



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 7, 2021

Ryan Stewart, Lead Counsel
FedEx Ground Package System, Inc.
1000 FedEx Drive
Moon Township, Pennsylvania 15108
Ryan.Stewart@fedex.com

Re: FedEx Ground Package System, Inc.
HW Facility ID #s FLR000030817 and FLR000219444
OGC Case No: 18-1015
Orange County

Dear Mr. Stewart:

Enclosed is a Consent Order ("Order") prepared by the Department for resolution of the referenced enforcement case. Please review this document and within 20 days of receipt, either: 1) return a signed copy to the Department or 2) provide comments and suggested changes. Once fully executed, a copy of the final document will be forwarded to you.

Should you have any questions or comments, please contact Daniel Hall at 407-897-4167 or via e-mail at Daniel.K.Hall@FloridaDEP.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins, Director
Central District

Enclosure: Consent Order

cc: Ronnie W. Hoenstine, FDEP
Daniel Hall, FDEP

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	CENTRAL DISTRICT
)	
v.)	OGC FILE NO. 18-1015
)	EPA ID NOs. FLR000030817
FEDEX GROUND PACKAGE SYSTEM, INC.))	FLR000219444
_____)	

STIPULATION AND CONSENT ORDER

This Stipulation and Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and FedEx Ground Package System, Inc. (“FedEx Ground”) to reach settlement of certain disputed matters at issue between the Department and FedEx Ground. The Department finds, and FedEx Ground neither admits nor denies, the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes (“F.S.”), and the rules promulgated in Rule 62-730, Florida Administrative Code (“F.A.C.”). The Department has jurisdiction over the matters addressed in this Order.
2. FedEx Ground is a “person” within the meaning of Sections 403.031(5) and 403.703(23), F.S.
3. FedEx Ground is a foreign for-profit corporation registered to do business in the State of Florida. FedEx Ground is operating as a motor carrier in Florida. Through its network of service providers, FedEx Ground picks up, transports, and delivers packages throughout Florida. FedEx Ground operates two hubs on real property located at 3000 Directors Row, Orlando, and 3100 NW 35th Avenue Road, Ocala, Florida (“Facilities”). FedEx Ground also operates a number of stations located in Florida. FedEx Ground is the owner and/or operator of the Facilities as defined in Rule 62-730.020, F.A.C.

4. FedEx Ground currently holds record title to the parcels of real property located at 3000 Directors Row, Orlando, Florida, 32809 and 3100 NW 35th Avenue Road, Ocala, Florida 34475 described in Paragraph 3. above.

5. FedEx Ground's Florida operations consist of two hubs, located in Orlando and Ocala, and a number of stations located throughout Florida. Throughout FedEx Ground's network, packages are picked up from a shipper and transported to a station or a hub where they are processed and routed for subsequent delivery to the designated recipient. Packages are delivered by vehicle to the recipient's home or business address. Packages transported by FedEx Ground may include hazardous materials such as solvents, alcohols, paints, acids, caustics, pesticides, flammable, and toxic materials.

6. The Department investigated FedEx Ground's procedures and practices for handling defective, broken, damaged, or leaking packages containing hazardous materials and finds that the following violations occurred, which FedEx Ground neither admits nor denies:

- a) Title 40 Code of Federal Regulations (40 CFR) 262.11 [2016]– Waste determination. FedEx Ground did not determine the regulatory status of wastes (damaged goods) before shipping the wastes from stations to the hub Facilities operated by FedEx Ground.
- b) Rule 62-730.150(2)(a), F.A.C. [2016] – Hazardous waste notification requirements. Stations operated by FedEx Ground have not notified as hazardous waste storage facilities and, at least five stations operated by FedEx Ground have not notified as small quantity generators of hazardous waste ("SQGs").
- c) Section 403.722, F.S., 403.727(1)(b), F.S., and Rule 62-730.240(1), F.A.C. [2016]– Stations were operated by FedEx Ground as hazardous waste storage facilities without RCRA permits.
- d) 40 CFR Part 264 Subparts B, E, F, G, H and I [2015]– RCRA permit requirements: waste analysis; manifests; solid waste management units; written closure plan; financial assurance; and, container storage area

requirements were not met by FedEx Ground for the operation of the locations as unpermitted hazardous waste storage facilities.

- e) Rule 62-730.150(2)(b), F.A.C. [2016] – Re-notification requirements for hazardous waste activities. FedEx Ground’s Ocala Facility failed to notify the Department of a change in status from SQG to large quantity generator of hazardous waste (“LQG”).
- f) 40 CFR 262.20(a)(1) [2016]– Use of Hazardous Waste Manifest. FedEx Ground shipped hazardous waste over public roads from station locations to the Facilities without an accompanying hazardous waste manifest.
- g) 40 CFR 268.7(a)(1) [2012]– Land disposal restriction treatment standards. FedEx Ground did not determine if hazardous wastes met land disposal restriction standards before shipping the waste from stations to the Facilities.
- h) 40 CFR 268.9(a) [2012]– Identification of all applicable EPA waste codes. FedEx Ground did not identify all applicable EPA waste codes for hazardous wastes to ensure proper treatment prior to shipping the waste off-site for disposal.

The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed claims and mutually consent to the entry of the agreed upon Consent Order. The Parties are each represented by counsel. This Stipulation and Consent Order were negotiated in good faith and at arms’ length by the Parties to avoid expensive, complicated, and protracted litigation. FedEx Ground does not admit any fact, liability, or violation of law.

Having reached a resolution of the matter FedEx Ground and the Department mutually agree and it is

ORDERED:

7. FedEx Ground shall address Paragraph 6 herein as follows, within the time periods stated below and shall comply with all applicable sections in Rule 62-730, F.A.C. and 40CFR Parts 260 through 266, Part 268 and Part 273. All time periods shall run from the effective date of this Order.

- a) Within 18 months of the effective date of this Order, FedEx Ground must provide written assurances that operating procedures have been modified to reflect the following requirements: In the event FedEx Ground discovers that a package containing a hazardous material is damaged, FedEx Ground shall determine if the package may still be delivered to the intended recipient or returned to the shipper. The determination must be made at the point of generation following the requirements in 40 CFR 262.11. The point of generation is the station or hub at which the damage, spill, or defect was discovered. In the event delivery or return of the hazardous material is not a viable option, FedEx Ground must determine if the hazardous material constitutes a hazardous waste.
- b) Within 60 days of the effective date of this Order, FedEx Ground must provide the name or designation, address, and current generator status of all Florida stations operated by FedEx Ground. The generator status must be determined following the requirements identified in 40 CFR 262.13. For any station that is a SQG or LQG, as defined in 40 CFR 260.10, FedEx Ground must provide documentation that the station has notified the Department of its hazardous waste activity in accordance with Rule 62-730.150(2)(a), F.A.C. and 40 CFR 262.18.
- c) Within 18 months of the effective date of this Order, FedEx Ground's Florida Facilities must cease acceptance of hazardous waste generated by off-site stations until FedEx Ground has obtained the appropriate RCRA permit in accordance with the requirements of Rule 62-730.240, F.A.C.
- d) Within 18 months of the effective date of this Order, FedEx Ground's Florida stations must cease operating in violation of 40 CFR Part 264 requirements until FedEx Ground has obtained the appropriate RCRA permit in accordance with the requirements of Rule 62-730.240, F.A.C.

e) FedEx Ground's Ocala Facility, EPA identification number FLR000219444, updated its generator status on August 28, 2019 in accordance with the requirements of Rule 62-730.150(2)(b), F.A.C.

f) Within 30 days of the effective date of this Order, and subject to its rights under Paragraphs 7(a) and 7(c) of this Order, FedEx Ground will provide assurances to the Department that if any shipment is determined to be hazardous waste, that shipment to a permitted treatment, storage or disposal facility will be accompanied by a properly completed manifest in accordance with 40 CFR 262.20(a)(1).

g) Within 30 days of the effective date of this Order, and subject to its rights under Paragraphs 7(a) and 7(c) of this Order, FedEx Ground will provide assurances to the Department that FedEx Ground will meet the land disposal restriction standards of 40 CFR 268.7(a)(1) for shipments determined to be hazardous waste.

h) Within 30 days of the effective date of this Order, and subject to its rights under Paragraphs 7(a) and 7(c) of this Order, FedEx Ground must provide assurances to the Department that FedEx Ground will identify the EPA waste code(s) associated with each waste stream generated by FedEx Ground's Florida Facilities in accordance with the requirements of 40 CFR 268.9(a) for shipments determined to be hazardous waste.

i) Consistent with this Stipulation and applicable law, FedEx Ground may use salvage drums to move damaged or leaking hazardous materials packages when such movement is conducted: (1) as part of the forwarding of those packages to their original, intended destination or returning them to the shipper in accordance with the instructions of the shipper; and (2) pursuant to, and in compliance with, 49 C.F.R. section 177.854(c)(2).

8. Within 18 months of the effective date of this Order, FedEx Ground shall submit a written estimate of the total cost of the corrective actions required by this Order to the

Department. The written estimate shall identify the information the FedEx Ground relied upon to provide the estimate.

9. Within 45 days of the effective date of this Order, FedEx Ground shall pay the Department \$398,858.00 in settlement of the matters addressed in this Order. This amount includes \$5,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

In lieu of making cash payment of the amount required above, the Department, at its discretion, will allow FedEx Ground to off-set \$258,378.00 from this amount by implementing an in-kind project, which has been approved by the Department with a value of \$390,000.00. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the portion of the stipulated penalty amount for which the approved project off-sets. FedEx Ground has requested consideration of applying stipulated penalties toward an in-kind project and FedEx Ground shall comply with all the requirements and timeframes in Consent Order Exhibit A, entitled In-Kind Projects. Notwithstanding the election to implement an in-kind project, payment of the remaining \$140,480.00 must be paid within 45 days of the effective date of the Consent Order. Within 30 days of completing the in-kind project, FedEx Ground shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project. If any balance remains after the entire in-kind project credit is applied to the allowable portion of the civil penalty, FedEx Ground shall pay the difference within 30 days of written notification by the Department to FedEx Ground that the balance is due.

10. The Department has the right to enforce this Stipulation and Consent Order as provided herein and pursuant to applicable law. Before pursuing any action relating to the terms of this Consent Order, the Parties shall meet and confer in a good faith attempt to resolve the issue(s) without judicial intervention.

11. FedEx Ground shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order, 18-1015, and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available. FedEx Ground may also pay by Electronic Fund Transfer ("EFT"). If FedEx Ground wishes to make the payment in such manner, it shall contact Laurie Roughton with the Department's Office of General Counsel at (850)245-2268 for the pertinent information to effectuate the EFT payment.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Daniel Hall, Environmental Manager, Department of Environmental Protection, Central District, 3319 Maguire Blvd, Suite 232, Orlando, Florida 32803.

13. FedEx Ground shall allow all authorized representatives of the Department access to its Florida Facilities and stations at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

14. FedEx Ground shall use all reasonable efforts to obtain any necessary access to implement the terms of this Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the Facilities and stations to which access is necessary, FedEx Ground shall notify the Department within ten business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Order.

15. The Department, for and in consideration of the complete and timely performance by FedEx Ground of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for any and all violations listed in Paragraph 6, up to the date of the filing of this Order. The Department's waiver is conditioned upon FedEx Ground's complete compliance with all of the terms of this Order.

16. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or the rules administered by the Department that are not specifically resolved by this Order. Nothing herein shall be construed to limit the Department's authority to take any action against FedEx Ground in response to or to recover the costs of responding to conditions at or from the Facility that require Department action to abate an imminent hazard to the public health, welfare, or the environment. Except as expressly provided in this Stipulation and Consent Order, FedEx Ground retains all of its defenses to the exercise of the aforementioned authority.

17. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve FedEx Ground of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

18. FedEx Ground acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Order. FedEx Ground also acknowledges and waives its right to appeal the terms of this Order pursuant to Section 120.68, F.S.

19. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order shall be effective until reduced to writing, executed by both FedEx Ground and the Department, and filed with the clerk of the Department.

20. This Stipulation and Consent Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided herein. No oral representations have been made or relied on other than as expressly set forth herein.

21. This Stipulation and Consent Order may be amended only pursuant to a written agreement signed by all the Parties.

22. At any time, FedEx Ground may seek to amend the Stipulation and Consent Order under paragraph 21 of this Stipulation and Consent Order.

23. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order shall constitute a violation of Section 403.161(1)(b), F.S.

24. This Stipulation and Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

25. Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;

- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated in Paragraph 12., above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Order may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

26. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR FEDEX GROUND PACKAGE SYSTEM, INC.:

Name

Date

Title

DONE AND ORDERED this ____ day of _____, 20__ in Orange County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Aaron Watkins
District Director
Central District

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A

In-Kind Projects

I. Introduction

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

b. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

c. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph 9 above, within 30 days of Department notice.

d. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in paragraph 11 above, within 30 days of Department notice.

e. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph I(a) above, Respondent shall complete the entire in-kind project.

f. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

g. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$398,858.00 penalty, no additional penalties shall be assessed under paragraph 10 for failure to complete the requirement of this paragraph.

h. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

i. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$398,585.00, no additional penalties shall be assessed under paragraph 10 for failure to complete the requirements of this paragraph.