

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE DIVISION
OF WATER RESOURCE
MANAGEMENT

vs.

OGC FILE NO. 22-3023

ALICO, INC.

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Alico, Inc., a Florida profit corporation, (“Respondent”) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapters 373, 378, and 403, Florida Statutes (“F.S.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“F.A.C.”). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a corporation and is a “person” within the meaning of Sections 376.301(28) and 403.031(5), F.S.
3. Respondent is operating a limestone mine on the property commonly known as Bronson Mine, (“Facility”). The Facility is located at Parcel Numbers A25-42-31-A01-001A-0000 and A24-42-31-A00-0010-0000 in Glades County, Florida. The Department has assigned Site Number MMR_272605 to the Facility.
4. As of the filing of this Order, the Respondent has failed to file a conceptual mining and reclamation plan (Plan), in accordance with Rule 62C-36, F.A.C., with the Department.
5. A file review and subsequent mining and reclamation inspection was conducted at

the Facility on June 14, 2019 and April 13, 2022. This inspection and file review revealed Respondent failed to obtain an environmental resource permit prior to conducting an expansion of approximately 4 acres of uplands at the Facility, in violation of Rule 62-330.020(2), F.A.C., Section 373.413(2), F.S., and Section 403.161(1)(b), F.S. In addition, Respondent failed to provide a conceptual mining and reclamation plan for review prior to disturbing new surface areas, in violation of Rule 62C-36.003(2)(b) F.A.C., and Section 378.501(2)(a), F.S.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

6. Respondent shall maintain site access to the Facility until all terms of the Order have been satisfied.

7. Respondent shall comply with the following corrective actions within the stated time periods:

- a) Within 15 days of the effective date of this Order, Respondent agrees that its application for an environmental resource permit (MMR_272605-002) is hereby withdrawn.
- b) Within 30 days of the effective date of this Order, Respondent shall submit an application for an environmental resource permit pursuant to Chapter 373, F.S., and a conceptual mining and reclamation plan pursuant to Chapter 378, F.S., to the Department's Mining and Mitigation Program for the purpose of continuing mining operations.
- c) Within 60 days of the Department's response to the environmental resource permit application and conceptual mining and reclamation plan described in subparagraph 7b of this Order, Respondent shall submit a revised environmental resource permit application and final conceptual mining and mitigation plan.
- d) Within 150 days of the Department's response to the environmental resource permit application and conceptual mining and reclamation plan described in subparagraph 7b of this Order, unless another date is approved in writing by the Department for good cause shown by Respondent, an environmental resource permit shall be obtained. If at this time an environmental resource

permit is not obtained, operations in the expanded area shall cease until the proper authorizations are obtained from the Department for the expanded mining activities described in paragraph 5 of this Order.

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$7,500 in settlement of the regulatory matters addressed in this Order. This amount includes \$6,500 for civil penalties and \$1,000 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalties are apportioned as follows:

- a) \$1,500 for violation of Rule 62-330.020(2), F.A.C., Section 373.413(2), F.S., and Section 403.121(3)(c), F.S., for unauthorized construction of a stormwater management system;
- b) \$3,500 for violation of Rule 62-330.020(2), F.A.C., Section 373.413(2), F.S., Section 403.161(1)(b), F.S., and Section 403.121(4)(c), F.S., for failure to obtain a required permit before construction;
- c) \$1,500 for violation of Rule 62C-36.003(2)(b) F.A.C., Section 378.501(2)(a), F.S., and Section 403.121(4)(e), F.S., for failure to submit required notification to the Department in the form of a conceptual mining and reclamation plan prior to the disturbance of new surface areas;

9. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day for the first two weeks, and then \$250 per day for each and every day thereafter, Respondent fails to timely comply with any of the requirements of paragraph(s) 6 through 8 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 10, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 8 of this Order.

10. Respondent shall make all payments required by this Order by cashier's check, money order, or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be

made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final and effectively filed with the Clerk of the Department before ability to make online payment is available.

11. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Marisa Rhian, Program Administrator, Department of Environmental Protection, Mining and Mitigation Program, 2600 Blair Stone Road, MS 3577, Tallahassee, Florida 32399, MiningAndMitigation@FloridaDEP.gov.

12. Respondent shall allow all authorized representatives of the Department access to the Facility at reasonable times upon reasonable notice to Respondent for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

13. In the event of a sale or conveyance of the Facility or of the property upon which the Facility is located (“Property”), if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or Property does not relieve Respondent of the obligations imposed in this Order.

14. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as “contractor”) to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond control of Respondent (unless the cause of the contractor’s late performance was also beyond the contractor’s control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next two working days and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b)

the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

15. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for alleged violations up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

16. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

17. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order. Based upon the site inspection conducted on June 14, 2019, the Department is not aware at this time of any such violations at this time. Notwithstanding the foregoing, nothing herein shall waive the Department's right to bring an appropriate action should the Department discover an additional or subsequent violation.

18. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000 per day per violation, and criminal penalties.

19. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also

acknowledges and waives its right to appeal the terms of this Order pursuant to Section 120.68, F.S.

20. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

21. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of Section 403.161(1)(b), F.S.

22. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;

- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at 160 West Government St., Pensacola, Florida 32502. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

23. Rules referenced in this Order are available at <https://floridadep.gov/ogc/ogc/content/rules>.

FOR THE RESPONDENT, Alico, Inc.:

John E. Keenan
Name: John E Keenan
Title: President & CEO

Date: February 13, 2023

DONE AND ORDERED this 14th day of February, 2023, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

John A. Coates Digitally signed by John A. Coates
Date: 2023.02.14 12:43:47 -05'00'

John A. Coates, P.E.
Program Management Director
Division of Water Resource Management

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Marjane C. Taylor Digitally signed by Marjane C. Taylor
Date: 2023.02.15 10:05:26 -05'00'

Clerk

February 15, 2023
Date

Copies furnished to:

Lea Crandall, Agency Clerk

Mail Station 35