

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:	)	Docket Number: RCRA-04-2008-4003(b)
	)	
Florida Tile, Inc.	)	Proceeding under Section 3008(a)
1247 Alton Road	)	of the Resource Conservation and
Lawrenceburg, Kentucky 40342	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No.: KYD 045 735 305	)	
Respondent.	)	

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**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 Florida Tile, Inc. (Florida Tile), a Delaware corporation with offices at 1247 Alton Road, Lawrenceburg, Kentucky, and registered to do 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 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.

7. 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.

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 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.

10. 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**

11. 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.

12. Respondent is the “owner” and “operator” of a “facility” located at 1247 Alton Road, Lawrenceburg, Kentucky (the “Facility”), as those terms are defined in 40 CFR § 260.10 and 401 KAR 30:005.

13. On February 24, 2006, Respondent acquired the Facility in a purchase of assets from Florida Tile Industries, Inc.

14. Respondent provided financial assurance in the form of a letter of credit and stand-by trust agreement on October 3, 2006.

15. Pursuant to 40 CFR § 270.40(b) and 401 KAR 38:040, when a transfer of ownership occurs, the new owner or operator must demonstrate compliance with subpart H requirements within six months of the date of the change of the ownership or operational control of the facility.

16. Respondent submitted its financial assurance documentation thirty-nine (39) days after the expiration of the six month period following its acquisition of the Facility.

17. On or about June 28, 2007, EPA issued a Notice of Violation and Opportunity to Show Cause to Florida Tile, Inc. After discussions and exchange of information between the parties, EPA and Florida Tile have negotiated the terms of this agreement.

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

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

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

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

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

21. 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.

22. 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.

23. 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.

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

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

#### PAYMENT OF CIVIL PENALTY

26. Respondent consents and agrees to the payment of a civil penalty in the amount of EIGHT THOUSAND DOLLARS (\$8,000), payable within 30 calendar days after the effective date of this CA/FO.

27. 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

28. 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).

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

## **VI. RESERVATION OF RIGHTS**

30. 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.

31. 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.

32. 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.

33. 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.

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

#### **VII. PARTIES BOUND**

35. 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.

36. 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.

37. 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.

#### **VIII. SEVERABILITY**

38. 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.



**IX. SERVICE OF DOCUMENTS**

39. 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 the 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

**X. TERMINATION AND SATISFACTION**

40. 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.

**XI. EFFECTIVE DATE**

41. 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:**

**Florida Tile, Inc.**

By: Bernard C Schwartz Dated: 3/12/2008  
(print name) Bernard C Schwartz

**U.S. Environmental Protection Agency**

By: Caroline Y.F. Robinson Dated: 3/26/08  
Caroline Y.F. Robinson, Chief  
RCRA/OPA Enforcement and Compliance Branch  
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

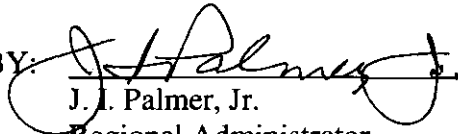
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)  
EPA ID No.: KYD 045 735 305 )  
Respondent. )  
\_\_\_\_\_ )

**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 27th day of March, 2008.

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

In the Matter of Florida Tile, Inc.  
Docket Number: RCRA-04-2008-4003(b)

**CERTIFICATE OF SERVICE**

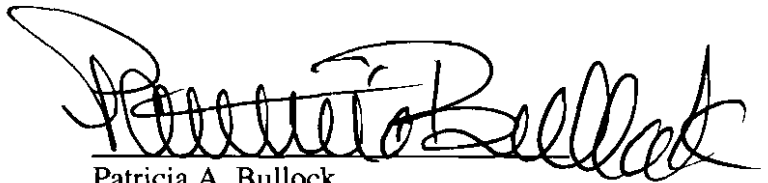
I hereby certify that on MAR 31 2008, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Florida Tile Inc., Docket Number: RCRA-04-2008-4003(b), and that on MAR 31 2008 I served a true and correct copy of the CA/FO on the parties listed below in the manner 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)

Carolyn M. Brown, Esq.  
Greenebaum Doll & McDonald  
300 West Vine Street  
Suite 1100  
Lexington, Kentucky 40507



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