



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District Office
160 West Government Street, Suite 308
Pensacola, FL 32502

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

January 9, 2024

Dale Jayne, Senior Environmental Manager
Ready Mix USA, LLC.
7503 Chapman Highway
Knoxville, TN 37920
Dale.Jayne@cemex.com

RE: Executed Consent Order; DEP vs. Ready Mix USA, LLC; Facility ID
FLG110091; OGC File No. 23-0344; Walton County

Dear Mr. Tyson:

Enclosed is the executed Consent Order (Order), which addresses issues related to unpermitted operations at the Ready Mix USA, LLC (Seagrove Facility). Please note the requirements of the Order for which you are responsible for and fulfill all pertinent actions accordingly. All Order time requirements begin the date that it is clerked by our Department unless otherwise noted.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Mike Brumfield at (850) 595-0557 or by email at Mike.Brumfield@FloridaDEP.gov.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr".

on behalf of

Elizabeth Mullins Orr
Director
Northwest District

EMO/mb

Enclosures: Executed Consent Order

cc: Michael Long, P.E., michaelg.long@ext.cemex.com
Marc Tyson, Marc.Tyson@cemex.com
Michael F. Egan, michaelf.egan@cemex.com
Lawrence E. Sellers, Jr., larry.sellers@hklaw.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHWEST DISTRICT
)	
v.)	OGC FILE NO. 23-0344
)	
READY MIX USA, LLC)	
)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Ready Mix USA, LLC ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds the following:

I. 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 Chapter 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 person within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of Ready Mix USA, LLC Seagrove (FLG110091), a Concrete Batch Plant ("Facility"). The Facility is located at 750 Coochee Road, Santa Rosa Beach, in Walton County, Florida ("Property"). Respondent owns the Property on which the Facility is located.

4. The Facility was constructed in 1998 and obtained a series of generic permits authorizing discharges from concrete batch plants, including a generic permit issued on November

5, 2013, with an effective date of April 28, 2014. As of April 28, 2023, Respondent had not obtained a renewal wastewater permit from the Department to operate the Facility. The Respondent submitted another Notice of Intent to Use Generic Permit for Discharges from Concrete Batch Plants on July 5, 2022, in response to a Warning Letter issued on April 13, 2022.

5. The Department alleges that the following occurred:

a) Respondent operated the Facility without a valid wastewater permit renewal from the Department since April 28, 2019, in violation of Rule 62-621, F.A.C, and 62-4, F.A.C.

b) Respondent failed to operate the Type I pond in accordance with the permitted design causing water to be retained past the 32-hour limit in violation of Rule 62 621.260, F.A.C.

c) Respondent failed to maintain vegetation and overgrowth along the banks of the Type I system in violation of Rule 62-621.260, F.A.C.

d) Respondent failed to grade the site to prevent ponding in ribboning area and failed to ensure all Type I wastewater remains within the Type I containment system, in violation of Rule 62-621.260, F.A.C

e) Respondent failed to properly maintain the aggregate retaining wall, allowing aggregate to spill into the adjacent Intercoastal Waterway. The activity was conducted on the above-described property within the landward extent of the Intercoastal Waterway, waters of the State, as defined by Section 403.031(13), F.S.

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

ORDERED:

6. A wastewater permit to operate the Facility is required by Sections 403.087 and 403.088, F.S., and Chapters 62-620 and 62-621, F.A.C. This Order is not intended to directly or indirectly authorize the temporary or permanent operation of the Facility. Respondent has applied to the Department for a wastewater permit to operate the Facility as required by Sections 403.087 and 403.088, F.S., and Chapters 62-620 and 62-621, F.A.C. The Department is currently satisfied with the current NOI and RAI response and will issue a renewed permit to operate within 60 days of the effective date of this Order.

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

a) Within 120 days of the effective date of this Order, Respondent shall complete all restoration activities in accordance with the approved restoration plan (Attachment D).

b) With the exception of the activities described in Attachment I, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from the Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a lease, easement, or other consent of use from the Department. Nothing in this Order represents an admission by Respondent concerning the ownership of title to lands below the ordinary mean high water line and Respondent reserves the right to assert any claim it may have

concerning the ownership of lands below the ordinary or mean high water mark in any future proceedings.

8. The issuance of the renewal permit described in Paragraph 6 and Respondent's completion of all corrective actions required by paragraph 7a by the deadline specified thereunder shall constitute full compliance with Rule 62-4, F.A.C. and 62-620, F.A.C.

9. Within 60 days of the effective date of this Order, Respondent shall pay the Department \$50,500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$50,000.00 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes and resolves all violations listed in this Order. Penalties have been capped at \$50,000.00 for timely resolution of this Consent Order.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 7 or 9 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 11 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 9 of this Order.

11. Respondent shall make all payments required by this Order by cashier's check, check, money order or on-line payment. Cashier's check, 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 (OGC# 23-0344) 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.tldeportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Erin Rasnake, Assistant Director, Department of Environmental Protection, Northwest District, 160 W. Government St., Suite 308, Pensacola, FL 32502. All submittals shall be copied to the Northwest District Compliance mailbox at NWD_WastewaterCompliance@FloridaDEP.gov. Notices to Respondent shall be sent to Dale Jayne, Senior Environmental Manager, Ready Mix USA, LLC, 7503 Chapman Highway, Knoxville, TN 37920, with a copy to Ready *Mix* USA, LLC, 1720 Centrepark Drive East, West Palm Beach, FL 33401, Attention: General Counsel.

13. Respondent shall allow all authorized representatives of the Department, upon presentation of credentials or other documents as may be required by law, access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

14. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, 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 the Property does not relieve Respondent of the obligations imposed in this Order.

15. 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 the 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 working day 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.**

16. 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 the violations described above 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.

17. 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**.

18. 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.

19. 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 \$15,000.00 per day per violation, and criminal penalties.

20. 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.

21. 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.

22. 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(l)(b), F.S.

23. 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.

24. 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 name and address of each agency affected and each agency's file or identification number, if known;

b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

c) A statement of when and how the petitioner received notice of the agency decision;

d) A statement of all disputed issues of material fact. If there are none, the **petition must so indicate;**

e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at AgencyClerk@floridadep.gov, 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 Northwest District, 160 West Government Street, 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 62110.106(12), Florida
Administrative Code.

25. Rules referenced in this Order are available at

<http://www.dep.state.fl.us/legal/Rules/rnlelist.htm>.

FOR THE RESPONDENT:

Marc Bryant Tyson 1-8-2024
By: Marc Bryant Tyson Date
Title: Pres of Ready Mix USA

DONE AND ORDERED this 9th day of January 2024, in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Erin Lashake on behalf of

Elizabeth Mullins Orr
Director Northwest District

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

Finda S. Hamilton

Clerk

January 9, 2024
Date

Copies furnished on this same date to:

Lea Crandall, Agency Clerk
Mail Station 35

Dale Jayne, dale.jayne@cemex.com
Michael F. Egan, michaelf.egan@cemex.com
Lawrence E. Sellers, Jr., larry.sellers@hklaw.com

Ready Mix USA, LLC – Seagrove Facility
750 Coochee Road Santa Rosa Beach, FL
Permit No. FLG110091
Intercoastal Restoration Plan
Removal of Spilled Pea Gravel
10-30-2023

This document sets forth the process for the removal of spilled pea gravel (gravel) in an area adjacent to the aggregate storage area at the Ready Mix USA, LLC (RMUSA) site located at 750 Coochee Road Santa Rosa Beach, FL. Gravel is located in an area approximately 300 feet long with accumulation ranging from 1/2 inch thick to 1-1/2 inches. The removal will occur in the area from the mean high tide mark to the low tide mark. Figure 1 below shows a picture of the shoreline which has been annotated to show the approximate mean high tide mark.



Figure 1: Area of removal.

Figures 2 and 3 below are pictures that show the depth of the gravel in the impacted area.



Figure 2: Pea Gravel Depth (pic 1)



Figure 3: Pea Gravel Depth (pic 2)

Removal Process:

The removal process will take place during low tide. Removal of the pea gravel will occur approximately two hours before and 2 hours after the low tide each day of the clean-up.

- 1) Stakes will be driven into the ground at the mean high tide mark every fifty feet. This will provide a reference point for the removal area and provide a method to track the progress of the removal.
- 2) The top layer of gravel (1/2" to 1/ 1/2") will be hand shoveled or picked up by hand and placed in 5-gallon buckets or equivalent containers.
- 3) The gravel placed in the buckets or containers will be transferred into a larger container located above the high tide mark close to the bin block wall. The larger container will be lifted over the wall with equipment located inside the bin block area. No equipment will be used in the removal area. The larger container will be emptied inside the aggregate storage area.
- 4) Removal will occur within each of the 50-foot marked sections one at a time. Pictures will be taken after completion of removal in each 50-foot section to document completion of the removal.