

## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb  
Governor

**Bruno L. Pigott**  
*Commissioner*

STATE OF INDIANA ) SS: BEFORE THE INDIANA DEPARTMENT OF  
 )  
COUNTY OF MARION ) ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT )  
OF ENVIRONMENTAL MANAGEMENT, )  
 )  
Complainant, )  
 )  
v. ) Case No. 2017-24836  
 )  
XPO LOGISTICS SUPPLY CHAIN, INC., )  
 )  
Respondent. )

NOTICE AND ORDER OF THE  
COMMISSIONER OF THE  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Via Certified Mail#: 1Z 198 24W  
A8 9348 5616

To: Richard Valitutto, Vice President  
XPO Logistics Supply Chain, Inc.  
4035 Piedmont Parkway  
High Point, NC 27265

Via Certified Mail#: 1Z 198 24W  
A8 9352 3039

To: Corporation Service Company  
Registered Agent for XPO Logistics  
Supply Chain, Inc.  
135 North Pennsylvania Street  
Suite 1610  
Indianapolis, IN 46204

This Notice and Order of the Commissioner of the Department of Environmental Management ("Order") is issued against Respondent for violation of Indiana environmental rules. This Order is issued pursuant to IC 13-30-3-4, IC 13-30-3-10, and IC 13-30-3-11, and is based on violations found during an investigation conducted by the Office of Land Quality on September 13, 2017. During the investigation it was determined that Respondent is in violation of 329 Indiana Administrative Code ("IAC") Article 3.1 rules.

## FINDING OF VIOLATION

1. Respondent is XPO Logistics Supply Chain, Inc. ("Respondent"), which owns and/or operates the facility located at 600 Perry Road, Suite 151 in Plainfield, Hendricks County ("Site").



2. 329 Indiana Administrative Code ("IAC") 3.1 incorporates certain federal hazardous waste management requirements found in 40 Code of Federal Regulations ("CFR") Parts 260 through 270 and Part 273, including those identified below.
3. Pursuant to 40 CFR 262.11, a person who generates a solid waste must determine if that waste is hazardous.

As noted during an inspection on September 13, 2017, Respondent failed to make a waste determination on the abandoned e-cigarette warehouse inventory. The e-cigarette inventory was determined to be waste because it was abandoned and nicotine contained in the e-cigarette products is an acutely toxic hazardous waste. IDEM was made aware of the contents of the NJOY inventory prior to the inspection and confirmed this information during the inspection; therefore, a waste determination is not necessary.

4. Pursuant to 329 IAC 3.1-1-10, every hazardous waste generator, transporter, or owner or operator of a hazardous waste facility shall notify the commissioner of its hazardous waste activities.

As noted during an inspection on September 13, 2017, Respondent failed to notify IDEM and obtain an EPA identification number when they became a large quantity generator of hazardous waste.

On December 13, 2017, Respondent notified IDEM and obtained an EPA identification number as a large quantity generator of hazardous waste. Respondent was given EPA identification number INR000144808.

5. Pursuant to 40 CFR 262.34(b), a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Part 264 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period.

Respondent stored hazardous waste on site for more than 90 days without a permit. A RCRA permit is required for the treatment, storage, and disposal of any hazardous waste.

6. Pursuant to 40 CFR 262.34(a)(1)(i) referencing 40 CFR 265.174, a generator must inspect areas where containers are stored, at least weekly, looking for leaks and deterioration caused by corrosion or other factors.

Respondent failed to conduct weekly inspections.

7. Pursuant to 40 CFR 262.34(a)(2), a generator may accumulate hazardous waste on-site for 90 days or less without a permit, provided that the date when the accumulation begins is clearly marked and visible for inspection on each container.

Respondent failed to clearly mark containers with the accumulation start date.

8. Pursuant to 40 CFR 262.34(a)(3), a generator may accumulate hazardous waste on-site

for 90 days or less without a permit, provided that, while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste".

Respondent failed to clearly mark/label each container with the words "Hazardous Waste".

9. Pursuant to 40 CFR 262.34(a)(4) referencing 40 CFR 265.35, a generator 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.

Respondent failed to stack boxes/pallets in a manner that allows for unobstructed movement to any area of the facility.

10. Pursuant to 40 CFR 262.34(a)(4) referencing 40 CFR 265.51, a generator must have a contingency plan for the facility.

Respondent failed to develop a hazardous waste contingency plan.

11. Pursuant to 40 CFR 262.34(a)(4) referencing 40 CFR 265.16(a), (b), and (c), facility personnel must complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in compliance with the hazardous waste management rules. Employees must be trained within six months after their date of hire and must take part in an annual review of the initial training.

Respondent failed to provide hazardous waste training to employees.

12. Pursuant to 40 CFR 270.1(c), a permit is required for the treatment, storage and disposal of any hazardous waste as identified or listed in 40 CFR Part 261.

Respondent stored hazardous waste for more than 90 days without a permit. A RCRA permit is required for the treatment, storage, and disposal of any hazardous waste.

13. Respondent properly disposed of 21,000 pounds of e-cigarette inventory as a hazardous waste on December 15, 2017.

14. On December 21, 2017, a Notice of Violation was issued, pursuant to IC 13-30-3-3 to Respondent for violation of 40 CFR 262.11, 329 IAC 3.1-1-10, 40 CFR 262.34(b), 40 CFR 262.34(a)(1)(i) referencing 40 CFR 265.174, 40 CFR 262.34(a)(2), 40 CFR 262.34(a)(3), 40 CFR 262.34(a)(4) referencing 40 CFR 265.35, 40 CFR 262.34(a)(4) referencing 40 CFR 265.51, 40 CFR 262.34(a)(4) referencing 40 CFR 265.16(a), (b), and (c), and 40 CFR 270.1(c). Respondent received this Notice of Violation on December 26, 2017.

15. The Notice of Violation contained an offer to enter into an Agreed Order containing actions required to correct the violations.

16. More than sixty (60) days have elapsed since Respondent was offered the opportunity to enter into an Agreed Order.
17. Respondent has not entered into an Agreed Order resolving this violation.

### **ORDER**

1. Respondent shall not store hazardous waste for greater than ninety (90) days without having first obtained a permit from IDEM.
2. Respondent shall pay a civil penalty of nineteen thousand five hundred dollars (\$19,500.00) for violation of Indiana 329 IAC 3.1. This penalty shall be remitted to the Department of Environmental Management within thirty (30) days of the Effective Date of this Order. Checks shall be made payable to the Environmental Management Special Fund, with the Case Number indicated on the checks and mailed to:

Indiana Department of Environmental Management  
Office of Legal Counsel  
IGCN, Room N1307  
100 North Senate Avenue  
Indianapolis, Indiana 46204

3. This Order shall apply to and be binding upon Respondent, its successors and assigns. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Order.

### **EFFECTIVE DATE OF ORDER**

Pursuant to IC 13-30-3-5, this Order takes effect twenty (20) days following receipt unless you request review of this Order, before the twentieth day after receipt, by filing a written request for review with the Office of Environmental Adjudication, and serving a copy of the request for review upon the Commissioner of the Indiana Department of Environmental Management. You may request that the Office of Environmental Adjudication conduct a hearing to review this Order, under IC 4-21.5, in its entirety, or you may limit your request for review to specific findings of fact and/or orders contained in this Order. Requests for review must be submitted to the Office of Environmental Adjudication and the Commissioner of the Indiana Department of Environmental Management at the following addresses:

Director  
Office of Environmental Adjudication  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, Indiana 46204-2273

Commissioner  
IDEM  
100 North Senate Avenue, Room 1301  
Indianapolis, Indiana 46206-6015

Failure to properly submit a request for review, before the twentieth day following receipt of this Order of the Commissioner, waives your right to administrative review of this Order and your



right to judicial review of the Order. The petition for administrative review must contain the following information:

- a. Name, address, and telephone number of each person filing the petition.
- b. Identification of the interest of each petitioner in the subject of the petition.
- c. Statement of facts demonstrating that the petitioner is:
  - (A) a person to whom the order is directed;
  - (B) aggrieved or adversely affected by the order; or
  - (C) entitled to review under any law.
- d. Statement with particularity the legal issues proposed for consideration in the proceedings.

The petition for administrative review should also contain the following information:

- a. Identification of any persons represented by the person making the request.
- b. Statement identifying the person against whom administrative review is sought.
- c. A copy of the notice of the commissioner's action issued by the department of environmental management which is the basis of the petition for administrative review.
- d. Statement indicating the identification of petitioner's attorney or other representative.

More information on the review process is available at the website for the Office of Environmental Adjudication at <http://www.in.gov/oea>.

Dated at Indianapolis, Indiana this 29 day of March, 2019.

  
Bruno L. Pigott  
Commissioner

cc: Hendricks County Health Department (w/enclosure)  
Kim Whittington, IDEM Hazardous Waste Compliance Section (w/enclosure)  
Deborah Fletcher, FisherBroyles, LLP at: [deborah.fletcher@fisherbroyles.com](mailto:deborah.fletcher@fisherbroyles.com)  
(w/enclosure)  
April Lashbrook, IDEM Office of Legal Counsel (w/enclosure)  
IDEM Public file  
<http://www.in.gov/idem>

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## Tracking Details

1Z19824WA893485616 XPO Logistics Supply Chain Inc. 

**Updated:** 04/16/2019 8:33 A.M. EST

# Delivered



**Delivered On**

**Monday**  
**04/08/2019**

**Delivery Time**

**at 9:08 A.M.**

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**Delivered To**

HIGH POINT, NC, US

**Left At:** Front Desk

**Received By:** MCALISTER

**Ask UPS**



Proof of Delivery

Shipment Progress

Overview

Detailed View

		Date	Location
	Delivered	04/08/2019 9:08 A.M.	HIGH POINT, NC, US
	Out for Delivery	04/08/2019 8:07 A.M.	High Point, NC, United States
	Shipped	04/04/2019 3:47 P.M.	Indianapolis, IN, United States
	Label Created	04/02/2019 3:07 P.M.	United States

Shipment Details

Service

UPS Ground [🔗 \(https://www.ups.com/content/us/en/shipping/time/service/ground.html\)](https://www.ups.com/content/us/en/shipping/time/service/ground.html)

Weight

1.00 LBS

Reference Number(s)

1833 2017-24836-H  
1833

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## Tracking Details

1Z19824WA893523039 XPO Logistics Supply Chain, Inc. 

**Updated:** 04/16/2019 8:37 A.M. EST

# Delivered



**Delivered On**

**Friday**  
**04/05/2019**

**Delivery Time**

**at 1:01 P.M.**

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**Delivered To**

INDIANAPOLIS, IN, US

**Left At:** Front Desk

**Received By:** DILL

**Ask UPS**

### Proof of Delivery



### Detailed View



**04/05/2019**  
**1:01 P.M.**

**INDIANAPOLIS,  
IN, US**



04/05/2019 8:42 A.M.

Indianapolis,  
IN, United  
States



04/04/2019 3:47 P.M.

Indianapolis,  
IN, United  
States



04/02/2019 3:20 P.M.

United States



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1.00 LBS

1833 2017-24836-H  
1833

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