

USEPA – Region II
Regional Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

	)	
In the Matter of	)	Index No. CERCLA-02-2026-2013
	)	
FedEx Freight, Inc.,	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Montgomery, New York	)	
	)	
Respondent.	)	
	)	

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9609. The Complainant in this action is the Director of the Superfund and Emergency Management Division of the United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to institute this action. Respondent is FedEx Freight, Inc. (“Respondent”).

2. Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where 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 pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

3. It has been agreed by Complainant and Respondent that settling this matter by entering into this CAFO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY AND REGULATORY BACKGROUND

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility, as defined under CERCLA, to immediately notify the National Response Center (“NRC”) as soon as he or she has knowledge of any release (other than a federally permitted release) of a hazardous substance from the facility in a quantity equal to or greater than the reportable quantity. The implementing regulations for CERCLA Section 103 requirements are found at 40 C.F.R. Part 302.

5. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

6. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), provides for the assessment of penalties for violations of Section 103 of CERCLA.

FINDINGS OF FACT

7. At all times relevant to this CAFO, Respondent was the operator of a shipping facility located at 191 Neelytown Road, Montgomery, New York (the "Facility").

8. At all times relevant to this CAFO, Respondent was engaged in the transport of ferric chloride through the Facility on behalf of Respondent's customer.

9. At approximately 2:50 a.m. on July 16, 2025, a release of ferric chloride to the environment occurred at the Facility (the "Release"). Respondent was aware of the Release when it occurred and was aware that the release likely involved more than 1,000 pounds of ferric chloride by 8:16 AM. The incident concluded at approximately 8:16 am on July 16th.

10. On July 16, 2025, at approximately 10:55 am, Respondent attempted to notify the NRC of the Release. Respondent was unable to contact the NRC, and it did not make any further attempts to complete the notice requirement.

11. By letter dated August 6, 2025, EPA issued an information request letter to Respondent regarding the Release.

12. By letter dated September 5, 2025, Respondent submitted a response to the August 6, 2025 information request letter regarding the Release to EPA.

EPA CONCLUSIONS OF LAW

13. Respondent is, and at all times relevant to this CAFO was, a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. At all times relevant to this CAFO, Respondent was the operator of the Facility, which is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. Ferric chloride (CAS# 7705-08-0) is a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as listed in 40 C.F.R. Part 302, Table 302.4. The

reportable quantity for ferric chloride is 1,000 pounds, as set forth in 40 C.F.R. Part 302, Table 302.4.

16. The Release was a “release” as defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). The Release was not a federally permitted release, as defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

17. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

18. Respondent failed to immediately notify the NRC upon knowledge that the Release exceeded the reportable quantity for ferric chloride. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

CONSENT AGREEMENT

19. Based upon the foregoing, and pursuant to Section 109 of CERCLA and 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), Complainant and Respondent hereby agree on the following provisions.

20. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the Findings of Fact set forth above, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

21. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

22. Respondent agrees to pay a civil penalty in the amount of seventeen thousand dollars (\$17,000) (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this CAFO is filed with the Regional Hearing Clerk (“Filing Date”).

23. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. The penalty shall be made pursuant to the instructions for Superfund payments on the EPA website.

24. When making a payment, Respondent shall:

- a. Identify the payment with Respondent's name and the index number of this CAFO, CERCLA-02-2026-2013.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007
maples.karen@epa.gov

Walter Sainsbury
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007
Sainsbury.walter@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate CERCLA Index number and Respondent's name.

25. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this CAFO, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest,

penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the Internal Revenue Service ("IRS") standard underpayment rate; any lower rate would fail to provide Respondent adequate incentive for timely payment.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this CAFO, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

26. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, EPA may take additional actions. Such actions that EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
- b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the IRS for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H;
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17, and
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

27. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

28. Tax Treatment of Penalties. The Assessed Penalty, penalties for late payments pursuant to Paragraph 26, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

GENERAL PROVISIONS

29. This CAFO is being voluntarily and knowingly entered into by Complainant and Respondent in full settlement of Respondent's alleged violation of CERCLA set forth above in the Findings of Fact and EPA Conclusions of Law.

30. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Except for the alleged violation resolved herein, compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

31. Respondent's full compliance with this CAFO shall resolve Respondent's liability for federal civil penalties for the violation and facts described above in the Findings of Fact and EPA Conclusions of Law. This CAFO shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not resolved in this CAFO.

32. This CAFO and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

33. Respondent explicitly waives any right to request a hearing as to the matters addressed herein and/or contest any allegations in this CAFO and explicitly waives any right to appeal the attached Final Order.

34. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

35. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS, annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification

Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this CAFO is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date of this CAFO, then Respondent, using the same email address identified in the preceding sub-Paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the effective date of the CAFO; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

36. This CAFO shall be binding on Respondent and its successors and assignees.

37. Each of the undersigned representatives to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the CAFO and to bind that party to it.

38. Respondent consents to service upon Respondent by electronic means, including by email, sent to the electronic addresses provided by Respondent in the Acknowledgement of Consent to Electronic Service, which Respondent represents is its electronic address for purposes of service, of a copy of this CAFO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of FedEx Freight, Inc.,
Index Number CERCLA-02-2026-2013

For Respondent
FedEx Freight, Inc.

Wayne Bailey
Signature

Date: 9/10/26

Wayne Bailey
Name (Printed or Typed)

Director of Safety
Title (Printed or Typed)

wayne.bailey@fedexfreight.com
Email Address (Printed or Typed)

In the Matter of FedEx Freight, Inc.,
Index Number CERCLA-02-2026-2013

For Complainant
U.S. Environmental Protection Agency, Region 2

Pat Evangelista

Digitally signed by Pat
Evangelista
Date: 2026.09.22 12:38:20
-04'00'

Date: 9/22/26

Pat Evangelista, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2

*In the Matter of FedEx Freight, Inc.
Consent Agreement and Final Order, Index No. CERCLA-02-2026-2013*

In the Matter of FedEx Freight, Inc.,
Index Number CERCLA-02-2026-2013

FINAL ORDER

As Regional Judicial Officer of the EPA, Region 2, I ratify the foregoing CAFO. The CAFO, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

SO ORDERED.

**DANA
FRIEDMAN**

Digitally signed by
DANA FRIEDMAN
Date: 2026.09.22
13:51:50 -04'00'

Dana Friedman
Regional Judicial Officer
U.S. Environmental Protection Agency — Region 2
290 Broadway
New York, NY 10007-1866

Date: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

_____	)	
In the Matter of	)	Index No. CERCLA-02-2026-2013
	)	
FedEx Freight, Inc.,	)	
	)	
Montgomery, New York	)	
	)	
Respondent.	)	
_____	)	

ACKNOWLEDGMENT OF CONSENT TO ELECTRONIC SERVICE

This is to acknowledge Respondent's consent to service by electronic means, including by email, of the fully executed CAFO and Final Order to the electronic address below.

FedEx Freight, Inc.
Mitchell Ashkenaz
Senior Managing Attorney
Mitchell.Ashkenaz@FedExFreight.com

Respondent represents that the electronic address provided above is Respondent's email address for purposes of service.

For Respondent
FedEx Freight, Inc.



Signature

Date: 9/14/20

Mitchell Ashkenaz

Name (Printed or Typed)

Sr. Mng. Attorney

Title (Printed or Typed)

*In the Matter of FedEx Freight, Inc.
Consent Agreement and Final Order; Index No. CERCLA-02-2026-2013*

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

	)	
In the Matter of	)	Index No. CERCLA-02-2026-2013
	)	
FedEx Freight, Inc.,	)	
	)	
Montgomery, New York	)	
	)	
Respondent.	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed CAFO and Final Order electronically to the respective email addresses below:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

FedEx Freight, Inc.
Mitchell Ashkenaz
Senior Managing Attorney
Mitchell.Ashkenaz@FedExFreight.com

Dated: _____
New York, New York

*In the Matter of FedEx Freight, Inc.
Consent Agreement and Final Order, Index No. CERCLA-02-2026-2013*