times relevant to the matters alleged below, generated, and continues to generate, “solid waste” (within the meaning of 6 NYCRR § 371.1(c)) that constitutes “hazardous waste” (within the meaning of 6 NYCRR § 371.1(d)). The hazardous waste generated at each such facility does not constitute an “acute hazardous waste” (within the meaning of 6 NYCRR 370.2(b)(6)).
7. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA: (a) through a notification (EPA form 8700-12) dated May 13, 1992, that it generated hazardous waste at the 104-01 facility; and (b) through a notification (EPA form 8700-12) dated November 30, 2017, that it generated hazardous waste at the 10615 facility.
8. Pursuant to the aforementioned notifications, EPA provided: (a) Respondent’s 104-01 Foster Avenue facility with EPA Identification Number NYD006979322, and (b) Respondent’s 10615 facility with EPA Identification Number NYR000234211.

9. For all times relevant to the matters alleged below, Respondent has been, and continues to be: (a) at the 104-01 facility, a “small quantity generator” of hazardous waste (within the meaning of 6 NYCRR § 370.2(b)), and (b) at the 10615 facility, a “conditionally exempt small quantity generator” of hazardous waste (within the meaning of 6 NYCRR § 371.1(f)(1)).
10. On or about February 14, 2023, a duly designated representative of EPA, pursuant to the authority granted EPA in Section 3007 of the Act, 42 U.S.C. § 6927, conducted a Compliance Evaluation Inspection at the 104-01 facility and the 10615 facility.
11. During the February 14th inspections, the EPA representative was advised of the following operations that had occurred at the two facilities: (a) UPS employees sent solid and hazardous waste via hand cart from the 10615 facility to the 104-01 facility; (b) the hazardous waste sent to the 104-01 facility was containerized in bags and labeled in accordance with RCRA and UPS’s policies and procedures; (c) the hazardous waste delivered from the 10615 facility to the 104-01 facility was not accompanied by a hazardous waste manifest; (d) UPS employees at the 104-01 facility accepted the solid and hazardous waste delivered to that facility by hand cart from the 10615 facility; (e) UPS employees at the 104-01 facility intermingled the hazardous waste received from the 10615 facility with hazardous waste generated at the 104-01 facility (f) the intermingled waste was placed into properly labeled drums and subsequently transported for off-site disposal to one or more RCRA permitted hazardous waste treatment, storage and disposal (“TSD”) facilities; and (g) hazardous waste drums containing waste generated at the 10615 facility and the 104-01 facility were shipped for off-site disposal under a hazardous waste manifest utilizing the EPA ID number associated with the 104-01 facility.
12. Pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, EPA issued on or about April 18, 2023, a “Notice of Violation/Information Request Letter” (“NOVIRL”) to Respondent, which: (a) informed Respondent of potential RCRA violations at each of the facilities; and (b) sought additional information about the operations at each of the facilities.
13. On or about May 26, 2023, Respondent timely responded to the NOVIRL. The responses, one for each facility, asserted: (a) Respondent had ceased transporting hazardous waste from 10615 facility to the 104-01 facility; and (b) Respondent created one or more waste accumulation areas at the 10615 facility from which future hazardous waste shipments were to be directed to a RCRA-permitted TSD facility.
14. Pursuant to 6 NYCRR § 371.1(f)(7)(iii), Respondent was required, with regard to the non-acute hazardous waste it was sending off-site from the 10615 facility to the 104-01 facility, to ensure delivery of such hazardous waste to a TSD facility permitted under 6 NYCRR Part 373 or otherwise authorized under a provision of 6 NYCRR § 371.1(f)(7)(iii) to receive such waste (such as a facility authorized to receive hazardous waste under RCRA).
15. The 104-01 facility was not a TSD facility permitted under 6 NYCRR Part 373 or otherwise authorized under a provision of 6 NYCRR § 371.1(f)(7)(iii) [or under any

other applicable RCRA provision] to receive the hazardous waste generated at the 10615 facility.

16. Based on the information EPA, Region 2 gathered during its February 14th inspection, EPA, Region 2 determined that, in sending the non-acute hazardous waste generated at the 10615 facility off-site to the 104-10 facility (as noted in Paragraph 11, above) and failing to ensure direct delivery of such hazardous waste to an off-site TSD facility authorized in accordance with a provision of 6 NYCRR § 371.1(f)(7)(iii) to accept such waste, Respondent violated 6 NYCRR § 371.1(f)(7)(iii).
17. Pursuant to 6 NYCRR § 364-1.2(k), hazardous waste transporters that are not exempt under 6 NYCRR § 364-2.1 must comply with the permitting requirements for hazardous waste transporters under 6 NYCRR § 364-4. Such requirements include, *inter alia*, possessing a valid hazardous waste transporters permit and meeting certain operational requirements pertaining to transportation vehicle maintenance and insurance coverage.
18. Based on the information EPA, Region 2 gathered during its February 14th inspection, EPA, Region 2 determined that, UPS (including its employees at the 10615 facility) was not exempt from the applicable transporter requirements under 6 NYCRR § 364-2.1, nor had it met the permit requirements for hazardous waste transporters under 6 NYCRR § 364-4.
19. Based on the information EPA, Region 2 gathered during its February 14th inspection, EPA, Region 2 determined that the action of UPS employees transporting hazardous waste from the 10615 facility to the 104-01 facility (as noted in Paragraph 11, above) without exemption under 6 NYCRR § 364-2.1 and without meeting the permit requirements for hazardous waste transporters under 6 NYCRR § 364-4 constitutes a violation of 6 NYCRR § 364-4.
20. In pertinent part, 6 NYCRR § 373-1.2(c) provides that no person may operate a “new hazardous waste management facility” (as defined in 6 NYCRR § 370.2(b)(126)) without possessing a permit issued pursuant to 6 NYCRR Part 373.
21. Based on the information EPA, Region 2 gathered during its February 14th inspection, EPA, Region 2 determined that because of the operations Respondent conducted at the 104-01 facility (as noted in Paragraph 11, above), Respondent operated a new hazardous waste management facility at such facility.
22. Respondent never obtained and did not possess a permit issued pursuant to 6 NYCRR Part 373 for the operation of the 104-01 facility.
23. As a consequence of its operation of the 104-01 facility, Respondent violated 6 NYCRR § 373-1.2(c).
24. As a consequence of the matters asserted above, EPA Region 2 determined that Respondent violated each of the following requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921-6939g: (a) 6 NYCRR § 371.1(f)(7)(iii); (b) 6 NYCRR § 364-4; and (c) 6 NYCRR § 373-1.2(c).

25. Based on the information EPA, Region 2 gathered during its February 14th inspection, EPA Region 2 determined that, for the violations noted in Paragraph 24, above, Respondent is liable to the United States for a civil penalty pursuant to 42 U.S.C. § 6928(g), as amended.

AGREEMENT ON CONSENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional basis for EPA prosecuting this administrative proceeding; (b) neither admits nor denies any of EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives any right it might possess to contest or obtain administrative or judicial review of the Final Order accompanying this Consent Agreement.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when "filed" (as defined in 40 C.F.R. § 22.5(a)) with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 (such date henceforth referred to as the "effective date").

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with RCRA and all applicable New York State federally authorized hazardous waste regulations relating to the generation and storage of hazardous waste at, or transportation from, the 10615 facility and the 104-01 facility. Such compliance requires, at a minimum, that Respondent:
 - a. Ensure delivery of hazardous waste generated at the 10615 facility to an off-site treatment, storage or disposal facility lawfully authorized under 6 NYCRR § 371.1(f)(7)(iii) to receive such waste;
 - b. Ensure that any hazardous waste generated at the 10615 facility be transported using a hazardous waste manifest and a transporter that is in full compliance with the permitting requirements for hazardous waste transporters under 6 NYCRR § 364-4 (unless some lawful exemption thereto under 6 NYCRR § 364-2.1 exists); and
 - c. Ensure that the 104-01 facility does not accept hazardous waste for treatment, storage, or disposal unless such facility has obtained a permit therefor pursuant to 6 NYCRR Part 373.
2. Respondent hereby certifies that, as of the date of its signature to this Consent Agreement and to the best of its knowledge and belief, it is in compliance at each of its 10615 facility and its 104-01 facility with all the aforementioned RCRA

requirements referenced in Paragraph 24 of the EPA's Findings of Facts and Conclusions of Law of this Consent Agreement (above).

3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable federal, state, and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.
4. Respondent shall pay a civil penalty in the amount of **FIFTY THOUSAND (\$50,000.00) DOLLARS**. Payment in full must be *received* by EPA *on or before* thirty (30) days from the effective date.
5. The payment, in accordance with the terms and schedule of this Consent Agreement, shall be made by cashier's check, certified check, electronically via Fedwire or on-line. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the below-listed address on or before the date specified. If Respondent makes payment electronically, then such Fedwire or on-line payment shall be *received* on or before the date specified.
 - a. If the payment is made by check, then the check shall be:
 - i. made payable to the **Treasurer, United States of America;**
 - ii. identified with a notation thereon listing the following: ***In re United Parcel Service, Inc., Docket No. RCRA-02-2023-7106;*** and
 - iii. mailed to:
**U.S. Environmental Protection Agency
Fines and Penalties Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.**
 - b. If Respondent chooses to make the payment by Fedwire, then Respondent shall provide the following information to the remitter bank:
 - i. Amount of Payment: **\$50,000;**
 - ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
 - iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
 - iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
 - v. Field Tag 4200 of the Fedwire message should read: **D 8010727 Environmental Protection Agency;**
 - vi. Name of Respondent and Matter: **"United Parcel Service, Inc." and**

vii. Docket Number: **RCRA 02-2023-7106**.

- c. If Respondent chooses to make on-line payment, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to Spielemann.Lee@epa.gov and Wilk.John@epa.gov with “*In re United Parcel Service, Inc., RCRA-02-2023-7106*” as the subject line.
6. Failure to pay the full amount of the penalty, according to the above provisions, may result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.
7. If Respondent fails to make timely payment of the amount in full in accordance with the schedule set forth in Paragraph 4 of this Agreement on Consent section, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, the following handling charges and late penalty charges in the event of any such failure or default and shall remit such payment in accordance with the payment instructions in Paragraph 5 of this Agreement on Consent section.
 - a. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
 - b. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
8. The civil penalty provided for in this section (including any payment(s) for interest or late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state income tax law.
9. Complainant shall email to Respondent (to the representative designated in Paragraph 12 of this Agreement on Consent section, below) a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO by e-mail and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk of Region 2.

10. Except as the parties may agree otherwise in writing or as otherwise provided for in the Agreement on Consent section, all documentation and information required to be submitted by the Respondent to EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by email to:

John Wilk, Enforcement Officer
Enforcement & Compliance Assurance Division
Wilk.John@epa.gov

a n d

Lee A. Spielmann, Assistant Regional Counsel
Office of Regional Counsel
Spielmann.Lee@epa.gov

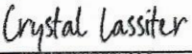
11. Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent by email to the following address:

Meaghan G. Boyd, Esq.
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Meaghan.Boyd@alston.com
12. Full payment of the penalty as set forth in Paragraph 4 of the Agreement on Consent section, above, shall fully and finally resolve Respondent's liability only for federal civil penalties for the violation(s) and facts described in the EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the authority of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
13. The provisions of this Consent Agreement and its accompanying Final Order shall be binding upon Respondent, and its successors or assigns.
14. Respondent waives its right to obtain any hearing to which it otherwise might be entitled in this matter, including a hearing on any of the findings of fact, conclusions of law or other terms and conditions set forth in the Consent Agreement and its accompanying Final Order.
15. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the authority of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations to EPA in regard to this matter or has provided materially false information in any document submitted to EPA in connection with this proceeding.
16. Each party hereto agrees to bear its own costs and attorney's fees in this matter.

17. The undersigned signatory for Respondent certifies that he/she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
18. EPA and Respondent agree that the parties may use electronic signatures for this matter.

In the Matter of United Parcel Service, Inc.
Docket Number: RCRA 02-2023-7106

RESPONDENT:

DocuSigned by:

9611FF8ED2954AA...
Crystal Lassiter
Vice President – Buildings and Systems Engineering
United Parcel Service, Inc.

In the Matter of United Parcel Service, Inc.,
Docket Number: RCRA 02-2023-7106

COMPLAINANT:

Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency - Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

In the Matter of United Parcel Service, Inc.,
Docket Number: RCRA 02-2023-7106

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of United Parcel Service, Inc.*, bearing Docket No. RCRA-02-2023-7106. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

In the Matter of United Parcel Service, Inc.

Docket Number: RCRA 02-2021-7106

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by E-MAIL:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by E-MAIL:

Meaghan G. Boyd, Esq.
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Meaghan.Boyd@alston.com

Dated: _____, 2023
New York, New York
