

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**XPO Logistics Freight, Inc.  
Bessemer, Jefferson County, Alabama  
USEPA ID Number ALR000044792**

Consent Order No. 23-XXX-CHW

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and XPO Logistics Freight, Inc. (“XPO Logistics”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. XPO Logistics operates a freight transport company (the “Facility”) with EPA Identification Number ALR000044792, located at 4930 Perimeter Way in Bessemer, Jefferson County, Alabama. XPO Logistics, as a result of its operations at the Facility, was a small quantity generator of hazardous waste, as that term is defined in ADEM Admin. Code Div. 14, at all times relevant to this action.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

## DEPARTMENT'S CONTENTIONS

4. On August 15, 2022, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of XPO Logistics. The CEI and a review of XPO Logistics' compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b), a small quantity generator of hazardous waste may accumulate hazardous waste on site without a permit or interim status provided that it accumulates hazardous waste on site for no more than 180 days, unless it has been granted an extension to the 180-day period. ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

XPO Logistics stored four containers of hazardous waste in the hazardous waste central accumulation area for more than 180-days without a permit or being granted an extension. The containers were marked with accumulation start dates of 6-2-2021, 9-28-2021, 9-28-2021, and 10-12-2021.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)2.(i), a small quantity generator of hazardous waste must immediately transfer the hazardous waste from a leaking container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions of 335-14-3-.01(6)(b)2.

XPO Logistics failed to properly manage a leaking and deteriorating 5-gallon bucket of hazardous waste located in the hazardous waste central accumulation area.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)2.(iii)., a small quantity generator of hazardous waste must always close a container of hazardous waste during accumulation, except when it is necessary to add or remove waste.

XPO Logistics failed to keep closed two containers of hazardous waste located in the central accumulation area.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)2.(iv), a small quantity generator of hazardous waste must inspect central accumulation areas weekly. The small quantity

generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors, and comply with 335-14-3-.01(6)(b)2.(i) if deterioration or leaks are detected. The small quantity generator must record inspections in an inspection log or summary and must keep these records for at least three years from the date of inspection.

XPO Logistics failed to perform weekly inspections of the hazardous waste central accumulation area that were adequate to identify and address a leaking and deteriorating container.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)6.(i)a., a small quantity generator of hazardous waste must mark or label containers with the words “Hazardous Waste”.

XPO Logistics failed to mark or label thirteen containers of hazardous waste located in the central accumulation area with the words “Hazardous Waste”.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)6.(i)b., a small quantity generator of hazardous waste must mark or label containers with an indication of the hazards of the contents.

XPO Logistics failed to mark or label nineteen containers of hazardous waste located in the central accumulation area with an indication of their hazards.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)6.(i)c., a small quantity generator of hazardous waste must mark the date upon which each period of accumulation begins clearly visible for inspection on each container.

XPO Logistics failed to mark twelve containers of hazardous waste located in the central accumulation area with accumulation start dates.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)6.(i)d., a small quantity generator of hazardous waste must mark or label containers with all appropriate hazardous waste numbers.

XPO Logistics failed to mark or label twenty-one containers of hazardous waste located in the central accumulation area with appropriate hazardous waste numbers.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)8.(i), a small quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or



any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

XPO Logistics failed to maintain and operate the hazardous waste central accumulation area in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste. Open and leaking containers of hazardous waste were observed in this area.

(j) Pursuant to pertinent parts of ADEM Admin. Code r. 335-14-3-.01(6)(b)8.(v), a small quantity generator of hazardous waste must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

XPO Logistics failed to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to the hazardous waste central accumulation area.

(k) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8)(d)1., a small quantity generator must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current waste activities to the Department annually. The Department must receive the ADEM Form 8700-12 (including all appropriate attachment pages and fees) no later than the 15th day of the specified month in the specified month schedule located at 335-14-1-.02(1)(a).

XPO Logistics failed to submit a complete 8700-12 to the Department for 2021.

5. On September 16, 2022, the Department issued a Notice of Violation to XPO Logistics, which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On November 1, 2022, the Department received XPO Logistics' response to the aforementioned Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the

public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In determining the seriousness of the violations, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **STANDARD OF CARE:** In considering the standard of care manifested by XPO Logistics, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, XPO Logistics failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit gained by XPO Logistics as a result of the violations referenced herein.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known environmental effects to mitigate as a result of the alleged violations.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, XPO Logistics has a history of similar violations and the penalty reflects that history.

(f) **ABILITY TO PAY:** The Department does not have any evidence indicating that XPO Logistics is unable to pay the civil penalty.

(g) **OTHER FACTORS:** The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22- 22A-5( 18)c., as amended, and has

concluded that the civil penalty is appropriate for the violations cited in this Order( see Attachment A, which is made a part of the Department' s Contentions)

8. The Department neither admits nor denies XPO Logistics' contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

#### **FACILITY'S CONTENTIONS**

9. XPO Logistics neither admits nor denies the Department's contentions. XPO Logistics consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

#### **ORDER**

Therefore, without admitting that it has violated any statutes or regulations XPO Logistics, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement. The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and XPO Logistics agree to enter into this Special Order by Consent with the following terms and conditions:

A. XPO Logistics agrees to pay to the Department a civil penalty in the amount of \$18,600 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.



B. XPO Logistics agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference XPO Logistics' name and address, and the ADEM Administrative Order number of this action.

C. XPO Logistics agrees that, independent of this Special Order by Consent, XPO Logistics shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and XPO Logistics ("parties") agree that this Special Order by Consent shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. XPO Logistics agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, XPO Logistics agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

H. The parties agree that the sole purpose of this Special Order by Consent is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Special Order by Consent, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement actions as may be appropriate. XPO Logistics agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement actions address new matters not raised in this Special Order by Consent.

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and XPO Logistics does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall not affect XPO Logistics' obligation to comply with any federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent is subject to the requirements that the Department give notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the order.

L. The parties agree that, should any provision of this Special Order by Consent be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State, or local law, and shall not be construed to waive or relieve XPO Logistics of its obligations to comply in the future with any permit.



Executed in duplicate, with each part being an original.

**XPO LOGISTICS FREIGHT, INC.**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

  
\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

*Matthew Zellen*  
\_\_\_\_\_  
(Printed Name)

*Director - EHS*  
\_\_\_\_\_  
(Printed Title)

*1/30/2023*  
\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Date Executed)

**Attachment A**

XPO Logistics Freight, Inc.  
 Bessemer, Jefferson County  
 Facility ID No. ALR000044792

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>
Storage of hazardous waste without a permit	1	\$10,000	\$1,000	\$0
Failure to properly manage leaking or damaged containers	1	\$1,000	\$100	\$0
Failure to keep containers of hazardous waste closed	1	\$200	\$100	\$0
Failure to conduct or document weekly inspections of the hazardous waste accumulation area(s)	1	\$1,000	\$500	\$500
Failure to mark containers of hazardous waste with the words "Hazardous Waste"	1	\$200	\$100	\$100
Failure to mark containers of hazardous waste with an indication of the hazards	1	\$200	\$100	\$0
Failure to mark containers of hazardous waste with accumulation start dates	1	\$200	\$100	\$100
Failure to mark containers of hazardous waste with all appropriate hazardous waste numbers	1	\$200	\$100	\$0
Failure to operate in a manner that minimizes the possibility of spills or releases	1	\$1,000	\$100	\$0

Failure to maintain adequate aisle space	1	\$1,000	\$500	\$0	
Failure to submit a correct and complete ADEM Form 8700-12 to the Department	1	\$100	\$50	\$50	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$15,100	\$2,750	\$750	\$18,600

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0	Amount of Initial Penalty	\$18,600
Mitigating Factors (-)	\$0	Total Adjustments (+/-)	\$0
Ability to Pay (-)	\$0	<b>FINAL PENALTY</b>	\$18,600
Other Factors (+/-)	\$0		

Footnotes

*\* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.*