



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FEDEX FREIGHT, INC.
FOR
FEDEX FREIGHT RCH
EPA ID No. VAR000532945**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and FedEx Freight, Inc., regarding the FedEx Freight facility in South Chesterfield Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the FedEx Freight facility located at 16201 Walthall Industrial Parkway in South Chesterfield, Virginia.

6. “FedEx” means FedEx Freight, Inc., a corporation authorized to do business in Virginia. FedEx is a “person” within the meaning of Va. Code § 10.1-1400.
7. “Generator” means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. “Hazardous Waste” means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. “LQG” means large quantity generator, and prior to April 8, 2018, means a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l). As of April 8, 2018, it means a hazardous waste generator that generates any of the following amounts in a calendar month: 1000 kilograms (2200 pounds) or greater of non-acute hazardous waste, or greater than 1 kilogram (2.2 pounds) of acute hazardous waste, or greater than 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e). *See* 40 CFR § 260.10.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
12. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. “Regulations” or “VHWMR” means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
14. “Solid Waste” means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. “SQG” means a small quantity generator, and prior to April 8, 2018, means a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f). As of April 8, 2018, it means a hazardous waste generator that generates any of the following amounts in a calendar month: greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2200 pounds) of non-acute hazardous waste, and less than or equal to 1 kilogram (2.2 pounds) of acute hazardous waste, and less than or equal to 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e). *See* 40 CFR § 260.10.
16. “Va. Code” means the Code of Virginia (1950), as amended.

17. "VAC" means the Virginia Administrative Code.
18. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. FedEx operates the Facility in South Chesterfield, Virginia. The Facility is for freight hauling and is located at 16201 Walthall Industrial Parkway. Operations at the Facility are subject to the Virginia Waste Management Act and Regulations.
2. FedEx submitted a RCRA Subtitle C Site Identification Form (received December 5, 2017) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. FedEx was issued EPA ID No. VAR000532945 for the Facility.
3. At the Facility, FedEx generates various hazardous and non-hazardous wastes from freight that has been damaged or if a release occurs. The following lists the solid wastes, which are also hazardous wastes, that are generated and accumulated at the Facility, followed by the corresponding waste code.

- Waste Aerosols – D001
- Waste Paint – D001
- Waste Paint – D001, D035
- Waste Flammable Liquids (petroleum distillates, alcohols) – D001
- Waste Flammable Liquids, N.O.S. – D001
- Waste Hydrocarbons – D001
- Waste Corrosive Liquids (lactic acid, acetic acid) – D002
- Waste Sodium Hydroxide – D002
- Waste Corrosive Liquid (sodium hydroxide, monoethanolamine) – D002
- Waste Corrosive Liquid (sodium hydroxide, sodium hypochlorite) – D002
- Waste Acetic Acid Solution – D002
- Waste Resin Solution – D001

4. On March 14 and 15, 2019, DEQ conducted an unannounced Compliance Evaluation Inspection (CEI) of the Facility to evaluate compliance with applicable Virginia Hazardous Waste Management Regulations (VHWMR). FedEx is identified in the RCRA Information System database as an SQG of hazardous waste. At the time of the inspection, FedEx was observed to be operating as a SQG of hazardous waste, however, based on observations and documentation review, FedEx had generated LQG amounts of hazardous waste, at the Facility in March and April of calendar year 2018. The Facility was evaluated for compliance as an SQG and for the applicable requirements for an LQG during March and April of calendar year 2018. During the inspection the Department observed the following:

a.) FedEx notified as an SQG of hazardous waste on December 5, 2017 via EPA Form 8700-12 due to moving operations to a new location (current). Upon review of the hazardous waste manifest data and Facility incident generation dates of the wastes, DEQ staff found that FedEx had generated approximately 2,415 pounds of hazardous waste in March of 2018 at the Facility. All the hazardous waste generated in March of 2018 was subsequently shipped to a disposal facility by April 27, 2018. The Facility was a LQG of hazardous waste in March and April of 2018. DEQ does not have a notification record from FedEx of the change in generator status at the Facility from SQG to LQG in March of 2018.

Legal Requirements: 9 VAC 20-60-315.D of the VHWMR states, “Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.”

b.) DEQ does not have a notification record from FedEx of the exact location of the hazardous waste central accumulation area at the Facility, after becoming an LQG of hazardous waste in March of 2018.

Legal Requirements: 9 VAC 20-60-262 B.4 states, “For accumulation areas established after March 1, 1988, a large quantity generator shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.17 prior to or immediately upon the establishment of each 90-day accumulation area. In the case of a new large quantity generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity EPA Form 8700 12 that he intends to accumulate hazardous waste in accordance with 40 CFR 262.18. This notification shall specify the exact location of the 90-day accumulation area at the site.”

c.) DEQ staff found that hazardous waste manifest #013169645FLE dated March 7, 2019, had an entry in Section 9b.2 of hazardous waste paint without the required unit volume and waste code included in sections 12 and 13, respectively.

Legal Requirements: 40 CFR §262.20 (a)(1) states, “A generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A”

d.) DEQ staff found that hazardous waste manifest #013169645FLE and the associated land disposal restriction (LDR) form dated March 7, 2019, did not account for the hazardous waste paint without waste codes on line 2 in section 9b.2. Facility staff confirmed during the DEQ inspection that the two waste paint streams originated from the same material, were profiled, and being properly treated.

Legal Requirements: 40 CFR §268.7(a)(1) requires generators of hazardous waste to determine if the waste has to be treated before it can be land disposed and outlines tracking and recordkeeping requirements.

e.) FedEx did not have a signed, return copy of hazardous waste manifest #009287858FLE (ship date of July 6, 2018) and hazardous waste manifest #012897774FLE (ship date of November 28, 2018) from the disposal facility. FedEx had not filed an exception report within 60 days of the initial transporter pick up to the Director for the two hazardous waste shipments.

Legal Requirements: 40 CFR §262.42(b) states, “A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.”

f.) DEQ staff observed the posted emergency information near the waste accumulation area and Facility phone. The posting information did not include the location of the fire extinguishers and spill equipment. The information was present in the Facility’s contingency plan, however, the plan was not observed to be posted next the telephones or in the waste accumulation area. During the inspection, Facility staff posted the map of the locations of the spill equipment and fire extinguishers next to the emergency posting location in the waste accumulation area and Facility telephone.

Legal Requirements: 40 CFR §262.16(b)(9)(ii)(B) states, “(ii) The small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:
(B) Location of fire extinguishers and spill control material, and if present, fire alarm...”

g.) DEQ staff reviewed bills of ladings from Safety-Kleen indicating that the used oil is transported for recycling, however the 500-gallon AST utilized to accumulate used oil was not labeled used “Used Oil.”

Legal Requirements: 40 CFR §279.22(c)(1) states, “(c)Labels. (1) Containers and above ground tanks used to store oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”

h.) FedEx did not have documentation to ensure that solvent-contaminated wipes (generated in the Facility maintenance shop) contain no free liquids at the point of being laundered or transported off-site for laundering.

Legal Requirements: 40 CFR §261.4(a)(26)(v)(C) states, “(v) Generators must maintain at their site the following documentation: (C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;”

5. On May 1, 2019, the Department issued NOV No. 2019-05-PRO-601 to FedEx citing them for the violations observed during the March 15, 2019, CEI.
6. On May 2, 2019, the Department held an enforcement conference with FedEx to discuss the NOV and the violations. FedEx demonstrated compliance with all of issues and the Department determined that injunctive relief was complete at that time.
7. FedEx has submitted documentation that verifies that the violations described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders FedEx, and FedEx agrees to:

1. Pay a civil charge of \$14,437 within 60 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

FedEx shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, FedEx shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of FedEx for good cause shown by FedEx, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, FedEx admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. FedEx consents to venue in the Circuit Court of Chesterfield County for any civil action taken to enforce the terms of this Order.
5. FedEx declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein, except that FedEx reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of FedEx. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by FedEx to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. FedEx does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FedEx shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. FedEx shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FedEx shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the FedEx intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FedEx.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after FedEx has completed all of the requirements of the Order;
 - b. FedEx petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FedEx.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FedEx from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of FedEx certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind FedEx to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FedEx.
13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, FedEx voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2020.

James J. Golden
Department of Environmental Quality
Piedmont Regional Director

FedEx Freight, Inc. voluntarily agrees to the issuance of this Order.

Date: 9/21/2020 By: [Signature], MD of Safety
(Person) (Title)
FedEx Freight, Inc.

Commonwealth of ~~Virginia~~ Arkansas
City/County of Boone

The foregoing document was signed and acknowledged before me this 21 day of SEPTEMBER,
2020, by ANDY DUE who is NOTARY of

FedEx Freight, Inc. on behalf of the corporation.

ANDY DUE
Notary Public
12404156
Registration No.

My commission expires: 4/16/25

Notary seal:

