

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF SOLID WASTE
)	MANAGEMENT
FEDERAL EXPRESS CORPORATION)	
TND 05-807-0459)	CASE NO. HWM 24-0028
)	
RESPONDENT.)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Lisa A. Hughey, Director of the Tennessee Division of Solid Waste Management, and states:

PARTIES

I.

David Salyers, P.E., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the Department) and is charged with the responsibility for administering and enforcing the Tennessee Hazardous Waste Management Act, Tenn. Code Ann. §§ 68-212-101 to -121 ("Act"). Lisa A. Hughey, CHMM, is the duly appointed Director of the Tennessee Division of Solid Waste Management ("Division"). She has received written delegation from the Commissioner to administer and enforce the Acts.

II.

Federal Express Corporation ("Respondent") is a foreign for-profit corporation created in the State of Delaware and is authorized to conduct business in the state of Tennessee. Its agent for service of process is C T Corporation, 300 Montvue Rd, Knoxville, Tennessee 37919-5546.

JURISDICTION

III.

When the Commissioner finds that provisions of the Acts are not being carried out, the Commissioner is authorized to issue an order for correction to the responsible person. Tenn. Code Ann. § 68-212-111. Further, the Commissioner has the authority to assess damages and civil penalties against any person who violates any provision of the Act, any order of the Board or Commissioner, the terms or conditions of any permit issued, or any rule, regulation or standard adopted pursuant to the Act. Tenn. Code Ann. § 68-212-114. Rules governing hazardous waste management have been promulgated. Tenn. Code Ann. § 68-212-107; Tenn. Comp. R. & Regs. 0400-12-01 and -02 (“Rules”).

IV.

The Respondent is a “person.” Tenn. Code Ann. § 68-212-104(14).

FACTS

V.

The Respondent operates a freight company specializing in overnight delivery utilizing truck and air transport located at 2837 Sprinkle Avenue, Memphis, Shelby County, Tennessee. The Respondent employs approximately 20,000 people and the facility (“facility”) occupies approximately 1.4 square miles of the Memphis International Airport. The Respondent is a Large Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and a generator of used oil. The facility has an Environmental Protection Agency (EPA) installation identification number of TND 05-807-0459.

VI.

On September 19, 2024, the Division conducted a Compliance Evaluation Inspection (CEI) at the facility. The inspection consisted of a facility walk-through and a review of the facility's hazardous waste records.

VII.

In the Dangerous Goods Central Accumulation Area, the Division inspector observed that all seven containers of hazardous waste were not dated properly. The month and the day of the start of waste accumulation were marked on the containers, but the year was not marked. Additionally, the Division inspector observed based upon statements by facility personnel that three of these improperly dated containers were storing waste since December 8, 2023.

VIII.

In the Supply Logistics Building #3233, the Division inspector observed four separate satellite accumulation areas (SAA) and that there was not a spill response kit located in the vicinity of these SAAs.

IX.

In the Hanger 10 area, the Division inspector observed one SAA container that was not labeled with an indication of the hazards of the contents.

X.

In the South Shop of the Ground Support Equipment area, the Division inspector observed one SAA container that was not labeled with an indication of the hazards of the contents. The Division inspector also observed one 15-gallon drain pan of used oil that was not labeled with the words, "Used Oil".

XI.

In the Hanger 12 area, the Division inspector observed one (1) 4-foot box of universal waste lamps, and one 15-gallon used oil drain pan that were not labeled.

XII.

In the Hanger 26 area, the Division inspector observed one box of waste aerosol cans, one 500-gallon container of used oil and one 15-gallon container of used oil that were not labeled.

XIII.

In the Hanger 27 area, the Division inspector observed one container of universal waste batteries that was dated “7/12/2023” indicating that the waste had been stored on site for 435 days.

XIV.

In the Hanger 20 area, the Division inspector observed one 55-gallon container of used oil that was not labeled.

XV.

In the West Shop area, the Division inspector observed one 5-gallon container of universal waste batteries that was dated “7/1/2022” indicating that the waste had been stored on site for 811 days.

XVI.

In the Aircraft Resource Training Center area, the Division inspector observed nineteen universal waste lamp containers that were not closed, eleven of which were not labeled or dated, and two universal waste batteries that were not labeled or dated.

XVII.

Upon reviewing the Respondent’s files and records related to the management of hazardous waste, the Division inspector observed the following:

- The Respondent missed three weekly inspections of the Hanger 11 central accumulation area in 2024 and three weekly inspections of the Dangerous Goods central accumulation area in 2022.
- The Respondent failed to include the time of inspection on its weekly hazardous waste storage inspection logs of the Dangerous Goods central accumulation area.
- The Respondent failed to create an annual progress report for the years 2022 and 2023 documenting the facility's continuing waste reduction efforts and including updated goals and objectives.

XVIII.

In total, the Division inspector observed 14 violations during the inspection conducted on September 19, 2024. On November 1, 2024, the Division issued a Notice of Violation (NOV) to the Respondent detailing the observations and the violations. The 14 violations observed:

1. Failure to properly date eight (8) hazardous waste containers. (Corrected during CEI)
2. Failure to properly label one hazardous waste container.
3. Storage of three containers of hazardous waste for greater than 90 days.
4. Failure to have a spill kit in the vicinity of a SAA.
5. Failure to label two containers of hazardous waste in SAAs with the indications of the hazards of the contents. (Corrected during CEI)
6. Failure to label six containers of used oil. (Corrected during CEI)
7. Failure to label 12 containers of universal waste lamps.
8. Failure to label one container of universal waste aerosol cans. (Corrected during CEI)
9. Storage of two 5-gallon containers universal waste batteries for greater than one year.
10. Failure to keep 20 universal waste lamp containers closed.

11. Failure to mark 11 universal waste lamp containers and 32 universal waste batteries with accumulation start dates.
12. Failure to label 32 universal waste batteries.
13. Failure to complete an annual hazardous waste reduction plan progress report for the years 2022 and 2023.
14. Failure to perform weekly inspections on six (6) occasions and failure to record the time of the inspection in the log.

XIX.

On December 2, 2024, the Division received via email a response from the Respondent addressing and discussing each of the violations cited in the November 1, 2024, NOV and the corrective actions taken to prevent future noncompliance.

XX.

On December 5, 2024, the Division conducted a follow-up inspection (FUI) at the facility. One new violation (repeat of Violation #3) was observed by the Division inspector. The Division inspector observed a 10-gallon container of organic peroxide hazardous waste with an accumulation start date of "7/27/23". At the time of the FUI, this container had been stored on site for 497 days. Therefore, the Division inspector observed that violation #3 had not been corrected. The Division inspector also observed that the weekly inspection logs were still missing the time of the inspections. Violation #14 cited in the November 1, 2024, NOV had not been corrected and was still in non-compliance. All remaining violations were observed to be corrected.

XXI.

On December 6, 2024, the Division received an email from the Respondent regarding the discovery of the container of organic peroxide hazardous waste that had been stored on site for

497 days. The Respondent stated that since October 8, 2024, several efforts have been made with multiple hazardous waste disposal companies to ship off the waste for proper disposal. The Respondent stated that finally, one of the companies has scheduled the waste to be shipped on December 19, 2024.

XXII.

On December 12, 2024, the Division sent the Respondent a letter offering the opportunity to schedule a show cause meeting. The Respondent declined the offer via email on December 17, 2024.

XXIII.

On December 18, 2024, the Division issued a Follow-Up Report to the Respondent. The report detailed the following observations:

- Violations #2, #5, #6 and #8 were corrected during the September 19, 2024, CEI.
- Violations #1, #4, #7, #9 and #10 - #13 were observed to be corrected.
- Violation #3 was repeated with a previously unobserved container of hazardous waste.
- Violation #14 had not been corrected.

XXIV.

On January 16, 2025, the Division conducted a second FUI (records review) based upon information submitted via email to the Division by the Respondent. The email, dated January 16, 2025, included a copy of a manifest and a copy of the revised inspection log. The Division inspector observed that the manifest provided by the Respondent documented the shipment of the organic peroxide hazardous waste to a disposal facility. The Division inspector further observed the weekly inspection logs had been revised to include the time of the inspection to be recorded in the logs.

XXV.

On January 21, 2025, the Division sent a letter to the Respondent documenting the second FUI (records review) and stating that the outstanding violations were determined to have been corrected.

XXVI.

The Division sent the Respondent a letter, dated February 4, 2025, that formal enforcement action would be taken.

XXVII.

During the investigation of the Respondent's facility, the Division has incurred damages in the amount of \$1,725.00.

VIOLATIONS

XXVIII.

The Respondent failed to meet the conditions for exemption from the requirement to obtain a permit to accumulate hazardous waste, as required by TN Rule 0400-12-01-.03(1)(h).

XXIX.

The Respondent failed to properly label containers of used oil, as required by TN Rule 0400-12-01-.11(3)(c)3(i).

XXX.

The Respondent failed to manage universal waste lamps in a manner that prevents release by keeping lamp containers closed, as required by TN Rule 0400-12-01-.12(2)(d).

XXXI.

The Respondent failed to properly label universal waste containers, as required by TN Rule 0400-12-01-.12(2)(e)

XXXII.

The Respondent failed to demonstrate length of storage time and stored universal waste for greater than one year, in violation of TN Rule 0400-12-01-.12(2)(f).

XXXIII.

The Respondent failed to annually prepare a progress report for the Waste Reduction Plan, as required by TN Rule 0400-12-01-.03(6)(c).

XXXIV.

The Respondent failed to comply with Tennessee Code Annotated section 68-212-105(4) by violating the aforementioned Rules.

Section 68-212-105(4) states:

It is unlawful to:

- (4) Store, containerize, label, transport, treat or dispose of hazardous waste, or fail to provide information in violation of the rules, regulations, or orders of the Commissioner or Board, or in such a manner as to create a public nuisance or a hazard to the public health.

ORDER AND ASSESSMENT

XXXV.

Under the authority vested by sections 68-212-111 and 68-212-114 of the Acts, I, Lisa A. Hughey, issues the following Order and Assessment to the Respondent:

1. The Respondent is hereby assessed DAMAGES in the amount of \$1,725.00 to be paid to the State on or before the 31st day after receipt of this Order and Assessment.

2. The Respondent is hereby assessed a CIVIL PENALTY in the amount of \$7,900.00 to be paid to the State on or before the 31st day after receipt of this Order and Assessment.
3. Payment of the DAMAGES AND CIVIL PENALTY totaling **\$9,625.00** should reference Case No. HWM 24-0028 be made payable to **“Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services – Consolidated Fee Section, Davy Crockett Tower, 500 James Robertson Parkway, 6th Floor, Nashville, Tennessee 37243.**

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Director does not implicitly or expressly waive any provision of the Acts or regulations promulgated thereunder or the authority to assess costs, civil penalties and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-212-113 and 114. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment, or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-212-113; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State’s Uniform Rules of Procedure for Hearing

Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, Davy Crockett Tower, 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243. The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, Davy Crockett Tower, 500 James Robertson Parkway, 6th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Christopher Lagan, State of Tennessee, Division of Solid and Hazardous Waste Management, Davy Crockett Tower, 500 James Robertson Parkway, 7th Floor, Nashville, TN 37243. Attorneys should contact

the undersigned counsel of record. **The case number, HWM 24-0028, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Solid Waste Management, Tennessee Department of Environment and Conservation, on this 16th day of April, 2025.



Lisa A. Hughey
Director, Division of Solid Waste Management
TN Department of Environment and Conservation

Reviewed by:



** (Apr 16, 2025 09:53 CDT)

Denard Mickens (BPR #025033)

Senior Associate Counsel

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