

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

FILED

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U.S. EPA REGION 5
HEARING CLERK

In the Matter of:	)	Docket No. CWA-05-2026-0008
	)	
Terminal Ready-Mix, Inc.	)	Proceeding to Assess a Class II Civil Penalty
524 Colorado Avenue	)	under Section 309(g) of the Clean Water
Lorain, Ohio 44052	)	Act, 33 U.S.C. § 1319(g)
	)	
Respondent.	)	
_____	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Terminal Ready-Mix, Inc. (Terminal Ready-Mix), a corporation in Lorain, Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. In addition to this CAFO, EPA and Respondents entered into an Administrative Order on Consent ("AOC") requiring Respondents to take certain actions to prevent the recurrence of the violations described in this CAFO. On July 25, 2024, Respondents submitted to EPA a satisfactory completion report for the actions required under that AOC.

7. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

8. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

9. Effective Date: In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if

applicable, 30 days after the request or petition is denied. The date of issuance is the date the final order is signed by the Regional Judicial Officer or Regional Administrator.

Jurisdiction and Waiver of Right to Hearing

10. Respondent admits the jurisdictional allegations in this CAFO and admits the factual allegations in this CAFO.

11. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

12. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state may permit discharges into navigable waters, subject to specific conditions. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

14. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Ohio requested approval from EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by EPA on March 11, 1974, 39

Fed. Reg. 26,061 (July 16, 1974). Therefore, pursuant to the State's permit program, the Ohio Environmental Protection Agency (OEPA) has issued OEPA NPDES permits.

15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C.

§ 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

Factual Allegations

16. Respondent is a corporation and therefore a "person" under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

17. At all times relevant to this Order, Respondent owned and operated the Terminal Ready-Mix facility, a producer of ready-mix concrete and a concrete road paving contractor, located in Lorain, Ohio (Facility).

18. The Black River is a "navigable water" under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. At all times relevant to this order, Respondent was granted coverage under the OEPA NPDES Industrial Stormwater General Permit # OHR000006 (Permit).

20. At all times relevant to this Order, two (2) stormwater basins at the Facility collect industrial stormwater. Stormwater then exits these basins and is discharged via four (4)

outfalls into the Black River: Outfall 001, Outfall 002, Outfall 003, and Outfall 004 (Facility Outfalls).

21. At certain times, Respondent allowed sand, sediment, and gravel material to enter the industrial stormwater runoff stream, which were then released into the Black River through Facility Outfalls.

22. The EPA conducted a Clean Water Act Compliance Evaluation Inspection at the Facility on June 22, 2022 (EPA Inspection).

23. Section 2.1.2 of the Permit describes the “Control Measures/Best Management Practices (BMPs)” to be utilized for managing storm water discharges. This includes the following requirements:

- a. Section 2.1.2.1 of the Permit requires Respondent to minimize the exposure of material storage areas (including loading, unloading, and storage,) to rain, snow, snowmelt, and runoff. This includes the use of grading, berming, or curbing to prevent runoff of contaminated flows and divert run-off away from these areas; and
- b. Section 2.1.2.2 of the Permit requires Respondent to keep clean all exposed areas that are potential sources of pollutants, using such measures as sweeping at regular intervals, keeping materials orderly and labeled, and storing materials in appropriate containers.

24. During the EPA Inspection, inspectors observed that there was insufficient containment and that the storm water runoff from the Facility resulted in contact with the stone and sand piles in the lower material storage area, resulting in sediment runoff and erosion into the Black River.

25. During the EPA Inspection, the following observations were made:
- a. Dandy bags covering the inlets to the storm water basins appeared to not be regularly maintained, as sediment build-up had occurred;
 - b. Excess sediment accumulation had occurred at the sediment trap; and
 - c. Containers of additive mixture and wash mix did not have secondary containment.

26. Section 2.1.2.9 of the Permit requires Respondent to, on an annual basis, conduct employee training covering both the specific control measures used to achieve the conditions in the Permit, and the monitoring, inspection, planning, reporting, and documentation requirements in the Permit. At the date of the EPA Inspection, Respondent had no record or evidence that such training had ever been conducted; however, Respondent provided such information in the course of negotiating this CAFO.

27. Section 4.1.1 of the Permit requires Respondent to conduct Routine Facility Inspections of all areas of the Facility where industrial materials or activities are exposed to storm water and of all storm water control measures at least once each calendar quarter. At the date of the EPA Inspection, Respondent had no record or evidence that such Routine Facility Inspections had ever been conducted; however, Respondent provided such information in the course of negotiating this CAFO.

28. Section 4.2.1 of the Permit requires Respondent to conduct Quarterly Visual Assessments of storm water discharges. As of the EPA Inspection, Respondent had no record or evidence that such Quarterly Visual Assessments had ever been conducted; however, Respondent provided this information in the course of negotiating this CAFO.

29. Section 6.2.1.2 of the Permit requires Respondent to conduct Benchmark

Monitoring of industrial storm water during 4 of the first 12 quarterly monitoring periods of the Permit's coverage, take an average of the monitoring concentration values, compare these averages to the benchmark concentration, and take additional actions if the average monitoring values exceed the benchmark concentration. Respondent failed to complete any calculations of the average measured concentrations and did not compare their data to the benchmark concentrations. Therefore, Respondent never determined if they were meeting or exceeding the benchmark concentrations, as required by the Permit.

Count 1: Unlawful Discharge of Pollutants into the Black River

30. The statements in paragraphs 1 through 29 are hereby incorporated by reference as if set forth in full.

31. The material described in paragraph 21 are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

32. The Facility Outfalls are all discernible, confined and discrete conveyances, and each constitutes a "point source" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. Respondent's addition of sand and sediment, from April 30, 2021, through July 30, 2024, from the Facility Outfalls into the Black River constitutes a "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

34. Because Respondent owns and operates a facility with outfalls that act as point sources for the discharge of pollutants to navigable waters, Respondent and the facility have been subject to the CWA and the NPDES program at all times relevant to this Order. Thus, any such discharge has been and is subject to the CWA and its implementing regulations, in

addition to the specific terms and conditions prescribed in the Permit.

35. Respondent is a person who discharged the pollutants described in Paragraph 21 from a point source into navigable waters, in violation of its Permit and in violation of Section 301 of the CWA, 33 U.S.C. 1311.

36. Each day a pollutant remains in the navigable waters and/or each day the pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

37. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$27,378 per day of violation up to a total of \$342,218, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after January 8, 2025, or other amounts as applicable. See 40 C.F.R. Part 19.

38. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$32,000.

39. Within 30 days after the Effective Date of this CAFO, Respondent must pay the \$32,000 civil penalty ("Assessed Penalty"). See Paragraphs 8 and 9 for an explanation of the "Effective Date."

40. Respondent must pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

41. When making a payment, Respondent must:

- a. Identify every payment with Respondent's name and the document number of this CAFO, CWA-05-2026-0008.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent must serve proof of such payment to the following persons:

Regional Hearing Clerk, U.S. EPA
r5hearingclerk@epa.gov

Jake Berger, Water Enforcement and Compliance Branch, U.S. EPA
berger.jake@epa.gov

L. Oviedo, Office of Regional Counsel, U.S. EPA
oviedo.luis@epa.gov

Cincinnati Finance Center, U.S. EPA
CINWD_AcctsReceivable@epa.gov

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

42. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or

other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest will become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS “standard” underpayment rate.
 - b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
 - c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.
43. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government),

which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty will not be subject to review.

44. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to principal that is the outstanding Assessed Penalty amount.

45. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO are not deductible for purposes of federal taxes.

General Provisions

46. The parties consent to service of this CAFO by email at the following valid email addresses: oviedo.luis@epa.gov (for Complainant) and mdooley@counsel365.law (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

47. Full payment of the penalty as described in Paragraphs 8 and 39 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United

States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

48. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in Paragraphs 8 and 39 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CAFO.

49. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

50. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

51. The terms of this CAFO bind Respondent and its successors and assigns.

52. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

53. Each party agrees to bear its own costs and attorneys fees in this action.

54. This CAFO constitutes the entire agreement between the parties.

55. When final and effective, this CAFO is a "final order" for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

56. See Paragraphs 8 and 9 for an explanation of how the CAFO becomes final and effective.

Signature Page

In the Matter of:
Terminal Ready-Mix, Inc.
Docket No. CWA-05-2026-0008

Terminal Ready-Mix, Inc.; Respondent

John M. Falbo
President and Co-Owner
Terminal Ready-Mix, Inc.

Date

United States Environmental Protection Agency, Complainant

Carolyn Persoon
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 5

In the Matter of:
Terminal Ready-Mix, Inc.
Docket No. CWA-05-2026-0008

Final Order

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R.

§ 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5