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TO: FedEx Ground Package System File
FLD980838569

FROM: John White
Environmental Consultant

DATE: November 8, 2019

RE: Notes from Review of 8/22/2019 Response to Warning Letter

Below are notes from the undated review of the response to the Warning Letter. The date of November 8, 2019 is based on the date of the electronic file.

FedEx Ground - Review of August 22, 2019, response to FDEP Warning Letter

In the first full paragraph of the response, FedEx Ground indicated that, as a nationwide common carrier, their transportation functions are regulated by, and must comply with, U.S. DOT transportation requirements. There is no acknowledgment of any other state or federal regulations that may also affect company operations.

In the second paragraph of the response, FedEx Ground discusses the definition of transportation and makes special note of the statement "Furthermore, "transportation" under the HMR "begins when a carrier takes physical possession of the hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium..."

The issue Florida DEP has with the current operating procedures is FedEx Ground is not delivering all packages to the destination indicated on a shipping document, package marking, or other medium.

According to the response, when FedEx Ground discovers at a station facility that a package is damaged or defective, its personnel assess the package to determine whether there exists a potential immediate threat of harm to personnel, public health, or the environment. This statement meets the process described in FedEx Ground's Hazardous Materials Spill Response policy, HAZ-006, last update 14 September 2017.

The response indicates that, if a threat of harm exists, FedEx Ground staff are required to call a 24-hour emergency response vendor to appropriately handle the package. The

response points the reader to 49 CFR 177.854(e). This regulation reads “In the event any leaking package or container cannot be safely and adequately repaired for transportation or transported, **it shall be stored pending proper disposition in the safest and most expeditious manner possible** [emphasis added].”

The response then indicates that, if no threat of harm exists, FedEx Ground staff re-pack the individual damaged package into a salvage drum. The salvage drum containing the damaged package then continues in transportation “to the recipient, the original shipper, and/or the nearest FedEx Ground hub facility in Florida.” The response appears to indicate this is in compliance with 40 CFR 177.854(c)-(d).

The language in 49 CFR 177.854(c)(1) states “Packages may be repaired when safe and practicable, such repairing to be in accordance with the best and safest practice known and available.” This language reflects the guidance described in FedEx Ground’s Hazardous Materials Spill Response policy, HAZ-006, last update 14 September 2017, section for Damaged but not leaking Hazmat packages discovered in any station/hub.

The language in 49 CFR 177.854(c)(2) states “Packages of hazardous materials that are damaged or found leaking during transportation, and hazardous materials that have spilled or leaked during transportation, may be forwarded to destination or returned to the shipper in a salvage drum in accordance with the requirements of § 173.3(c) of this subchapter.” Nothing in this regulation indicates the package should be shipped to the nearest FedEx Ground hub facility in Florida, as described in the response.

The language in 49 CFR 177.854(d) states “Any package repaired in accordance with the requirements of paragraph (c)(1) of this section **may be transported to the nearest place at which it may safely be disposed of** [emphasis added] only in compliance with the following requirements: 1) The package must be safe for transportation; (2) The repair of the package must be adequate to prevent contamination of or hazardous admixture with other lading transported on the same motor vehicle therewith; (3) If the carrier is not himself the shipper, the consignee's name and address must be plainly marked on the repaired package.”

According to FedEx Ground’s Hazardous Materials Spill Response policy, HAZ-006, last update 14 September 2017, if the damaged and/or leaking package poses a threat of imminent danger to others or to the station/hub an authorized Hazmat employee is to call the emergency spill response service. If the emergency spill response service is not called, then FedEx Ground staff have determined the material does not pose a threat and is safe to be managed at the station/hub where the damaged hazardous material was first identified.

The response goes on to discuss the RCRA regulations and when a material becomes a solid waste for the purposes of 40 CFR 261.2, definition of a solid waste, and indicates the damaged hazardous material that has been transferred to a hub is not regulated until FedEx Ground makes a determination to discard it.

It is the Department’s position that FedEx Ground clearly made a decision that the damaged hazardous material was a solid waste when it was abandoned, per the definition

in 40 CFR 261.2(b)(3), when it was not forwarded to the destination or returned to the shipper in accordance with 49 CFR 177.854(c)(2). A footnote in the August 22, 2019, response notes the “Hubs are registered with the U.S. Environmental Protection Agency as certified hazardous waste generating facilities.” It must be noted that while the Orlando and Ocala hubs have notified the state and federal governments that these facilities generate hazardous waste, the notifications did not identify the fact that these facilities receive hazardous waste generated off-site.

DOT REGULATIONS REFERENCED IN THE PAGES ABOVE

49 CFR 177.854 - Disabled vehicles and broken or leaking packages; repairs.

(a) Care of lading, hazardous materials

Whenever for any cause other than necessary traffic stops any [motor vehicle](#) transporting any [hazardous material](#) is stopped upon the traveled portion of any highway or shoulder thereof, special care shall be taken to guard the vehicle and its load or to take such steps as may be necessary to provide against hazard. Special effort shall be made to remove the [motor vehicle](#) to a place where the hazards of the materials being transported may be provided against. See §§ [392.22](#), [392.24](#), and [392.25](#) of this title for warning devices required to be displayed on the highway.

(b) Disposition of containers found broken or leaking in transit

When leaks occur in [packages](#) or containers during the course of transportation, subsequent to initial loading, disposition of such [package](#) or container shall be made by the safest practical means afforded under paragraphs (c), (d), and (e) of this section.

(c) Repairing or overpacking packages

- (1) [Packages](#) may be repaired when safe and practicable, such repairing to be in accordance with the best and safest practice known and available.
- (2) [Packages](#) of [hazardous materials](#) that are damaged or found leaking during transportation, and [hazardous materials](#) that have spilled or leaked during transportation, may be forwarded to destination or returned to the shipper in a salvage [drum](#) in accordance with the requirements of [§ 173.3\(c\)](#) of this subchapter.

(d) Transportation of repaired packages

Any [package](#) repaired in accordance with the requirements of [paragraph \(c\)\(1\)](#) of this section may be transported to the nearest place at which it may safely be disposed of only in compliance with the following requirements:

- (1) The [package](#) must be safe for transportation.
- (2) The repair of the [package](#) must be adequate to prevent contamination of or hazardous admixture with other [lading](#) transported on the same [motor vehicle](#) therewith.

(3) If the [carrier](#) is not himself the shipper, the [consignee's](#) name and address must be plainly marked on the repaired [package](#).

(e) Disposition of unsafe broken packages

In the event any leaking [package](#) or container cannot be safely and adequately repaired for transportation or transported, it shall be stored pending proper disposition in the safest and most expeditious manner possible.

(f) Stopped vehicles; other dangerous articles

Whenever any [motor vehicle](#) transporting [Class](#) 3 (flammable liquid), [Class](#) 4 (flammable solid), [Class](#) 5 (oxidizing), [Class](#) 8 (corrosive), [Class](#) 2 (gases), or [Division](#) 6.1 (poisonous) materials, is stopped for any cause other than necessary traffic stops upon the traveled portion of any highway, or a shoulder next thereto, the following requirements shall be complied with during the period of such stop:

(1) For [motor vehicles](#) other than [cargo tank motor vehicles](#) used for the transportation of [Class](#) 3 (flammable liquid) or [Division](#) 2.1 (flammable gas) materials and not transporting [Division](#) 1.1, 1.2, or 1.3 (explosive) materials, warning devices must be set out in the manner prescribed in [§ 392.22](#) of this title.

(2) For [cargo tanks](#) used for the transportation of [Class](#) 3 (flammable liquid) or [Division](#) 2.1 (flammable gas) materials, whether loaded or empty, and vehicles transporting [Division](#) 1.1, 1.2, or 1.3 (explosive) materials, warning devices must be set out in the manner prescribed by [§ 392.25](#) of this title.
