

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2018-0005
)	
Sierra Pacific Ready Mix, Inc.,)	
d/b/a Allied Redy-Mix.	)	COMPLAINT, CONSENT AGREEMENT,
	)	AND FINAL ORDER
Oakland, California)	
	)	<i>Class II Administrative Penalty Proceeding</i>
Respondent.	)	<i>under Section 309(g) of the Clean Water Act,</i>
	)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
	)	<i>22.13(b) and 22.18</i>

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Sections 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter “Complainant.”
3. Respondent is Sierra Pacific Ready Mix, Inc., d/b/a Allied Redy-Mix.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States.
7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
8. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include concrete manufacturing facilities classified under SIC Major Group 32.
9. Pursuant to CWA § 402(p)(4), 33 U.S.C. § 1342(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or an individual permit.
10. The State of California has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ (“1997 General Permit”), which was in effect through June 30, 2015, and subsequently revised by the SWRCB on April 1, 2014, Water Quality Order No. 2014-0057-DWQ (the “General Permit”). The revised General Permit became effective on July 1, 2015.
11. Entities seeking coverage under the General Permit must submit a Notice of Intent (NOI) to California at least fourteen (14) days prior to commencing discharge, pursuant to 40 C.F.R. § 122.28(b)(2) and the 1997 General Permit NOI Instructions.
12. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$177,500 in total, against a person for CWA Section 301(a) violations that occurred on or before December 6, 2013. For violations that occurred after December 6, 2013, EPA may assess a penalty up to \$16,000 per day of violation, not to exceed \$187,500. For violations that occurred after November 2, 2015, EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

13. Respondent is a California corporation and, therefore, a person within the meaning of CWA

§ Section 502(5), 33 U.S.C. § 1362(5). Respondent operates a ready-mix concrete manufacturing facility at 3213 Wood Street, Oakland, California 94608 (the “Facility”).

14. Respondent has been engaged in manufacturing ready-mixed concrete at the Facility since at least July 25, 2012, a date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 3273 (Ready-Mixed Concrete) and therefore “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).
15. Stormwater runoff discharges from the Facility’s entrance to the curb and gutter of an adjacent street. The stormwater then flows into storm drain inlets connected to the Alameda County municipal separate storm sewer system (MS4). Such curbs, gutters, inlets, pipes, and the Alameda County MS4 are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
16. Stormwater runoff from the Facility is a “stormwater discharge associated with industrial activity,” as defined by 40 C.F.R. § 122.26(b)(14)(ii).
17. Stormwater discharges from the facility include rock, sand, and dirt, and therefore contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
18. Discharges from the Facility enter the Alameda County MS4 and discharge into the San Francisco Bay. The San Francisco Bay is a “water of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and implementing regulations.
19. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
20. On March 23, 2017, representatives of EPA Region 9 inspected the Facility to evaluate Respondent’s compliance with the General Permit. EPA inspectors found that Respondent had not submitted an NOI to California seeking authorization to discharge industrial stormwater under the General Permit. EPA inspectors observed that the facility engaged in producing ready-mixed concrete. EPA inspectors also observed uncovered concrete material stockpiles and an unpermitted non-stormwater discharge from a leaking water-storage tank.
21. On or around July 5, 2017, Respondent submitted an NOI to California seeking coverage under the General Permit for the Facility. On or around July 10, 2017, the SWRBC granted Respondent coverage under the General Permit and assigned WDID Number 2 011027235 for the Facility. Prior to July 10, 2017, stormwater discharges from Respondent’s Facility were not authorized by the General Permit or an individual NPDES permit.
22. Between July 25, 2012 and July 10, 2017, the National Oceanic and Atmospheric Administration recorded at least seventy-six (76) days with rainfall in excess of 0.5 inches in the area of the Facility. Upon information and belief, each of these seventy-six (76) days resulted in a discharge of stormwater associated with industrial activity from the Facility.

IV. ALLEGED VIOLATIONS

23. Between July 25, 2012 and July 10, 2017, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a), on at least seventy-seven (77) days by discharging pollutants from a point source into waters of the United States without NPDES permit authorization.

V. ADMINISTRATIVE PENALTY

24. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of \$72,169 within thirty (30) calendar days of the Effective Date, as defined in Section XIII below, of this CA/FO.

25. Respondent shall make penalty payment by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York 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)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter "SFO Form Number 1.1." in the search field
Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

26. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
27. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Connor Adams
Enforcement Division (ENF-3-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

28. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
29. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of

Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

30. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

31. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations of the complaint;
- b. neither admits nor denies specific factual allegations contained in the complaint;
- c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
- d. waives any right to contest the allegations set forth in this CA/FO; and
- e. waives its right to appeal this proposed Final Order.

IX. RESERVATION OF RIGHTS

32. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO resolves only Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
33. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

X. ATTORNEY FEES AND COSTS

34. Unless otherwise specified, each party shall bear its own attorney fees and costs.

XI. EFFECTIVE DATE AND TERMINATION

35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XII. PUBLIC NOTICE

36. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.

37. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

//s//

03/20/2018

Kathleen Johnson
Director, Enforcement Division

Date

For Respondent Sierra Pacific Ready Mix, Inc., d/b/a Allied Redy-Mix.

//s//

2/22/2018

Randy Burgo
Chief Executive Officer

Date

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2018-0005
)	
Sierra Pacific Ready Mix, Inc.,	)	CONSENT AGREEMENT
d/b/a Allied Redy-Mix.	)	AND FINAL ORDER
)	
Oakland, California	)	<i>Class II Administrative Penalty Proceeding</i>
	)	<i>under Section 309(g) of the Clean Water Act,</i>
Respondent.	)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
	)	<i>22.13(b) and 22.18</i>
)	

The United States Environmental Protection Agency Region 9 (EPA) and Sierra Pacific Ready Mix, Inc., d/b/a Allied-Redy Mix (Respondent), having entered into the foregoing Consent Agreement, and the EPA having duly publicly noticed the proposed Consent Agreement and Final Order,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. CWA-09-2018-0005) be entered; and
2. Respondent pay an administrative civil penalty of \$72,169 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order is effective on the date that it is filed with the Regional Hearing Clerk. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

Regional Judicial Officer, Region 9
U.S. Environmental Protection Agency

Date: _____