

2011 JAN -5 P 3:08

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

DHL Express (USA), Inc.
1200 South Pine Island Road, Suite 600
Plantation, Florida, 33324

Wilmington Air Park, LLC
570 Polaris Parkway
Westerville, Ohio 43082

ABX Air, Inc.
145 Hunter Drive
Wilmington, OH 45177

Director's Final Findings
and Orders

I certify this to be a true and accurate copy of the
official documents so filed in the records of the Ohio
Environmental Protection Agency.



1/5/2011

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to DHL Express (USA), Inc. ("Respondent DHL Express"), Wilmington Air Park, LLC (Respondent WAP) and ABX Air, Inc. ("Respondent ABX Air") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and their respective successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director has determined the following findings:

1. Respondent DHL Express (USA), Inc. is the domestic subsidiary of DHL which is an international delivery and logistics company.
2. Respondent Wilmington Air Park, LLC ("WAP") is a Delaware limited liability company and an affiliate of Respondent DHL Express. In 2003, Respondent WAP, purchased the Wilmington Air Park (Air Park) located at 145 Hunter Drive, Wilmington, Clinton County, Ohio from Airborne Express. Up until January 2009, the Air Park served as a major airport hub for Respondent DHL Express' delivery operations.
3. During WAP's ownership of the Air Park, Respondent ABX Air provided services at the Air Park under contract to Respondent DHL Express that included cargo handling, air transportation services and overall day to day operation of the Air Park.
4. Under contract with Respondent DHL Express, Respondent ABX Air operated a storm water management system that captured and treated storm water including runoff from aircraft and runway de-icing areas during winter months. The system consisted of two storm water treatment plants ("SWTPs"). The Lytle Creek SWTP is located to the north of the north runway, and discharges to Lytle Creek. The Indian Run SWTP lies south of the south runway, and discharges to Cowan Creek via Indian Run. Both SWTPs have detention basins where storm water from the Air Park is collected before being routed to a SWTP for treatment.
5. Lytle Creek, Indian Run, and Cowan Creek constitute "waters of the state" as defined by ORC 6111.01(H).
6. Up until November 1, 2010, Respondent ABX Air was the named permittee in a valid National Pollutant Discharge Elimination System ("NPDES") permit, number 11100031*FD, for the discharge of runoff from airport operations into Lytle Creek via outfall 031 and its tributaries, and into Indian Creek and its tributaries via outfall 032.
7. During winter months, a de-icing compound was historically used on departing

aircraft that consisted of propylene glycol. Runways were historically de-iced with potassium acetate or sodium formate.

8. In June, 2004, Respondent DHL Express announced that it would consolidate its air hub operations from Greater Cincinnati/Northern Kentucky Airport with its existing operations in Wilmington. This allowed an expansion of hours of operation of the Air Park, allowing for earlier arrivals and later departures.
9. Modifications to the Indian Run treatment system were made to accommodate the increased air traffic at the Air Park as the majority of the increased de-icing activity would occur in the drainage area covered by the Indian Run treatment system.
10. Pursuant to ORC Section 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.
11. As more fully set forth in Attachment I, there were effluent violations of the NPDES permit for the facility, with the majority of these violations occurring during winter months of 2007 and 2008.
12. As more fully set forth in Attachment II, there were monitoring violations of the NPDES permit for the facility, with the majority of these violations occurring during the spring months of March and April 2009.
13. In 2007, Ohio EPA conducted biological surveys of the streams associated with this facility in conjunction with work to support a TMDL for the Lower Little Miami River Watershed. Portions of Cowan Creek were listed in partial non attainment because of sedimentation/siltation, nutrient/eutrophication. Indian Run was assessed next to the Air Park's outfall and found to be in non attainment for aquatic life because of low dissolved oxygen.
14. In May 2008, ODNR, Division of Wildlife and Ohio EPA investigated a fish/wildlife kill and chemical water quality standards violations in Cowan Creek. It is believed that the fish kill and water quality standard violations resulted from the discharge of inadequately treated storm water from the SWTP in the Indian Run watershed.
15. In February 2009, the detention basins from the Indian Run system were at capacity. As a result, contaminated storm runoff from the Indian Run watershed could not be collected for treatment which resulted in the discharge of inadequately treated storm water into Indian Run.

16. In March 2009, storm water runoff percolated through a leak in the synthetic liner of one of the detention basins for Indian Run SWTP and was conveyed to a ditch along Jenkins Road leading to Cowan Creek through an under-drain pipe. Respondent DHL Express installed a temporary fix in the form of a sump. By letter dated October 7, 2009, David Combs of Ohio EPA requested a permanent fix. On March 12, 2010, WAP submitted a work plan for a new pump station and pipe to re-route this flow to the Indian Run SWTP, which work plan was approved by letter dated April 12, 2010 from Ron Ware of Ohio EPA. An application for a Permit to Install was received by WAP on October 29, 2010 and Ohio EPA has issued a Permit to Install (PTI) to WAP authorizing this work on November 10, 2010.
17. In May 2008, Respondent DHL Express announced significant restructuring which ultimately culminated with the relocation of operations to the Greater Cincinnati/Northern Kentucky Airport.
18. Ownership of the Wilmington Air Park, including the storm water management system was transferred on June 2, 2010 from WAP to the Clinton County Port Authority (CCPA).
19. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works. Any such construction or modification is subject to the PTI requirements of OAC Chapter 3745-42.
20. This document does not modify NPDES Permit No. 11I00031*FD. The purpose of this document is to correct incidents of noncompliance with the NPDES permit, and not to alter said permit.
21. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
22. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent DHL Express shall pay the amount of \$80,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$64,000.00 of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA's District Office at:

Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402

2. In lieu of paying the remaining \$16,000.00 of the civil penalty, Respondent DHL Express shall, within thirty (30) days of the effective date of these Orders, fund a supplemental environmental project (SEP) by making a contribution in the amount of \$16,000.00 dollars to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent DHL Express shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check and a cover letter identifying the Respondent shall be submitted to Brenda Case, or her successor at:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Mark Mann, Enforcement Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA

Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

3. Should Respondent DHL Express fail to fund the SEP within the required time frame set forth in Order No. 2, Respondent DHL Express shall immediately pay to Ohio EPA the remaining \$16,000.00 of the civil penalty in accordance with the procedures in Order No. 1.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondent DHL Express certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent DHL Express has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. Ohio EPA agrees to respond to Respondent DHL Express's written certification under this paragraph within sixty (60) days after its receipt. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent DHL Express of the obligations that have not been performed, in which case Respondent DHL Express shall have a reasonable opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete to the best of my knowledge and belief."

This certification shall be submitted by Respondent DHL Express to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

IX. MODIFICATIONS

These Orders may be modified by written agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges, causes of action and defenses, except as specifically waived in Section XI of these Orders.

XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XII. EFFECTIVE DATE

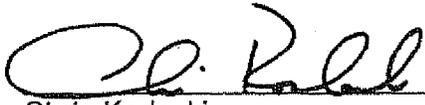
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



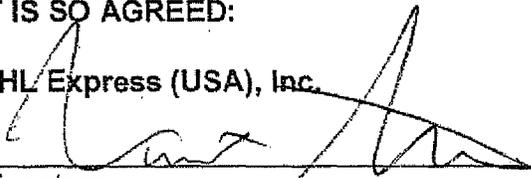
Chris Korleski
Director

JAN 05 2011

Date

IT IS SO AGREED:

DHL Express (USA), Inc.



Signature

December 17, 2010

Date

Vincent Atriano

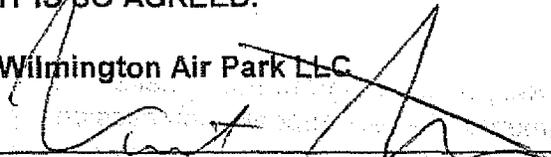
Printed or Typed Name

Attorney

Title

IT IS SO AGREED:

Wilmington Air Park LLC



Signature

December 17, 2010

Date

Vincent Atriano

Printed or Typed Name

Attorney

Title