



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

SEP 04 2008

CERTIFIED MAIL RETURN RECEIPT

Mark Jacobi
ACT Holdings, LLC
5609 Fern Valley Road
Louisville, Kentucky 40228

SUBJ: ACT Holdings, LLC
Docket Number RCRA-04-2008-4011
EPA ID No. KYD 985 092 006

Dear Mr. Jacobi:

Enclosed please find a fully executed Consent Agreement and Final Order issued pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 41 U.S.C. § 6928(a).

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at 404-562-8976, or contact Nancy McKee at 404-562-8674, if you have any additional questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Caroline Y.F. Robinson".

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

Enclosure

cc: Anthony Hatton, Director, Division of Waste Management, KYDEP
Jeffrey Cummings, Acting Director, Division of Enforcement, KYDEP
Melissa Heath

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4011
)	
ACT Holdings, LLC)	Proceeding under Section 3008(a)
5609 Fern Valley Road)	of the Resource Conservation and
Louisville, Kentucky 40228)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: KYD 985 092 006)	
Respondent.)	

RECEIVED
 EPA REGION 4
 2008 SEP -4 AM 8:31
 RECEIVING 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. 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, ACT Holdings, LLC (ACT), is a Limited Liability Corporation organized under the laws of and doing business in the Commonwealth of Kentucky.

III. PRELIMINARY STATEMENTS

6. 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 KAR. Therefore, for the purpose of the Order, a citation hereinafter to the requirements of 40 CFR Parts 124, 270, 260 – 268 shall constitute a citation to the equivalent requirements of KAR.
7. Although EPA has granted the Commonwealth of Kentucky the 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). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the Commonwealth of Kentucky.
8. 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.
9. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), authorizes the regulation of facilities that generate hazardous waste. The implementing regulations for this requirement are found in 40 CFR Part 262.
10. Section 3005 of RCRA, 42 U.S.C. § 6925 sets forth the requirement that a facility treating, storing or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found in (Interim Status Facilities) 40 CFR Part 264 and (Permitted Facilities) 40 CFR Part 265.
11. Pursuant to Sections 3002, 3003, 3004, and 3005, 42 U.S.C. §§ 6922, 2923, 6924, and 6925, a streamlined, reduced regulatory scheme for certain hazardous wastes regulated under RCRA was created to facilitate their collection and proper management. These wastes were designated as “Universal Wastes.” The regulations applicable to Universal Waste are found in 40 CFR Part 273.

IV. EPA ALLEGATIONS AND DETERMINATIONS

12. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903 (15), 240 CFR § 260.10 and 401 KAR 30:005.

13. Respondent is the “owner” and “operator” of a “facility” located at 5609 Fern Valley Road, Louisville, Kentucky 40228, as those terms are defined in 40 CFR § 260.10 and 401 KAR 30:005.
14. On October 31, 2007, representatives from EPA Region 4 and the KYDEP performed a RCRA compliance evaluation inspection (CEI) of the Facility.
15. At the time of the CEI, Respondent was registered with KYDEP as a large quantity generator of hazardous waste.
16. At the time of the CEI, Respondent was a small quantity generator of universal waste in that while Respondent generated universal waste, it had, at no one time, accumulated 5,000 kilograms or more of universal wastes (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively).
17. On December 18, 2007, EPA provided ACT with a copy of its RCRA Compliance Evaluation Inspection Report; and on March 10, 2008, EPA provided ACT with a Notice of Violation letter outlining EPA’s findings from the CEI.
18. On May 9, 2008, ACT, EPA, and KYDEP representatives met to discuss EPA’s findings from the CEI.
19. During the CEI, EPA noted the following issues that EPA alleges are violations of RCRA and its implementing regulations:
 - a. ACT had not made a waste determination on certain unknown chemical wastes found in Laboratory #2 of the ACT facility. 40 CFR § 262.11, adopted by reference in 401 KAR 32:010 Section 2, provides that a person who generates a solid waste, as defined in 40 CFR § 261.2, must determine if that waste is a hazardous waste using the method outlined in this section. Therefore, ACT failed to comply with the requirements of 40 CFR § 262.11.
 - b. ACT did not manage hazardous waste at or near the point of generation in Laboratory #3, as laboratory scientists were transferring hazardous wastes from one satellite accumulation area to another satellite accumulation area that was not at the point of generation. 40 CFR § 262.34 (c)(1), adopted by reference in 401 KAR 32:020 Section 5, provides that a generator may accumulate as much as 55 gallons of hazardous waste without a permit, provided he manages hazardous waste in containers at or near the point of generation where wastes initially accumulate. Therefore, ACT failed to comply with the requirements of 40 CFR § 262.34 (c)(1).
 - c. ACT did not ensure that hazardous waste accumulated in Laboratory #2 was under the control of the operator of the process generating the waste, as Laboratory #2 was no longer in use and laboratory personal were not working in this laboratory. 40 CFR § 262.34 (c)(1), adopted by reference in

401 KAR 32:020 Section 5, provides that a generator may accumulate as much as 55 gallons of hazardous waste without a permit, provided he manages hazardous waste in containers that are under the control of the operator of the process generating the waste. Therefore, ACT failed to comply with the requirements in 40 CFR § 262.34 (c)(1).

- d. ACT did not ensure that containers of hazardous waste were closed, as one container of hazardous waste located in the Quality Control Laboratory and one container located in the Peptide Laboratory were kept open. 40 CFR § 262.34 (c)(1)(i)/40 CFR § 265.173(a), adopted by reference in 401 KAR 32:020 Section 5/401 KAR 35:180 Section 4, provides that a generator may accumulate as much as 55 gallons of hazardous waste without a permit, provided he complies with 40 CFR § 262.173(a). 40 CFR § 262.173(a) states that a container must always be closed during storage, except when it is necessary to add or remove waste. Therefore, ACT failed to comply with the requirements in 40 CFR § 262.34 (c)(1)(i)/40 CFR § 265.173(a).
- e. ACT did not have the handwritten signature of the owner or operator of the designated facility for Manifest #000653433. Additionally, ACT did not contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste manifested on Manifest #000653433 and did not submit an Exception Report to the EPA Regional Administrator. 40 CFR § 262.42 (a)(1) & (2), adopted by reference in 401 KAR 32:040 Section 4, requires that a large quantity generator of hazardous waste contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste if the generator does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter. Additionally, 40 CFR § 262.42 (a)(1) & (2), adopted by reference in 401 KAR 32:040 Section 4, requires the generator to submit an Exception Report to the EPA Regional Administrator if a copy of the manifest with the handwritten signature of the owner or operator of the designated facility is not received within 45 days of the date the waste was accepted by the initial transporter. Therefore, ACT failed to comply with the requirements of 40 CFR § 262.42 (a)(1) & (2).
- f. ACT failed to clean up spill residue from a leaking 55-gallon container labeled "Non-halogenated Hazardous Waste," located in Laboratory #3. The spill residue was on the ground and on the wall. 40 CFR § 265.31, adopted by reference in 401 KAR 35:030 Section 2, requires that facilities be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. Therefore, ACT failed to comply with the requirements in 40 CFR § 265.31.
- g. ACT did not have a complete contingency plan, as the plan did not include the location and a physical description of each item (emergency equipment) on the

list, and failed to include a brief capability outline for each item. 40 CFR § 265.52 (e), adopted by reference in 401 KAR 35:040 Section 3, requires that a contingency plan include a list of all required emergency equipment at the facility. In addition, the plan must include the location and a physical description of each item on the list, and a brief capability outline for each item. Therefore, ACT failed to comply with the requirements of 40 CFR § 265.52 (e).

- h. ACT did not ensure that hazardous waste was being stored in containers that were in good condition, as ACT did not transfer hazardous waste from the leaking container labeled "Non-halogenated Hazardous Waste," located in Laboratory #3, to a container in good condition. 40 CFR § 265.171, adopted by reference in 401 KAR 35:180 Section 2, provides if a container is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition. Therefore, ACT failed to comply with the requirements of 40 CFR § 265.171.
- i. ACT did not store universal waste lamps appropriately, as approximately fifteen, 12' fluorescent lamps and approximately ten, 4' fluorescent lamps, located outside of the 90-Day Storage Area, were not in structurally sound containers or packages. 40 CFR § 273.13 (d)(1), adopted by reference in 401 KAR 43:020 Section 4, provides that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Therefore, ACT failed to comply with the requirements of 40 CFR § 273.13 (d)(1).

V. TERMS OF AGREEMENT

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

- 20. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above.
- 21. Respondent neither admits nor denies the factual allegations or legal conclusions set forth in this CA/FO.
- 22. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.
- 23. Respondent waives any 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.

24. 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.
25. The Parties agree that settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
26. The Parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
27. Each Party will pay its own costs and attorneys' fees.

VI. PAYMENT OF CIVIL PENALTY

28. Respondent consents to the payment of a civil penalty in the amount of TWENTY THREE THOUSAND DOLLARS (\$23,000) within thirty (30) calendar days after the effective date of this CA/FO.
29. No later than 30 days after the effective date of the Final Order, Respondent shall pay the amount of \$23,000 by means of a corporate cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the docket number of this action. If Respondent sends payment by the U.S. Postal Service, address payment to:

US Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, MO 63197-9000

If Respondent sends payment by wire transfer, address payment as follows:

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

If Respondent sends payment by overnight mail, address the payment to the U.S. Bank as follows:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

If Respondent sends payment by remittance express 1, the payment shall be addressed to the ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

If Respondent sends an online payment, follow the instructions at the website www.pay.gov and enter sfo 1.1 in the search field. Open form and complete required fields.

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:

Douglas 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

30. 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 thirty (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 thirty (30) calendar day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty more than ninety (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).

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

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

32. Respondent shall undertake the Supplemental Environmental Project (SEP) as described in Attachment 1 and incorporated herein by reference. The parties agree that the SEP is intended to secure significant environmental and/or public health protection and improvements. The SEP will provide for the purchase and donation of an approved list of emergency response equipment to the applicable local emergency response organization. Respondent shall complete the SEP, as set forth in Attachment A, no later than 60 days after the effective date of this CA/FO.
33. The total expenditure for the SEP is anticipated to be not less than Five Thousand Dollars (\$5000). Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
34. Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the activities in the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement or grant, in any other case, or in compliance with any state or local requirement. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

35. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment or any SEP cost incurred pursuant this CA/FO.
36. Respondent shall submit to EPA a written SEP Completion Report for the SEP within thirty (30) calendar days after completion of all activities required for the SEP. The SEP Completion Report shall contain the following information:
 - a. A detailed description of the equipment purchased and to whom provided;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs, with any documentation not previously submitted;
 - d. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
 - e. A description of the environmental and public health benefits resulting from the implementation of the SEP, including but not limited to quantifiable measures of success of the project.
37. Following the receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:
 - a. Accept the SEP Completion Report, in writing;
 - b. Reject the SEP Completion Report in writing, notify Respondent in writing of deficiencies in the SEP Completion Report, and grant Respondent an additional thirty (30) calendar days (or more, if EPA determines additional time is reasonably necessary) in which to correct any deficiencies; or
 - c. Reject the SEP Completion Report, in writing, and seek stipulated penalties in accordance with the provisions of this CA/FO, if a determination is made that the SEP Completion Report is so grossly deficient that the deficiencies cannot be corrected in a timely manner.
38. If EPA elects to exercise the option in Paragraph 37(c) above, EPA shall permit Respondent the opportunity to object, in writing, to the notification of deficiency or disapproval within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt of the notification of the objection to reach agreement. If agreement cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. EPA shall be reasonable in its determination, and Respondent shall be entitled to challenge this determination in any enforcement of this CA/FO.

39. Should Respondent request any extension of time to meet the deadlines for completion of the SEP as imposed by this CA/FO, the written request shall contain a justification as to the reasons for the extension and shall be submitted to EPA within fourteen (14) calendar days from the date Respondent becomes aware of the event or circumstance which will cause a delay in the implementation or action required by this CA/FO. Should EPA concur with Respondent's request, EPA will notify Respondent in writing and the schedule shall be amended as approved by EPA.
40. In the event Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP, and/or to the extent that the actual expenditures for the SEP do not equal or exceed \$5000 for the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. Except as provided in Subparagraph b immediately below, if Respondent does not pursue the SEP or does not satisfactorily complete the SEP pursuant to Attachment 1, Respondent shall pay a stipulated penalty to the United States in the amount of \$4000 for the SEP.
 - b. If the SEP is not completed satisfactorily, but Respondent: (i) made good faith and timely efforts to complete the project; and (ii) certifies with supporting documentation, that at least the required amount of money was expended on the SEP, Respondent shall not pay any stipulated penalty.
 - c. If Respondent spent less than the required amount of \$5000 for the SEP, Respondent shall pay a stipulated penalty to the United States in an amount equal to 80% of the difference between the money actually spent for the SEP and \$5000.
 - d. For failure to submit the SEP Completion Report as required, Respondent shall pay a stipulated penalty of \$250.00 for each calendar day after the due date until the report is submitted.
41. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA. EPA shall be reasonable in its determination, and Respondent shall be entitled to challenge this determination in any enforcement of this CA/FO.
42. Stipulated penalties shall begin to accrue on the day after performance is due, as extended if an extension is granted by EPA pursuant to the provisions of this CA/FO, and shall continue to accrue through the final day of the completion of the activity.
43. Respondent shall pay stipulated penalties within fifteen (15) calendar days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 29 above. Interest and late charges shall be paid as stated in Paragraph 30 above.

44. Any public statement, oral or written, in print, film, or other media, made by Respondent with reference to the SEP shall include the following language: “[T]his project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 et seq., and the relevant sections of the Kentucky Administrative Regulations.”

VIII. RESERVATION OF RIGHTS

45. 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 other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent’s facility may present an imminent and substantial endangerment to human health or the environment.
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.

IX. OTHER APPLICABLE LAWS

49. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. PARTIES BOUND

50. 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.
51. 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.

52. 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.

XI. 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. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909
(404) 562-8381

54. 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 authorized to receive service for the Respondent in this proceeding:

Mark Jacobi
ACT Holdings, LLC
5609 Fern Valley Road
Louisville, Kentucky 40228
(800) 456-1403

XII. SEVERABILITY

55. 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.

XIII. EFFECTIVE DATE

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

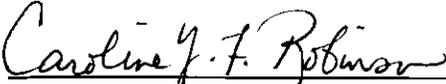
AGREED AND CONSENTED TO:

ACT Holdings, LLC

By: 
Name: EX. U.P. DAVID PHELPS
Its: EX. U.P.

Dated: 8/20/08

U.S. Environmental Protection Agency

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

Dated: 8/25/08

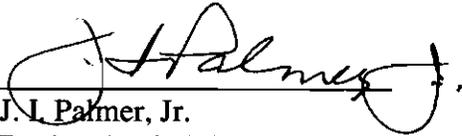
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Louisville, Kentucky 40228) Recovery Act, 42 U.S.C. § 6928(a)
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EPA ID No.: KYD 985 092 006)
Respondent.)
_____)

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 29 day of August, 2008.

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

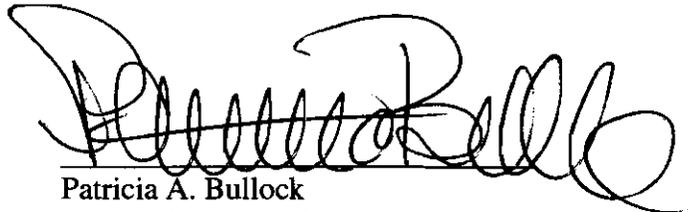
In the Matter of ACT Holdings, LLC
Docket Number: RCRA-04-2008-4011

CERTIFICATE OF SERVICE

I hereby certify that in SEP 04 2008, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of ACT Holdings, LLC, Docket Number: RCRA-04-2008-4011, and that on SEP 04 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. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via Certified Mail- Return Receipt Requested)
Mark Jacobi
ACT Holdings, LLC
5609 Fern Valley Road
Louisville, Kentucky 40228



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

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EPA ID No.: KYD 985 092 006)	
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_____)	

ATTACHMENT 1 – SUPPLEMENTAL ENVIRONMENTAL PROJECT

The provisions of this Attachment 1 provide additional details concerning implementation of the Supplemental Environmental Project (SEP) contemplated by the Consent Agreement/Final Order (CA/FO) in this matter. These provisions are supplementary to the requirements of the CA/FO and shall not be construed to obviate or alter the provisions of the CA/FO. These provisions may be altered or amended upon the mutual written agreement of ACT Holdings, LLC (Respondent) and the Environmental Protection Agency (EPA), Region 4 (Complainant).

Summary of Project

Respondent will implement a Supplemental Environmental Project (SEP) to purchase the emergency response equipment listed below and donate the same to the Okolona Fire Department, Hazardous Materials Response Team, Okolona, Kentucky. Respondent sought input from the community regarding community needs, and has subsequently worked with the Fire Department to develop a list of the most needed equipment that maybe obtained within Respondent’s budget.

Environmental Benefit

Okolona is a small town outside Louisville, Kentucky, with a population of approximately 18,000 residents. Its Fire Department is not well funded, yet it is the primary emergency response entity for the area, which includes, as well as the ACT Holdings laboratory, other business entities that produce, store or utilize hazardous materials. The equipment contemplated by the SEP will enable the Fire Department to respond more effectively and more safely in the future to any incidents involving hazardous materials, and therefore will benefit the local population and local environment by eliminating or minimizing the impact of any such incidents. The SEP therefore qualifies as a Pollution Reduction SEP.

Qualified Purpose

The proposed SEP has an adequate nexus, or logical connection, to the alleged violations in this matter. Respondent operates a small chemical laboratory, and its alleged violations related to improper hazardous waste determinations, handling, storage and failure to prevent and clean up small spills of hazardous chemicals. The SEP will reduce the potential for adverse impact of spills of hazardous materials at Respondent's facility as well at other facilities in the area, by providing the local first responder with the appropriate equipment to minimize spill impacts. EPA will have no role in managing, administering or controlling the funds set aside by Respondent for the SEP. EPA will oversee the implementation of the SEP through Respondent's submittal of the SEP Completion Report, as set forth in the CA/FO. Neither EPA nor any other Federal agency is required to perform the activities which comprise the SEP.

Terms of Supplemental Environmental Project

I. Purchase and Donation

Respondent shall purchase the following equipment for donation:

Items	Place	Amount	Cost	Total Cost	Running Total
Calibration Gas	All Safe Ind.				
Isobutylene	All Safe Ind.	4	\$152.50	\$610.00	\$610.00
Muilt gas	All Safe Ind.	4	\$250.00	\$1,000.00	\$1,610.00
Class A Foam (Selfex)	ORR	2	\$800.00	\$1,600.00	\$3,210.00
Containment Pools	ORR	2	\$112.73	\$225.46	\$3,435.46
5" fire hose (100')	American Bravest	3	\$565.00	\$1,695.00	\$5,130.46

All purchases shall be completed and delivered to the Okolona, KY, Fire Department as soon as practicable after the effective date of the CA/FO, but no later than sixty (60) days after the effective date of the CA/FO.

II. Costs

Respondent shall record and track all costs associated with the implementation of the SEP and shall include those costs in the SEP Completion Report.

III. Final Reporting and Conclusions.

Respondent shall also include in the SEP Completion Report, in addition to data required by the CA/FO, analysis of the success of the project. In this analysis Respondent shall discuss, in addition to the costs and dates of purchase and delivery, any available information concerning