



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-04-2015-4008(b)
)	
Con-Way Freight, Inc.)	
244 Jacintoport Boulevard)	Proceeding Under Section 3008(a) of the
Saraland, Alabama 36571)	Resource Conservation and Recovery Act,
EPA ID No.: ALR000047720)	42 U.S.C. § 6928(a)
)	
Respondent)	
_____)	

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 Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), Ala. Code §§ 22-30-1 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at Rules 335-14-1 to 335-14-9 of the Alabama Department of Environmental Management (ADEM) Administrative Code (ADEM Admin. Code) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] and ADEM Admin. Code r. 335-14-1 to 335-14-9 [40 C.F.R. Parts 260 through 270].
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 and 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 244 Jacintoport Boulevard, Saraland, Alabama (the "Facility").

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama (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 at AHWMMMA, Ala. Code §§ 22-30-1 *et seq.* and ADEM Admin. Code r. 335-14-1 to 335-14-9.
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. Alabama 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 22-30-14 of the AHWMMMA, Ala. Code § 22-30-14 [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 ADEM Admin. Code r. 335-14-3 [40 C.F.R. Part 262].
12. Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [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 ADEM Admin. Code r. 335-14-5 (permitted) and ADEM Admin. Code r. 335-14-6 (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to ADEM Admin. Code r. 335-14-2-.01(2)(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 ADEM Admin. Code r. 335-14-2-.01(3)(a) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in ADEM Admin. Code r. 335-14-2-.01(3)(a)(2) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by ADEM Admin. Code r. 335-14-2-.01(4)(b) [40 C.F.R. § 261.4(b)].
15. Pursuant to ADEM Admin. Code r. 335-14-2-.03(1) [40 C.F.R. § 261.20], solid wastes that exhibit any of the characteristics identified in ADEM Admin. Code r. 335-14-2-.03(2)-(4) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to ADEM Admin. Code r. 335-14-2-.03(2)(b) [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 ADEM Admin. Code r. 335-14-2-.03(3)(b) [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 ADEM Admin. Code r. 335-14-2-.03(5)(b) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to ADEM Admin. Code r. 335-14-2-.03(5)(b) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for Methyl Ethyl Ketone is identified with the EPA Hazardous Waste Number D035.
19. Pursuant to ADEM Admin. Code r. 335-14-2-.01(3)(a)2 [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30]], a solid waste is a listed “hazardous waste” if it is listed in ADEM Admin. Code r. 335-14-2-.04 [40 C.F.R. Part 261, Subpart D].
20. Acetone is a commercial chemical product that, when not usable for its intended purpose, is a listed hazardous waste in ADEM Admin. Code r. 335-14-2-.04 [40 C.F.R. Part 261, Subpart D] and ADEM Admin. Code r. 335-14-2-.04(f) [40 C.F.R. § 261.33(f)] and is identified with the Hazardous Waste Number U002.
21. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)113(i) [40 C.F.R. § 260.10], a “generator” is defined “as any person, by individual generation site, whose act or process produces hazardous waste identified or listed in ADEM Admin. Code r. 335-14-2 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.”

22. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)244, a generator is a “small quantity generator (SQG)” if more than 100 kilograms is generated in any calendar month during a twelve month period and less than 1000 kg of hazardous waste is generated in every month during the same twelve month period. The generator's twelve month period is assigned by county in the “specified month schedule” as defined in ADEM Admin. Code r. 335-14-1- 02(1)(a).
23. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)101(i) [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.”
24. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)192 [40 C.F.R. § 260.10], a “person” includes a corporation.
25. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)103 [40 C.F.R. § 260.10], a “facility owner” means a person who owns a facility. In most cases, this will be the “operator” or the “owner.”
26. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)186 [40 C.F.R. § 260.10], an “operator” is “the person responsible for the overall operation of a facility.”
27. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)188 [40 C.F.R. § 260.10], an “owner” is “the person who owns in fee simple the property on which a facility or part of a facility is sited.”
28. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)255, “storage” means “the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.”
29. Pursuant to ADEM Admin. Code r. 335-14-3-.01(3)(a) [40 C.F.R. § 262.12(a)], “a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA Identification Number from the Department.”
30. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d) [40 C.F.R. § 262.34(d)], a SQG may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C § 6925], provided the generator complies with the requirements in ADEM Admin. Code r. 335-14-3-.03(5)(d) [40 C.F.R. § 262.34(d)(1)-(5)] (hereinafter referred to as the “SQG Permit Exemption”).
31. Pursuant to ADEM Admin. Code r. 335-14-3-.03(3)(d)5 [40 C.F.R. § 262.34(d)(4)], which incorporates ADEM Admin. Code r. 335-14-3-.03(5)(a)3 [40 C.F.R. § 262.34(a)(3)], and is a condition of the SQG Permit Exemption, a generator is required to label or clearly mark each container accumulating hazardous waste on-site with the words “Hazardous Waste.” In addition, ADEM Admin. Code r. 335-14-3-.03(5)(a)3 requires the generator to mark on each container the “EPA hazardous waste number.”
32. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)2 [40 C.F.R. § 262.34(d)(2)], which incorporates ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)], and is a

condition of the SQG Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.

33. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)2 [40 C.F.R. § 262.34(d)(2)], which incorporates ADEM Admin. Code r. 335-14-6-.09(5) [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 leaks and for deterioration of containers and the containment system caused by corrosion or other factors. Pursuant to ADEM Admin. Code r. 335-14-5-.09(5), the owner or operator must also note the number and capacity of hazardous waste containers present and document the inspections in accordance with ADEM Admin. Code r. 335-14-5-.02(6)(d).
34. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)6(i), (ii)(1), and (iii)(I) [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 telephone number of the emergency coordinator, the location of fire extinguishers and spill control material, and the telephone number of the fire department (unless the generator 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 site operations and emergencies. In addition, pursuant to ADEM Admin. Code r. 335-14-6-.03(5)(d)6(iii), employees must not work in unsupervised positions until they have completed the training requirements set forth in ADEM Admin. Code r. 335-14-6-.02(7)(b).
35. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)7, a generator is required to “maintain sufficient documentation to demonstrate the quantity of hazardous waste generated each calendar month. This documentation must be retained on-site for at least three years from the date the waste was generated.”

IV. EPA ALLEGATIONS AND DETERMINATIONS

36. Respondent is a “person” as defined in ADEM Admin. Code r. 335-14-1.02(1)(a)192 [40 C.F.R. § 260.10].
37. Respondent is the “facility owner,” “owner” and “operator” of a “facility” located at 244 Jacintoport Boulevard, Saraland, Alabama, as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)103, 335-14-1-.02(1)(a)188, and 335-14-1-.02(1)(a)186 [40 C.F.R. § 260.10].
38. Respondent is a “generator” of “hazardous waste” as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)113(i) [40 C.F.R. § 260.10] and ADEM Admin. Code r. 335-14-2-.01(3) [40 C.F.R. § 261.3].
39. Between late 2009 and August 2010, Respondent was a “SQG” of hazardous waste, as that term is defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)224.
40. Respondent generates various types of hazardous waste when products containing hazardous materials are damaged during shipment and no longer considered product.

41. On August 26, 2010, the EPA and ADEM conducted a compliance evaluation inspection (CEI) at Respondent's facility. The findings of the CEI were documented in a Report mailed to Respondent, dated October 13, 2010.
42. At the time of the CEI, the EPA and ADEM reviewed Respondent's hazardous waste activities and observed Hazardous Waste Manifest number 03051588FLE, which showed that on February 16, 2010, the Facility offered for transportation three (3) drums of waste paint (waste code D001) totaling 60 gallons, one (1) drum of waste paint material (waste code D002) totaling 20 gallons, eleven (11) drums of waste paraformaldehyde (waste code D001) totaling 120 pounds, and one (1) drum of waste hydrogen peroxide (waste codes D001 and D002) totaling 85 gallons.
43. At the time of the CEI, the EPA and ADEM reviewed Respondent's hazardous waste activities and observed Hazardous Waste Manifest number 003117670FLE, which showed that on August 30, 2010, the Facility offered for transportation two (2) drums of waste paint (waste code D001) totaling 30 gallons, two (2) drums of waste paint (waste code D001) totaling 25 gallons, and one (1) drum of waste flammable liquids (waste codes D001, D035, and U002).
44. At the time of the CEI, the EPA and ADEM observed that Facility had generated more than 100 kilograms of hazardous waste on at least two occasions in late 2009 or early to mid-2010 and had offered hazardous waste for transportation from its Facility on February 16, 2010 and August 30, 2010.
45. At the time of the CEI, the EPA and ADEM observed that the Facility was a SQG of hazardous waste on at least two occasions between late 2009 and August 2010.
46. At the time of the CEI, Respondent had not yet requested, nor received, an EPA Identification Number from the ADEM, even though the Facility was a SQG of hazardous waste on at least two occasions between late 2009 and August 2010.
47. In or about February 17, 2011, Respondent requested an EPA Identification number from ADEM.
48. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-3-.01(3)(a) [40 C.F.R. § 262.12] by failing to request and receive an EPA Identification Number from ADEM prior to storing at, and/or offering hazardous waste for transport from its Facility as a SQG.
49. During the CEI, the EPA and ADEM observed that the Respondent was storing the following hazardous waste in the less than 180-day Hazardous Waste Accumulation Area:
 - a. One (1) 45 gallon container of epoxy resin (hazardous waste codes D001 and D002), which was dated August 26, 2010. The container was not labeled with the words "Hazardous Waste" nor was it labeled with an EPA hazardous waste number;

- b. Two (2) 20 gallon black plastic containers each containing one (1) 4 gallon container of hardener catalyst (hazardous waste code D001 and D002), which was generated in June 2010 according to facility personnel. The containers were not labeled with the words "Hazardous Waste" nor were they labeled with an EPA hazardous waste number;
 - c. One (1) 20 gallon black plastic container of epoxy primer (hazardous waste code D001 and D002), which was dated June 16, 2010. The container was open and was not labeled with the words "Hazardous Waste" nor was it labeled with an EPA hazardous waste number;
 - d. One (1) 20 gallon black plastic container of adhesive (hazardous waste code D001), which was dated June 15, 2010. The container was open and was not labeled with the words "Hazardous Waste" nor was it labeled with an EPA hazardous waste number;
 - e. One (1) 20 gallon yellow metal container of Euro Quick Activator(hazardous waste code D001 and D002), dated December 17, 2009, was not labeled with the words "Hazardous Waste" nor was it labeled with an EPA hazardous waste number and was stored greater than 180 days;
 - f. One (1) black plastic container that was holding two (2) 1 gallon containers and two (2) 1 quart containers of epoxy top coat paint (hazardous waste codes D001, D035, and U002), which was dated March 10, 2010. The containers were not labeled "Hazardous Waste" nor were they labeled with an EPA hazardous waste number; and,
 - g. One (1) 30 gallon yellow metal container of polyurethane (hazardous waste code D001), dated August 18, 2010, was not labeled with the words "Hazardous Waste" nor was it labeled with an EPA hazardous waste number.
50. The EPA therefore alleges, for the containers in paragraph 49(a)-(g), Respondent violated Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [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 ADEM Admin. Code r. 335-14-.03(5)(d)5 [40 C.F.R. § 262.34(d)(4)], by not complying with the "hazardous Waste" labeling requirements of ADEM Admin. Code r. 335-14-3-.03(5)(a)3 [40 C.F.R. § 262.34(a)(3)] and the "EPA hazardous waste number" labeling requirement of ADEM Admin. Code r. 335-14-3-.03(5)(a)3.
51. The EPA therefore alleges, for the containers in paragraph 49(c) and (d), Respondent violated Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [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 ADEM Admin. Code r. 335-14-3-.03(5)(d)2 [40 C.F.R. § 262.34(d)(2)], by not complying with the container closure requirement of ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 262.173(a)].

52. The EPA therefore alleges, for the container identified in paragraph 49(e), Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [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 less than 180 day storage requirement of ADEM Admin. Code r. 335-14-3-.03(5)(d) [40 C.F.R. § 262.34(f)].
53. During the CEI, the EPA and ADEM observed that Respondent had not conducted adequate weekly inspections of hazardous waste stored in the Facility's less than 180-day Hazardous Waste Accumulation Area and that Respondent did not have records documenting the weekly inspections.
54. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [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 ADEM Admin. Code r. 335-14-.03(5)(d)2 [40 C.F.R. § 262.34(d)(2)], by not complying with the weekly inspection requirements of ADEM Admin. Code r. 335-14-6-.09(5) [40 C.F.R. § 265.174], and by not keeping records of the inspections, as required by ADEM Admin. Code r. 335-14-5-.02(6)(d).
55. During the CEI, the EPA and ADEM 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 ADEM also observed that Respondent did not have documentation to demonstrate 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 and the employees who were working in unsupervised positions had completed the required training before working in those positions and that.
56. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet conditions of the SQG Permit Exemption, by not complying with emergency preparedness requirements of ADEM Admin. Code r. 335-14-3-.03(5)(d)6(i), (ii)(I), and (iii)(I) [40 C.F.R. § 262.34(d)(5)(i), (ii)(A), and (iii)].
57. The EPA therefore alleges Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet conditions of the SQG Permit Exemption, by not complying with the requirement of ADEM Admin. Code r. 335-14-3-.03(5)(d)6(iii) that the employees receive the training required by ADEM Admin. Code r. 335-14-6-.02(7)(b) before working in unsupervised positions.
58. During the CEI, the EPA and ADEM observed that Respondent did not have documentation to demonstrate the quantity of hazardous waste generated in each calendar month.

59. The EPA therefore alleges Respondent violated ADEM Admin. Code r. 335-14-3-.03(5)(d)7, because Respondent failed sufficient documentation to demonstrate the quantity of hazardous waste generated in each calendar month.

V. TERMS OF AGREEMENT

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

60. 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.
61. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
62. For the purposes of this CA/FO, Respondent waives any right to contest the allegations and its right to appeal the CA/FO.
63. 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.*
64. 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.
65. 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.
66. Respondent states that it has corrected the alleged violations cited in Paragraphs 36 through 59 of this CAFO.
67. Compliance with this CA/FO constitutes a full and complete settlement by the 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.
68. Each party will pay its own costs and attorneys' fees.

VI. PAYMENT OF CIVIL PENALTY

69. Respondent consents to the payment of a civil penalty in the amount of FIFTY THOUSAND – NINE HUNDRED DOLLARS (\$50,900.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
70. 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

71. 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
US EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

72. 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 thirty (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).

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

VII. PARTIES BOUND

74. 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.
75. 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.
76. 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

77. 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.
78. 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.
79. 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

80. 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

81. 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

82. 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

83. 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


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

[CONITNUED ON NEXT PAGE]

In the matter of Con-Way Freight, Inc., Docket No. RCRA-04-2015-4008(b):

AGREED AND CONSENTED TO:

Con-Way Freight, Inc.

By:  _____

Dated: 9/24/15


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

[CONITNUED ON NEXT PAGE]

In the matter of Con-Way Freight, Inc., Docket No. RCRA-04-2015-4008(b):

AGREED AND CONSENTED TO:

United States Environmental Protection Agency

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

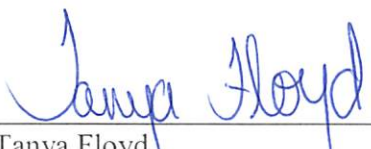
IN THE MATTER OF:) DOCKET NO.: RCRA-04-2015-4008(b)
)
Con-Way Freight, Inc.)
244 Jacintoport Boulevard)
Saraland, Alabama 36571) Proceeding Under Section 3008(a) of the
EPA ID No.: ALR000047720) Resource Conservation and Recovery Act,
) 42 U.S.C. § 6928(a)
)
Respondent)
_____)

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 30th 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-04-2015-4008(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
(202) 736-8000

(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