



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 15 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Karen Ellis  
Managing Director  
Environmental Management Department  
FedEx Corporation  
3620 Hacks Cross Road  
Memphis, Tennessee 38125-7113

SUBJ: FedEx Corporation  
Consent Agreement and Final Order  
Docket No.: CWA-04-2011-04-5140(b)

Dear Ms. Ellis:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CA/FO) in the above-referenced matter that has been filed with the Regional Hearing Clerk and served as required in the Consolidated Rules of Practice, 40 C.F.R. § 22.6. Please make note of the provisions in Paragraph 13 of the CA/FO, with respect to payment of the assessed penalty, which is due within 30 days from the effective date of the CA/FO (the date the CA/FO is filed with the Regional Hearing Clerk).

Should you have any questions, please do not hesitate to call me at (404) 562-9536.

Sincerely,

A handwritten signature in black ink that reads "Marlene J. Tucker".

Marlene J. Tucker  
Associate Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT
FedEx Corporation	)	AND FINAL ORDER
3620 Hacks Cross Road	)	UNDER 40 C.F.R. § 22.13(b)
Memphis, Tennessee 38125-7113	)	Docket No.: CWA-04-2011-04-5140(b)
	)	
	)	
Respondent	)	

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EPA REGION 4

**LEGAL AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities to the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, ("Complainant").

**CONSENT AGREEMENT**

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CAFO), and Respondent hereby agrees to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

### Stipulation

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. FedEx Corporation ("Respondent") is a corporation organized under the laws of the State of Delaware and doing business in the State of Tennessee.
2. The Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).
3. The Respondent was, at all times relevant to this CAFO, the owner and operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the FedEx Air Operations Complex ("the Facility") located on property leased from Memphis-Shelby County Airport Authority at 2491 Winchester Road, Memphis, Tennessee 38116, during the time of the discharge.
4. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
5. Hurricane Creek is a navigable water as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is subject to the jurisdiction of Section 311 of the CWA.
6. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health, welfare or environment of the United States.

7. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3(b), to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

#### **Allegations of Complainant**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On or about December 29, 2008, approximately 400 gallons (9.5 barrels) of "oil" (No. 2 Diesel Fuel) was released at the Respondent's Facility, as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, some of which entered into a storm drain and discharged into the Hurricane Creek (hereinafter, the "Incident").

9. The Incident caused a sheen upon or discoloration of the surface of the waters of Hurricane Creek, and/or its adjoining shoreline, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311 (b)(3) of the CWA.

#### **Waiver of Rights**

10. Solely for the purpose of this Consent Agreement and Final Order, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in

this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

**Penalty**

11. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Four Thousand Five Hundred and Two dollars (\$4,502).

**Payment Terms**

12. Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the Effective date of the Final Order, the Respondent shall pay the amount of Four Thousand Five Hundred Two dollars (\$4,502) by means of a corporate cashier's or certified check, by electronic funds transfer (EFT), or on-line payment. If paying by check, the Respondent shall submit a corporate cashier's or certified check, payable to the "Environmental Protection Agency," and bearing the notation "OSFLT – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
PO Box 979077  
St. Louis, Missouri 63197-9000

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 418-1028

Respondent may also elect the On-Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter SFO 1.1 in the search field and then open form and complete required fields.

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency."

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit a copy of the check or, in the case of an EFT transfer or on-line payment, copies of the EFT or on-line confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA- Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Doug McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA- Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

15. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### General Provisions

16. The Final Order shall be binding upon Complainant and Respondent, and their officers, directors, agents, successors, and assigns.

17. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

18. The undersigned representative of Respondent hereby certifies that she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

19. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

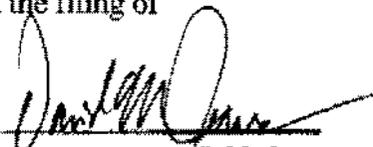
Marlene Tucker, Associate Regional Counsel  
U.S. EPA – Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9536  
tucker.marlene@epa.gov

20. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

Karen Ellis  
Managing Director  
Environmental Management Department  
FedEx Corporation  
3620 Hacks Cross Road  
Memphis, Tennessee 38125-7113

Effective Date

21. This Consent Agreement and attached Final Order are effective upon the filing of the Final Order with the Regional Hearing Clerk.

Approved:   
Domestic Regulatory Affairs  
FedEx Legal Department

CONSENTED AND AGREED TO:

FEDEX CORPORATION

Date: 11/30/10

  
\_\_\_\_\_  
Karen Ellis  
Managing Director  
Environmental Management Department

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/14/10

  
\_\_\_\_\_  
Dee Stewart, Acting Chief  
RCRA and OPA Enforcement  
and Compliance Branch  
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF

) CWA SECTION 311 CLASS I  
) CONSENT AGREEMENT AND  
) FINAL ORDER  
)  
) UNDER 40 C.F.R. § 22.13(b)  
)  
) Docket No.: CWA-04-2011-5140(b)

FedEx Corporation  
3620 Hacks Cross Road  
Memphis, Tennessee 38125-7113

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 15<sup>th</sup> day of December, 2010.

BY:   
Susan Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this day, filed the foregoing Consent Agreement and the attached Final Order (CAFO), in the FedEx Corporation, Docket Number: CWA-04-2011-5140(b), and that on this day, I served a true and correct copy of the CAFO on the parties listed below in the manner indicated:

Marlene Tucker  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

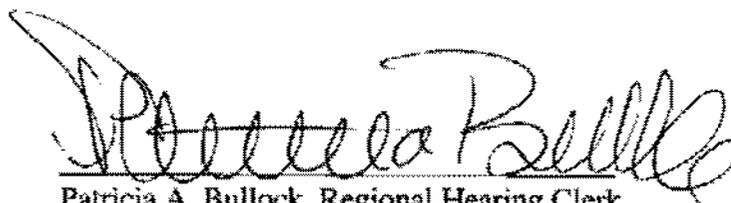
Quantindra Smith  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Karen Ellis  
FedEx Corporation  
3620 Hacks Cross Road  
Memphis, Tennessee 38125-7113

(Via Certified Mail - Return Receipt Requested)

Date 12-15-10



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511