



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

AUG 6 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Bradley E. Dillon, Esq.  
Greenebaum Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202

SUBJ: Lakeland Transition Holdings, Inc.  
Docket No. RCRA-04-2008-4006(b)  
EPA ID No. KYD 045 735 305

Dear Mr. Dillon:

Enclosed please find a fully executed Consent Agreement and Final Order (CA/FO) issued pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). Please note that payment of the \$23,000 penalty is due within thirty (30) calendar days after the effective date of this CA/FO. Please contact me with any questions or comments, or your client may contact Nancy McKee at 404-562-8674. Thank you for your cooperation in this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read "Melissa Allen Heath".

Melissa Allen Heath  
Associate Regional Counsel

Enclosures

cc: Anthony R. Hatton  
Director, Division of Waste Management, KYDEP  
Jeffrey Cummings  
Acting Director, Division of Enforcement, KYDEP  
Nancy McKee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:	)	Docket Number: RCRA-04-2008-4006(b)
	)	
Lakeland Transition Holdings, Inc.	)	Proceeding under Section 3008(a)
c/o Blackstreet Capital	)	of the Resource Conservation and
4800 Montgomery Lane	)	Recovery Act, 42 U.S.C. § 6928(a)
Suite 940	)	
Bethesda, Maryland 20814	)	
	)	
EPA ID No.: KYD 045 735 305	)	
Respondent.	)	
_____	)	

RECEIVED  
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 HEARINGS CLERK

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (CFR), Parts 260 through 270; and Title 401 Kentucky Administrative Regulations (KAR) Chapters 30 – 40.

2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 CFR Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 CFR §§ 22.13(b) and 22.18(b)(2).

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## **II. THE PARTIES**

4. Complainant is the Chief, RCRA & OPA Enforcement & Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is Lakeland Transition Holdings, Inc., a Florida corporation located at 4800 Montgomery Lane, Suite 940, Bethesda, Maryland 20814. Respondent was formerly, and at all times relevant to the allegations contained herein, known as Florida Tile Industries, Inc. ("Florida Tile"), authorized to do business in Kentucky, and operated a facility at 1247 Alton Road, Lawrenceburg, Kentucky (the "Facility").

6. Respondent sold the assets of the Facility to a distinct company known as Florida Tile, Inc., on February 24, 2006.

## **III. PRELIMINARY STATEMENTS**

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 24, 1984, the Commonwealth of Kentucky received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. On June 25, 1996, the Commonwealth of Kentucky received final authorization for the Hazardous and Solid Waste Amendments (HSWA) portion of RCRA. The Kentucky Department for Environmental Protection (KYDEP) is charged with the statutory duty of enforcing the law of the Commonwealth of Kentucky relating to hazardous waste management

under Title 401 of the Kentucky Administrative Regulations (KAR). Therefore, for the purpose of this Order, a citation hereinafter to the requirements of 40 C.F.R. Parts 124, 270, and 260 – 268 shall constitute a citation to the equivalent requirements of KAR.

8. Although EPA has granted the Commonwealth of Kentucky authority to enforce its own hazardous waste program, 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). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the Commonwealth of Kentucky.

9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the Commonwealth of Kentucky before issuance of this CA/FO.

10. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator of EPA to promulgate regulations establishing standards applicable to treatment, storage, and disposal facilities of hazardous waste. These standards include establishing financial assurance as may be necessary. Pursuant to that provision, EPA promulgated 40 CFR parts 264/265 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The regulations became effective on May 19, 1980.

11. Pursuant to 40 CFR § 264.145 and 401 KAR 34:100, the owner or operator of each facility must establish financial assurance for post-closure care of the facility.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

12. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 CFR § 260.10, and 401 KAR 30:005.

13. Respondent was the “owner” and “operator” of a permitted RCRA post-closure unit located at 1247 Alton Road, Lawrenceburg, Kentucky (the “Facility”), as those terms are defined in 40 CFR § 260.10 and 401 KAR 30:005.

14. The Facility is regulated through a RCRA post-closure permit issued by the Commonwealth of Kentucky.

15. Until February 24, 2006, Respondent was the owner and operator on this permit.

16. Pursuant to 40 CFR § 264.145 and 401 KAR 34:100, the owner or operator of a hazardous waste management unit subject to the requirements of § 264.144 and 401 KAR 34:100 Section 1 must establish financial assurance for post-closure care, in accordance with the approved post-closure plan for the facility, 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator must choose from the following options: post-closure trust fund, surety bond guaranteeing payment into a post-closure trust fund, surety bond guaranteeing performance of post-closure care, post-closure letter of credit, post-closure insurance, financial test and corporate guarantee for post-closure care, use of multiple financial mechanisms, and use of a financial mechanism for multiple facilities.

17. Respondent provided an initial submittal of financial assurance for post-closure care through the financial test and corporate guarantee, and the Commonwealth of Kentucky approved this submittal.

18. Pursuant to 40 CFR § 264.145 (f)(5) and 401 KAR 34:100 Section 8 (5), after the initial submission and approval of items required for the financial test and corporate guarantee, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year.

19. On November 2, 2003, Respondent changed its accounting from calendar year to fiscal year. The accounting year for 2003, a calendar year, ended on December 31, 2003. The accounting year for 2004, a fiscal year, ended on July 31, 2004. The accounting year for 2005, a fiscal year, ended on July 31, 2005.

20. As such, financial assurance for year 2004 was due on March 31, 2004 (90 days after the close of the prior fiscal year); financial assurance for year 2005 was due on October 31, 2004; and financial assurance for year 2006 was due on October 31, 2005.

21. On March 31, 2004, Respondent was required to submit updated information to the Regional Administrator for the year 2004. 40 CFR § 264.145 (f)(5) and 401 KAR 34:100 Section 8 (5).

22. On March 31, 2004, Respondent submitted a notice to the Regional Administrator of intent to establish alternate financial assurance.

23. Pursuant to 40 CFR § 264.145 (f)(6) and 401 KAR 34:100 Section 8 (6), if the owner or operator provides notice to the Regional Administrator of intent to establish alternate financial assurance, the owner and operator must send in alternate financial assurance within 120 days after the end of such fiscal year.

24. On April 30, 2004, Respondent was required to submit alternate financial assurance to the Regional Administrator for the year 2004.

25. Respondent failed to submit alternate financial assurance for the year 2004, a violation of 40 CFR § 264.145 (f)(6) and 401 KAR 34:100 Section 8 (6).

26. On October 31, 2004, the date 90 days after the close of its fiscal year 2004, Respondent was required to submit updated information to the Regional Administrator for the year 2005.

27. On May 31, 2005, Respondent submitted updated information to the Regional Administrator for the year 2005.

28. Respondent was late 210 days in submitting updated information to the Regional Administrator for the year 2005, a violation of 40 CFR § 264.145 (f)(5) and 401 KAR 34:100 Section 8 (5).

29. On October 31, 2005, Respondent was required to submit updated information to the Regional Administrator for the year 2006.

30. On March 8, 2006, Respondent submitted updated information to the Regional Administrator for the year 2006.

31. Respondent was late 128 days in submitting updated information to the Regional Administrator for the year 2006, a violation of 40 CFR § 264.145 (f)(5) and 401 KAR 34:100 Section 8 (5)

#### **V. TERMS OF AGREEMENT**

Based on the foregoing Preliminary Statements and EPA Allegations and Determinations, the parties agree to the following:

32. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above.

33. Respondent neither admits nor denies the factual allegations or legal conclusions set forth above.

34. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

35. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.

36. Respondent waives any right it may have pursuant to 40 CFR § 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 CA/FO.

37. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.

38. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.

39. Each party will pay its own costs and attorney's fees.

#### **VI. PAYMENT OF CIVIL PENALTY**

40. Respondent consents and agrees to the payment of a civil penalty in the amount of TWENTY THREE THOUSAND DOLLARS (\$23,000), payable within 30 calendar days after the effective date of this CA/FO.

41. Respondent shall make payment of the penalty by cashier's check or certified check, made payable to: **Treasurer, United States of America**. Respondent shall reference the facility name and the docket number for this matter on the face of the check, and shall be tendered, if by U.S. Postal Service, to:

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

or if by commercial express delivery service to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Respondent shall submit a copy of the payment to the following addressees:

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

and to:

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

42. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required 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. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

(a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c).

(b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.

(c) Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

43. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

## **VII. RESERVATION OF RIGHTS**

44. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA 42 U.S.C. § 6973, or any other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondents' facility may present an imminent and substantial endangerment to human health or the environment.

45. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any applicable provision of law, except for those violations specifically alleged in this CA/FO.

46. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.

47. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

48. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

### **VIII. PARTIES BOUND**

49. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

50. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

51. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

### **IX. SEVERABILITY**

52. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO 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 CA/FO shall remain in force and shall not be affected thereby.

### **X. SERVICE OF DOCUMENTS**

53. 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:

Melissa Allen Heath  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-8381

**XI. TERMINATION AND SATISFACTION**

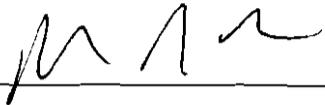
54. The provisions of this CA/FO shall be deemed satisfied upon a determination by Complainant that Respondent has fully satisfied the requirements of this CA/FO.

**XII. EFFECTIVE DATE**

55. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

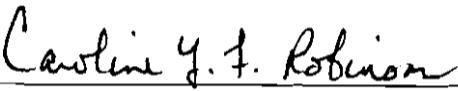
**Lakeland Transition Holdings, Inc.**

By:  Dated: 7/14/08

(print name) Murry Gunty

Its: President

**U.S. Environmental Protection Agency**

By:  Dated: 7/28/08

Caroline Y.F. Robinson, Chief  
RCRA/OPA Enforcement and Compliance Branch  
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

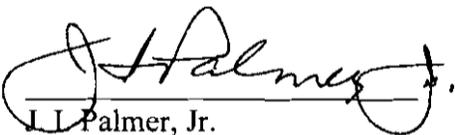
REGION 4

IN THE MATTER OF:	)	Docket Number: RCRA-04-2008-4006(b)
	)	
Lakeland Transition Holdings, Inc.	)	Proceeding under Section 3008(a)
C/O Blackstreet Capital	)	of the Resource Conservation and
4800 Montgomery Lane	)	Recovery Act, 42 U.S.C. § 6928(a)
Suite 940	)	
Bethesda, Maryland 20814	)	
	)	
EPA ID No.: KYD 045 735 305	)	
Respondent.	)	
_____	)	

**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 CFR Part 22. 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 CFR §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 1<sup>st</sup> day of Aug, 2008.

BY:   
 J.L. Palmer, Jr.  
 Regional Administrator  
 EPA Region 4

In the Matter of Lakeland Transition Holdings, Inc.  
Docket Number: RCRA-04-2008-4006(b)

**CERTIFICATE OF SERVICE**

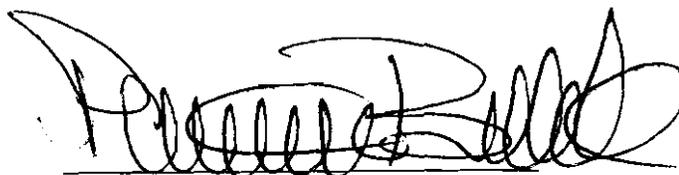
I hereby certify that on AUG 06 2008, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Lakeland Transition Holdings, Inc., Docket Number: RCRA-04-2008-4006(b), and that on AUG 06 2008 I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

(Via EPA's internal mail)

Melissa Allen Heath  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via Certified Mail- Return Receipt Requested)

Bradley E. Dillon  
Greenebaum, Doll & McDonald, PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511