

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**DHL Express (USA), Inc.,
236 Wendell Ford Boulevard
Erlanger, Kentucky 41018,
EPA ID No.: KYR000035873**

Respondent.

Docket No. **RCRA-04-2020-2104(b)**

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. Respondent is **DHL Express (USA), Inc.**, a corporation doing business in the **Commonwealth of Kentucky**. This proceeding pertains to Respondent's facility located at **236 Wendell Ford Boulevard, Erlanger, Kentucky** (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Commonwealth of Kentucky (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at KRS § 224.46 *et seq.* and Title 401 of the Kentucky Administrative Regulations (Ky. Admin. Regs.) Chapter 39.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. KRS § 224.46-510(1) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 401 Ky. Admin. Regs. 39:080 Sections 1(1)-(7)(a)1., (8)(a), and (9)-(11) [40 C.F.R. Part 262].
12. Pursuant to 401 Ky. Admin. Regs. 39:060 Section 3(1) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
13. Pursuant to 401 Ky. Admin. Regs. 39:060 Section 3(1) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 401 Ky. Admin. Regs. 39:060 Section 3(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 401 Ky. Admin. Regs. 39:005 Section 3 [40 C.F.R. § 261.4(b)].
14. Pursuant to 401 Ky. Admin. Regs. 39:060 Section 3(1) [40 C.F.R. §§ 261.3(a)(2)(i)], solid wastes that exhibit any of the characteristics identified in 401 Ky. Admin. Regs. 31:060 Sections 3(1) (2006) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
15. Pursuant to 401 Ky. Admin. Regs. 39:060, Section 3(1) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.

16. Pursuant to 401 Ky. Admin. Regs. 31:060 Section 3(1) [40 C.F.R. §§ 261.20 and 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
17. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(33) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 401 Ky. Admin. Regs. 39:060 Sections 3(1)-(3), (5)-(7), and (9)(a) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(28) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste I
19. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1 [40 C.F.R. § 260.10], a “Large Quantity Generator” (LQG) is a generator who generates greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste in a calendar month.
20. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(53) [40 C.F.R. § 260.10], a “person” includes a corporation.
21. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(51) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility.”
22. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(50) [40 C.F.R. § 260.10], an “operator” is “the person responsible for the overall operation of a facility.”
23. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(68)] [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
24. Pursuant to 401 Ky. Admin. Regs. 39:005 Section 1(73) [40 C.F.R. § 260.10], “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
25. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)], a generator may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.16(b) or §262.17(a)], except as required in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(7) and (8)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)] (hereinafter referred to as the “SAA Permit Exemption”).
26. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(4)], which is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed at all times during accumulation, except when adding, removing, or consolidating

waste; or when temporary venting of a container is necessary for the proper operation of equipment, or to prevent dangerous situations, such as build-up of extreme pressure.

27. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(5)], which is a condition of the SAA Permit Exemption, a generator is required to mark or label its containers (i) with the words “Hazardous Waste” and (ii) with an indication of the hazards of the contents.
28. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(6)], a generator who accumulates non-acute hazardous waste in excess of the amounts listed in paragraph (a) of this section at or near any point of generation must comply within three consecutive calendar days with the applicable central accumulation area regulations in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.16(b)] or 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)], or remove the excess from the SAA within three consecutive calendar days to a central accumulation area operated in accordance with the applicable regulations in either 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.16(b)] or 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)].
29. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17], a LQG may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17] (hereinafter referred to as the “LQG Permit Exemption”).
30. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(1)(v)], which is a condition of the LQG Permit Exemption, a generator is required to, at least weekly, inspect central accumulation areas looking for leaking containers and for deterioration of containers caused by corrosion or other factors.
31. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(5)(i)(A)], which is a condition of the LQG Permit Exemption, a generator must mark or label its containers with the words “Hazardous Waste.”
32. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(6)], which incorporates 401 K.A.R 39:080 Section 1(1) [40 C.F.R. § 262.260], and is a condition of the LQG Permit Exemption, a generator must have a contingency plan for the Facility.
33. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(7)(iv)(D)], which is a condition of the LQG Permit Exemption, the generator must maintain records at the facility that document that the training or job experience, required under this section, has been given to, and completed by, facility personnel.
34. Pursuant to 401 Ky. Admin. Regs. 39:080, Section 3(1) [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a Universal Waste handler who does not accumulate 5,000 kilograms or more of Universal Waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
35. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 3(1) [40 C.F.R. § 273.14(e)], a SQHUW must label or mark each lamp or container of lamps clearly with one of the following phrases: “Universal Waste-Lamp(s),” or “Waste Lamp(s),” or “Used Lamps.”

36. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 3(1) [40 C.F.R. § 273.13(d)], a SQHUW must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
37. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 4(1) [40 C.F.R. § 279.1], a “used oil generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
38. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 4(1) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”
39. Pursuant to 401 Ky. Admin. Regs. 39:080 Section 4(1) [40 C.F.R. § 279.22(d)], upon detection of a release of used oil to the environment, a generator must clean up and manage properly the released used oil and other materials.

IV. FINDINGS OF FACTS

40. Respondent operates a distribution hub that ships, receives and delivers packages to clients worldwide.
41. At the time of inspection, the Respondent was not registered with the State as a generator of hazardous waste.
42. On April 22, 2019, the EPA and KYDEP conducted a compliance evaluation inspection (CEI) at Respondent’s Facility. The EPA’s findings of the CEI were documented in a Report mailed to the Respondent, dated July 23, 2019.
43. At the time of the CEI, the EPA inspectors determined that the facility was operating as an LQG of D001 and D002 hazardous waste and a used oil generator.
44. At the time of the CEI, the Respondent was storing D001 and D002 hazardous waste on-site for a temporary period prior to sending it elsewhere for treatment, storage, or disposal.
45. At the time of CEI, the EPA inspectors observed a SAA in the maintenance shop. There were two drums of hazardous waste in the SAA. The containers were not labeled with the words “Hazardous Waste.” The containers were not marked with an indication of the hazards of the contents of the drums. The total volume of D001 hazardous waste in the SAA exceeded 55 gallons. The hazardous waste that exceeded 55 gallons was not being managed in accordance with central accumulation area regulations.
46. At the time of the CEI, the EPA inspectors observed SAAs in Building #3. One SAA in the paint booth area had a 55-gallon drum of D001 hazardous waste aerosol containers that was open. One SAA in the maintenance area had a 55-gallon drum of hazardous waste aerosol containers that was open.
47. At the time of the CEI, the EPA inspectors reviewed the container inspection records and determined that no inspections of the hazardous waste central accumulation area had occurred from March 2018 to the date of the CEI.

48. At the time of CEI, the EPA inspectors observed eleven containers in the central accumulation area that were not labeled with the words "Hazardous Waste."
49. At the time of the CEI, there was no contingency plan available for review.
50. At the time of CEI, personnel training records were not available for review.
51. At the time of CEI, the EPA inspectors observed the containers of universal waste lamps were open in a way that could release universal waste and components of universal waste to the environment.
52. At the time of CEI, the EPA inspectors observed that the facility had failed to label each lamp or container of lamps clearly with one of the following phrases: "Universal Waste Lamps(s)" or "Waste Lamp(s) or "Used Lamps".
53. At the time of CEI, the EPA inspectors observed containers storing used oil. The containers of used oil were not labeled "Used Oil".
54. At the time of the CEI, the EPA inspectors observed used oil spills on the floor in the used oil storage area that had not been cleaned up and properly managed.

V. ALLEGED VIOLATIONS

55. Respondent is a "person" as defined in 401 Ky. Admin. Regs. 39:005 Section 1(53) [40 C.F.R. § 260.10].
56. Respondent is the "owner" and "operator" of a facility located in Erlanger, Kentucky as those terms are defined in 401 Ky. Admin. Regs. 39:005 Section 1(51) and (50) [40 C.F.R. § 260.10].
57. Respondent generates D001 and D002 wastes that are solid waste and hazardous waste as defined in 401 Ky. Admin. Regs. 39:060 Section 3(1) [40 C.F.R. §§ 261.2 and 261.3].
58. Respondent is a used oil generator as defined in 401 Ky. Admin. Regs. 39:080 Section 4(1) [40 C.F.R. § 279.1].
59. Respondent failed to keep containers of hazardous waste in the SAA located in the maintenance building closed at all times during accumulation except when adding, removing or consolidating waste. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or an interim status, because Respondent failed to keep its containers of hazardous waste closed at all times in accordance with 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(4)] which is a condition of the SAA Permit Exemption.
60. Respondent failed to mark containers in a SAA with the words "Hazardous Waste" and indication of the hazards of the contents of the containers. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or an interim status because Respondent failed to comply with the marking and labeling requirement in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(5)], which is a condition of the SAA Permit Exemption.

61. Respondent failed to remove excess hazardous waste (accumulated hazardous waste over 55 gallons) from a SAA to the central accumulation area. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without having interim status, because Respondent failed to remove its excess waste from the SAA in violation of 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.15(a)(6)], which is a condition of the SAA Permit Exemption.
62. Respondent failed to inspect central accumulation areas at least weekly looking for leaking containers and for deterioration of containers caused by corrosion or other factors. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to comply with the container inspection requirement in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(1)(v)], which is a condition of the LQG Permit Exemption.
63. Respondent failed to label all hazardous waste containers with the words “Hazardous Waste.” The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to comply with the marking and labeling requirement in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(5)(i)], which is a condition of the LQG Permit Exemption.
64. Respondent failed to have a contingency plan. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(6)], by not having a contingency plan for the Facility as required by 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.260].
65. Respondent failed to provide facility personnel training records for review during the inspection. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 Ky. Admin. Regs. 39:080 Section 1(1) [40 C.F.R. § 262.17(a)(7)(iv)(D)], by not maintaining records at the facility that document that the training or job experience, required under this section, has been given to, and completed by, facility personnel.
66. Respondent failed to close spent universal lamp containers in a way that could prevent release of universal waste and components of universal waste to the environment. The EPA therefore alleges that Respondent violated 401 Ky. Admin. Regs. 39:080 Section 3(1) [40 C.F.R. § 273.13(d)], by failing to manage spent universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
67. Respondent failed to label containers of spent fluorescent lamps. The EPA therefore alleges that Respondent 401 Ky. Admin. Regs. 39:080 Section 3(1) [40 C.F.R. § 273.14(e)], by failing to label or mark each lamp or container of lamps clearly with one of the following phrases: “Universal Waste-Lamp(s),” or “Waste Lamp(s),” or “Used Lamps.”
68. Respondent failed to label containers storing used oil with the words “Used Oil”. The EPA therefore alleges Respondent violated 401 Ky. Admin. Regs. 39:080 Section 4(1) [40 C.F.R.

§ 279.22(c)(1)] by storing used oil in containers that were not labeled or marked clearly with the words “Used Oil.”

69. Respondent failed to clean up a release of used oil in the maintenance building. The EPA therefore alleges Respondent violated 401 Ky. Admin. Regs. 39:080 Section 4(1) [40 C.F.R. § 279.22(d)] by failing to clean up and properly manage used oil releases upon detection.

VI. STIPULATIONS

70. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

71. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below ;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

72. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
- d. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

f. agrees to comply with the terms of this CAFO.

73. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.]

74. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means at the following valid email addresses: redleaf-durbin.joan@epa.gov for the EPA and fred.matthews@dhl.com for the Respondent.

VII. TERMS OF PAYMENT

75. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$20,900.00**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

76. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004

Account Number: 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”

d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

77. Respondent shall send proof of **payment**, within 24 hours of payment of the civil penalty, to:

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

and

Raj Aiyar, Environmental Engineer
Enforcement and Compliance Assurance Division
Chemical Safety and Land Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
aiyar.raj@epa.gov

78. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and “Docket No. **RCRA-04-2020-2104(b)**.”

79. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the

delinquent claim. Accordingly, EPA may require the Respondent to pay the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
- b. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

80. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

81. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

82. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
83. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c),
84. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
85. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
86. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
88. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
89. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
90. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
91. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
92. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

93. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
94. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
95. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
96. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

97. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement In the Matter of **DHL Express (USA), Inc.**, Docket No. **RCRA-04-2020-2104(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Jeff Billingsley 4-9-20
Signature Date

Printed Name: Jeff Billingsley

Title: General Manager

Address: 236 Wendell Ford Blvd.

The foregoing Consent Agreement In the Matter of **DHL Express (USA), Inc.**, Docket No. **RCRA-04-2020-2104(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

DATE

Alan A. Annicella, Acting Chief
Chemical Safety and Land Enforcement Branch
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

DHL Express (USA), Inc.
236 Wendell Ford Boulevard
Erlanger, Kentucky 41018
EPA ID No.: KYR000035873

Respondent.

Docket No. **RCRA-04-2020-2104(b)**

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, 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 Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **DHL Express (USA), Inc.**, Docket No. **RCRA-04-2020-2104(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties:

To Respondent:

Fred Matthews
Senior Manager of Safety
DHL Express
fred.matthews@dhl.com

To EPA:

Raj Aiyar
aiyar.raj@epa.gov,

and

Joan Redleaf Durbin
Associate Regional Counsel
redleaf-durbin.joan@epa.gov

DATE

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