

ONIS "TREY" GLENN, III
DIRECTOR



BOB RILEY
GOVERNOR

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Montgomery, Alabama 36130-1463
(334) 271-7700
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June 3, 2008

CERTIFIED MAIL NO.: 7005 0390 0000 9281 6323
RETURN RECEIPT REQUESTED

MS ERIN CHRISTIE
COUCH READY MIX USA INC
PO BOX 101868
BIRMINGHAM AL 35210


RE: Consent Order 08-166-CAP

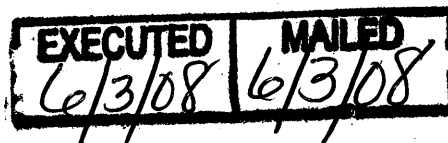
Dear Ms. Christie:

Please find enclosed ADEM Consent Order No. 08-166-CAP which requires Couch Ready Mix USA, Inc., to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Couch Ready Mix USA, Inc. and the Department. Please refer to Order Items A. and B. for the dates by which the monetary penalties must be paid.

If you have any questions concerning this matter, please contact Shane Jordan at (334) 274-4228 in Montgomery.

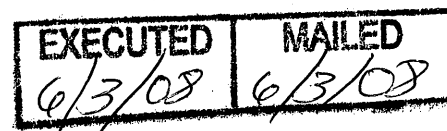
Sincerely,


Ronald W. Gore, Chief
Air Division



Enclosure

cc: Olivia Rowell, Office of General Counsel



Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (Fax)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (Fax)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (Fax)

Mobile - Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF
ENVIRONEMNTAL MANAGEMENT**

IN THE MATTER OF:)

Couch Ready Mix USA, LLC.)

Montgomery,)

Montgomery County, Alabama)

Tallassee,)

Elmore County, Alabama)

CONSENT ORDER NO. 08-166-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Couch Ready Mix USA, LLC. (hereinafter "Couch RM USA") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol. and 2007 Cum. Supp.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol. and 2007 Cum. Supp.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Couch RM USA operates portable concrete batch plants located in Tallassee, Elmore County, Alabama and Montgomery, Montgomery County, Alabama, (hereinafter, "the Facilities").

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol. and 2007 Cum. Supp.).

3. Pursuant to Ala. Code § 22-22A-4(n), (2006 Rplc. Vol. and 2007 Cum. Supp.), the Department is the state air pollution control agency for the purposes of the

federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol. and 2007 Cum. Supp.).

4. ADEM Admin. Code r. 335-3-4-.01 (1) (a) states:

Except as provided in subparagraphs (b), (c), (d), or (e) of this paragraph, no person shall discharge into the atmosphere from any source of emissions, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six minute average.

5. ADEM Admin. Code r. 335-3-4-.01 (1)(b) states:

During one six (6) minute period in any sixty (60) minute period, a person may discharge into the atmosphere from any source of emission, particulate of opacity not greater than that designated as forty percent (40%).

6. On June 13, 2006, the Department issued a Notice of Violation (hereinafter, "NOV") to Couch RM USA for the Montgomery facility because of excessive emissions documented by Department personnel on May 30, 2006. The six minute average was 75% opacity.

7. On July 14, 2006, the Department received a response to the June 13, 2006 NOV from Couch RM USA.

8. On December 3, 2007, the Department issued a NOV to Couch RM USA for the Tallassee facility because of excessive emissions documented by Department personnel on November 16, 2007. The six minute average was 80% opacity.

9. On December 20, 2007, the Department received a response to the December 3, 2007, NOV from Couch RM USA.

10. On January 17, 2008, the Department issued a NOV to Couch RM USA for the Montgomery facility because of excessive emissions documented by Department personnel on December 21, 2007. The six minute averages were 85% and 81% opacities.

11. On January 23, 2008, the Department received a response to the January 17, 2008 NOV from Couch RM USA.

12. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

13. Couch RM USA has agreed to the terms of this Consent Order in an effort to resolve the violations herein without the unwarranted expenditure of its funds in further defending the above alleged violations. Couch RM USA neither admits nor denies the Department's allegations embodied in this Consent Order.

CONTENTIONS

14. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol. and 2007 Cum. Supp.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any

civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation.

15. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department is not aware of any evidence of irreparable harm to human health or the environment due to these violations.

B. THE STANDARD OF CARE: By not maintaining and operating the facility in such a manner as to comply with ADEM Admin. Code r. 335-3-4-.01(1)(a) and (b), Couch RM USA did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit to Couch RM USA as a result of these alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Subsequent to the issuance of the January 17, 2008 NOV, Couch RM USA stated that it took steps to resolve the noncompliance issues, which included improving the maintenance of existing equipment and installation of new equipment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Couch RM USA Montgomery facility has been issued two NOVs, dated January 17, 2008 and June 13, 2006. The Montgomery facility has also been issued three Warning Letters, dated July 27, 2007, May 29, 2007 and March 16, 2006. The Couch RM USA Tallassee facility has been issued one NOV, dated December 3, 2007, and one Warning Letter, dated May 24, 2006.

F. THE ABILITY TO PAY: Couch RM USA has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, Couch RM USA, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol. and 2007 Cum. Supp.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Couch RM USA agree to enter into this ORDER with the following terms and conditions:

A. Couch RM USA agrees to pay the Department a civil penalty in the amount of \$15,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit court of Montgomery County to recover the civil penalty.

B. Couch RM USA agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Couch RM USA agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code chap. 335-3-4 immediately upon the effective date of this Consent Order and each and every day hereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. This Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the known violations which are cited in this Consent Order.

F. Couch RM USA agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Couch RM USA agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Couch RM USA also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Couch RM USA shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Couch RM USA, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Couch, RM USA) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Couch RM USA, the Department may extend the time as justified by the

circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Couch RM USA agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Couch RM USA shall not object to such future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Couch RM USA agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Couch RM USA does hereby waive any hearing on the terms and conditions of same.

J. The Department and Couch RM USA agree that this Order shall not affect the Couch RM USA's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Couch RM USA agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Couch RM USA agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and Couch RM USA agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and Couch RM USA agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Couch RM USA of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Couch Ready Mix, USA, LLC.

Erin Christie

(Signature of Authorized Representative)

Erin Christie

(Printed Name)

Environmental Director

(Printed Title)

Date Signed: 4/10/08

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Onis "Trey" Glenn, III

Director

Date Signed: 6/3/08