

USEPA – Region II  
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**United Parcel Service, Inc.**  
P. O. Box 2113  
Carolina, Puerto Rico 00984

Site: UPS San Juan Hub  
Road PR-150  
Sector Central  
Carolina, Puerto Rico 00979  
NPDES ID: PRR053209

**RESPONDENT**

Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**DOCKET NUMBER  
CWA-02-2024-3353**

**I. CONSENT AGREEMENT AND FINAL ORDER**

Complainant, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”), and Respondent, United Parcel Service, Inc. (“Respondent” or “UPS”), by its undersigned representatives, hereby consent and agree as follows:

**II. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made, and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the CWA, 33 U.S.C. § 1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director of the Caribbean Environmental Protection Division (“CEPD”), Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), which

sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

4. As set forth below, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Complainant alleges that Respondent is liable for numerous violations of the Act in its operation of its UPS San Juan Hub facility, located at Road PR-150, Sector Central, Carolina, Puerto Rico, including by failing to submit timely annual reports, conduct routine facility inspections, and conduct quarterly visual assessments of stormwater discharges in accordance with the National Pollutant Discharge Elimination System (“NPDES”) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Therefore, Complainant alleges that Respondent has violated Section 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, and is proposing to assess a civil penalty.
5. Complainant and Respondent agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement (“Agreement”) and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law, will avoid prolonged and potentially complicated litigation between EPA and Respondent (herein collectively “the Parties”).
6. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein, admits Complainant's facts stipulated and allegations of violations contained herein, and consents to the assessment of the civil penalty.
7. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Agreement, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
8. Upon incorporation into a Final Order, this Agreement applies to, and is binding upon, Complainant and Respondent and Respondent's officers, directors, agents, successors, and assigns. Any change in ownership or corporate organization, structure, or status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, unless Complainant, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities.
9. This Agreement contains all settlement terms agreed to by the Parties.

### **III. APPLICABLE LAW**

10. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

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11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
12. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue NPDES permits for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary.
13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits to “persons” that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA.
14. Section 502(5) of the CWA defines “person” to mean “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
15. Section 502(12) of the CWA defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
16. Section 502(7) of the CWA defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
17. Section 502(6) of the CWA defines “pollutant” to include, among other things, solid waste, garbage, sewage, sewage sludge, biological material, rock, and sand. 33 U.S.C. § 1362(6).
18. Section 502(14) of the CWA defines “point source” as “any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19. Respondent is a “person” pursuant Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
20. Respondent is the “owner and/or operator” as defined in 40 C.F.R. § 122.2, of the UPS San Juan Hub Facility (the “Facility” or “UPS San Juan”) located at Road PR-150, Sector Central, Carolina, Puerto Rico.
21. UPS San Juan’s operation consists of a distribution center where packages are received at the UPS Terminal located at the Luis Muñoz Marín International Airport, and the packages are stored and sorted for distribution via ground transportation.

22. The operations at the Facility are best described by the Standard Industrial Classification (“SIC”) Code 4513 (Air Transportation Facilities) and SIC Code 4215 (Courier Services), which cover establishments primarily engaged in air and land transportation.
23. Respondent’s operations at the Facility are classified as an “industrial activity,” as defined in 40 C.F.R. § 122.26(b)(14)(viii), which includes those facilities identified with SIC Codes 4215 and 4513.
24. Respondent’s Facility has a stormwater runoff collection and conveyance system, which is used to discharge stormwater associated with industrial activity into the Torrecillas Lagoon.
25. At relevant times, Respondent “discharged pollutants,” as defined in 40 C.F.R. § 122.2, from the Facility into Torrecillas Lagoon, a “navigable water” of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
26. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”
27. Section 402(p) of the Act, 33 U.S.C. § 1342(p), authorizes the Administrator of EPA to issue NPDES permits NPDES for the discharge of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
28. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), authorizes the Administrator of EPA to issue a permit for stormwater discharges associated with industrial activity.
29. Pursuant to the CWA, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which are codified at 40 C.F.R. Part 122, as amended.
30. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.* and the regulations promulgated pursuant to the CWA.
31. Respondent was required to apply for an NPDES permit for its stormwater discharges associated with industrial activity from the Facility into the Torrecillas Lagoon pursuant to Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. §§ 122.21 and 122.26(e)(1).
32. On June 4, 2015, EPA issued the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“2015 MSGP”), as authorized under Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B). The 2015 MSGP became effective on June 4, 2015, and expired on June 3, 2020.
33. EPA did not issue a new NPDES permit prior to the expiration of the 2015 MSGP. Therefore, the 2015 MSGP was administratively continued in accordance with the Administrative Procedure Act, 5 U.S.C.

§ 558(c), and 40 C.F.R. § 122.6, and remained in force and effect for those operators of facilities with stormwater discharges associated with industrial activity that obtained 2015 MSGP coverage prior to its expiration date.

34. On January 15, 2021, EPA re-issued the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“2021 MSPG”). The 2021 MSGP became effective on September 29, 2021, and will expire on February 28, 2026.
35. On May 28, 2021, UPS filed a Notice of Intent (“NOI”) to obtain coverage under the 2021 MSGP, which became effective on June 27, 2021.
36. The 2015 MSGP and the 2021 MSGP (collectively “the MSGP Permits”) establish filing requirements, development and implementation of a Stormwater Pollution Prevention Plan (“SWPPP”), inspections, monitoring, reporting, recordkeeping and other special and general conditions.
37. Part 1.2. of the 2015 MSGP and the 2021 MSGP establish the eligibility criteria and NOI filing requirements for operators of regulated industrial activities seeking coverage under either permit.
38. Part 3.1 of the 2015 MSGP required and Part 3.1 of the 2021 MSGP require UPS to perform Quarterly Routine Facility Inspections (“Routine Inspections”) at the Facility.
39. Part 3.2 of the 2015 MSGP required and Part 3.2 of the 2021 MSGP require UPS to perform Quarterly Visual Assessment of Stormwater Discharges (“Visual Assessments”) at the Facility.
40. Part 7.5 of the 2015 MSGP required and Part 7.4 of the 2021 MSGP require UPS to “[s]ubmit an Annual Report to EPA via NeT-MSGP, per Part 7.2, by January 30th for each year of permit coverage containing information generated from the past calendar year.”
41. On December 17, 2020, EPA issued a Request for Information with identification number CEPD-CWA-02-IR-2021-009 (“December 2020 RFI”) to UPS, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
42. On February 26, 2021, UPS submitted its response to the December 2020 RFI (the “February 2021 Response”). EPA’s review of the February 2021 Response revealed that UPS’ response was incomplete as it did not include certain information for questions 5 and 12 of the December 2020 RFI.
43. On July 22, 2021, EPA issued an RFI Follow-up letter requesting additional information.
44. On September 13, 2021, UPS submitted the response to the RFI Follow-up letter (the “September 2021 Response”).



45. On September 22, 2021, EPA performed a NPDES Stormwater Inspection (the “Inspection”) of the Facility. The findings of the Inspection were included in an Inspection Report, dated October 26, 2021, and revealed, among other things that:
- a. The Annual Reports for years 2017, 2018, 2019 and 2020, were not submitted on time, as established in the 2015 MSGP.
  - b. Routine Inspections were not performed for years 2019 and 2020, as established in the 2015 MSGP.
  - c. Visual Assessments were not performed for years 2019 and 2020, as established in the 2015 MSGP.
46. On May 28, 2021, UPS submitted an NOI for UPS San Juan under the 2021 MSGP. The effective date of coverage was June 27, 2021, and the NPDES ID assigned was PRR053209.
47. Eighty-nine (89) rain events of 0.5 inches or more in 24-hours were documented from April 28, 2019, to December 31, 2021, at the “San Juan L M Marin International Airport, PR US RQW00011641” station.

#### **V. CONSENT AGREEMENT**

48. Paragraphs 1 through 47 are re-alleged and incorporated herein by reference.
49. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement and Final Order (“CA/FO”) without further litigation and the expense and effort that litigation entails.
50. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

#### **VI. TERMS OF SETTLEMENT**

51. For the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of this CA/FO;
  - b. neither admits nor denies the factual allegations contained herein;
  - c. waives any right to contest the allegations, a judicial or administrative hearing, and to appeal this CA/FO; and

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- d. shall pay a civil penalty in the amount of forty-eight thousand dollars (\$48,000), by making a one-time payment within thirty (30) days from the effective date of the Final Order, as stated in Section VII, below.

**VII. PAYMENT OF CIVIL PENALTY**

52. Respondent agrees to pay a civil penalty in the amount of forty-eight thousand dollars (\$48,000) (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).
53. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, combination of appropriate methods, as provided on the EPA provided on the website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
54. When making a payment, Respondent shall:
- Identify every payment with Respondent’s name and the docket number of this Agreement, CWA-02-2024-3353,
  - Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

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

and

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

and

Yolianne Maclay, P.E.  
Environmental Engineer  
Clean Water Act Team

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Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Agency  
United States Environmental Protection Agency Region 2  
maclay.yolianne@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 docket number and Respondent’s name.

55. 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 Agreement, 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 IRS standard corporate 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 Agreement, 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.

56. 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 Agreement, EPA may take additional actions. Such actions 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.

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- 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 Internal Revenue Service 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.
  - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
57. 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.
58. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
59. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

#### **VIII. GENERAL PROVISIONS**

60. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. Absent EPA's consent, no transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
61. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
62. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable provision of law.

63. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of the CWA and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
64. Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
65. Each undersigned representative of the Parties to this CA/FO certifies that he or she 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.
66. Each party shall bear its own costs and attorney's fees in this matter.

**FOR RESPONDENT, UNITED PARCEL SERVICE, INC., an Ohio corporation**

BY:  \_\_\_\_\_

DATE: 08-01-2024

**Daniel Herrera**  
Latam Buildings and Systems Director  
P. O. Box 2113  
Carolina, Puerto Rico 00984

**FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

BY: \_\_\_\_\_

DATE: 9-18-24

**CARMEN R. GUERRERO PÉREZ**  
Director  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
City View Plaza II  
48 Road 165, STE 7000  
Guaynabo, Puerto Rico 00968-8073

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**IX. FINAL ORDER**

The Director of the Caribbean Environmental Protection Division of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered by the Parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

**CARMEN R. GUERRERO PÉREZ**

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

City View Plaza II

48 Road 165, STE 7000

Guaynabo, Puerto Rico 00968-8073

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