FILED
August 17, 2022
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: Julie Golden
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Signal Hill Area Alliance,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 21-352**
	§	
Easy Mix Concrete Services, LLC,	§	
	§	
Defendant.	§	
	§	

CONSENT DECREE

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BACKGROUND

1. Plaintiff Signal Hill Area Alliance (hereinafter "SHAA") is a private, non-profit alliance of neighbors created to safeguard the quality of life of residents in the Signal Hill area and to promote mutual interests and address concerns related to the impact that development has upon the Signal Hill area.

2. Defendant Easy Mix Concrete Services, LLC (hereinafter "Easy Mix") is a limited liability corporation registered in Texas engaged in the business of supplying concrete materials. Easy Mix holds Texas Pollutant Discharge Elimination System ("TPDES") Permit ID No. TXR05D064 from the Texas Commission on Environmental Quality for operation of Easy Mix's Signal Hill facility located at 10656 Signal Hill Road, Austin, Texas 78737 (hereinafter the "Signal Hill Facility").

3. SHAA brought this federal Clean Water Act lawsuit pursuant to 33 U.S.C. §1365(a)(1) against Easy Mix alleging unauthorized discharges in violation of its TPDES permit for Easy Mix's Signal Hill Facility. The lawsuit was filed April 21, 2021.

4. In the interest of settling and resolving all civil claims and controversies regarding the violations alleged above and otherwise alleged in SHAA's Notices of Intent to Sue dated January 22, 2021 and October 20, 2021, the Parties hereby consenting to the entry of this Consent Decree; and the Court hereby finding that settlement of all claims alleged without further litigation or trial of any additional issues is fair, reasonable and in the public interest and the entry of this Consent Decree is the most appropriate way of resolving the claims alleged, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

5. Jurisdiction exists under 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between SHAA

and Easy Mix. The requested relief is proper under 28 U.S.C. §§ 2201, 2202, and 33 U.S.C. §§ 1319(d), 1365(a), (d).

6. Venue lies in the Western District of Texas, pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this claim occurred at the Signal Hill facility, located in the extra-territorial jurisdiction of the City of Austin, Texas, in Hays County, within the Western District of Texas.

II. APPLICATION AND SCOPE

7. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors, and assigns.

III. DEFINITIONS

8. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "**Bulk Cement Material**" includes all aggregate and all aggregated bulk cement material stored or processed at the Signal Hill Facility for ultimate use in the production of concrete.

b. "**Days**" means calendar days, unless otherwise stated, including weekends and holidays. Computation of time begins the calendar day after receipt by one representative.

c. "**Unauthorized Discharge(s)"** means any and all discharges alleged to be in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit ID No. TXR05D064 held by Easy Mix.

d. "**Force Majeure Event**" means any event that would otherwise be a violation of this agreement but was caused solely by an act of God, war, strike, riot, or other catastrophe. (30 Tex. Admin. Code § 70.7).

e. "**Mitigation Projects**" means environmental remediation projects that provide benefits that would not otherwise be available but for this Consent Decree.

a. **"Remediation Consultant**" means a qualified, environmental remediation firm mutually agreed upon and chosen through the process set forth in Section IV(C), Paragraphs 15-20, paid for by Easy Mix.

IV. REMEDIAL MEASURES

A. REDUCED OPERATIONS

9. Within 270 Days from the effective date of this Consent Decree, Easy Mix will reduce current operations at the Signal Hill facility to sixty-six percent (66%) of its 2021 operations to be measured by throughput of Bulk Cement Material. Within 548 Days from the effective date of this Consent Decree, Easy Mix will reduce current operations at the Signal Hill facility to thirty-three percent (33%) of its 2021 operations to be measured by throughput of Bulk Cement Material. During each quarter subsequent to 18 months after the effective date of this Consent Decree, Easy Mix will limit quarterly operations to 33% of its operations in the corresponding quarter of 2021, to be measured by throughput of Bulk Cement Material.

10. An accounting of 2021 throughput will be determined by Easy Mix and reported to SHAA within 30 days of the effective date of this Consent Decree ("2021 Accounting"). Easy Mix agrees to allow an independent audit of this accounting at SHAA's full expense, including any associated legal fees, if SHAA requests such an audit within 60 days of the effective date of this Consent Decree.

11. On or before January 31, 2023 and quarterly thereafter as long as the Signal Hill facility is in operation, Easy Mix will provide SHAA with a quarterly accounting of throughput demonstrating compliance with the operating reductions identified in Paragraph 9, above. Easy Mix agrees to allow an independent audit of this accounting at SHAA's full expense, including

any associated legal fees, if SHAA requests such an audit within 60 days of receipt of a quarterly accounting from Easy Mix.

B. SITE PLAN IMPLEMENTATION

12. Easy Mix will adhere to the "Sequence of Construction" approved by the City of Austin in Permit No. SP-2019-0102D. Easy Mix shall complete the Sequence of Construction within 304 Days from the effective date of this Consent Decree.

13. A mid-construction conference between Easy Mix and the City of Austin will be held no later than one-hundred fifty-two (152) Days from the effective date of this Consent Decree. At such meeting, any changes in the Sequence of Construction will be determined. Within seven (7) Days, Easy Mix will report to SHAA any changes that may extend completion of the Sequence of Construction beyond 304 Days from the effective date of this Consent Decree.

14. In addition, SHAA understands and agrees that deviations from the timeline for completing the Sequence of Construction above may be required to account for delays resulting from a Force Majeure Event, governmental inaction, including but not limited to delayed consent to move forward with implementation and/or construction from the City of Austin or other governmental body or agency, and modifications resulting from the mid-construction conference described in Paragraph 13.

C. REMEDIATION OF PAST DISCHARGES

15. SHAA alleges that Easy Mix's past discharges have impacted particular areas that are located within the broader area labeled as "Affected Area" in Attachment A to this Consent Decree. SHAA acknowledges that not all areas within the "Affected Areas" identified in Attachment A to this Consent Decree have been impacted to a material degree.

16. Easy Mix agrees to remediate the areas identified in Attachment A that the Remediation Consultant determines to have been negatively impacted by the Easy Mix discharges to a material degree.

17. Within fourteen (14) Days from the effective date of this Consent Decree, SHAA and Easy Mix will each propose two (2) recommendations for a Remediation Consultant. Within thirty (30) Days of exchanging recommendations, the Parties will agree upon the selection of the Remediation Consultant. If the Parties cannot agree, then the determination of the Remediation Consultant will be made through the Dispute Resolution process.

18. The Remediation Consultant shall not be Dr. Lauren Ross (Plaintiff's Witness).

19. Easy Mix will retain the Remediation Consultant pursuant to a scope of work agreed to by SHAA in advance within fourteen (14) Days of the written agreement of both Parties to the Remediation Consultant or a signed Court Order designating the Remediation Consultant.

20. Within thirty (30) Days of the conclusion of any remediation pursuant to this Consent Decree, the Remediation Consultant shall create a final report that includes a summary of the remediation. This report shall be provided to the Parties and the Court.

D. MITIGATION PROJECTS

21. Easy Mix will contribute fifty-thousand dollars ($50,000) to the Greater Edwards Aquifer Alliance ("GEAA") for dedication to the San Antonio Soil Carbon Mapping Project (a joint project of the City of San Antonio, the United States Department of Agriculture Natural Resource Conservation Service, and the Greater Edwards Aquifer Alliance), and GEAA's "Under Our Feet" program educating the public on steps to avoid contamination of the Edwards Aquifer ("Mitigation Projects"). This contribution will be made within sixty (60) days of the effective date of this Consent Decree.

V. COSTS OF SUIT

22. Within thirty (30) Days of the effective date of this Consent Decree, Easy Mix shall pay SHAA's reasonable attorneys' fees and costs in the amount of $98,500. Except as identified in Paragraph 28, any post-entry legal fees will be borne by the party incurring such fees.

VI. DISPUTE RESOLUTION

23. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

24. Informal Dispute Resolution. Any dispute under this Consent Decree shall first be the subject of good faith informal negotiations. The dispute shall be considered to have arisen when the SHAA or Easy Mix sends the other Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter(s) in dispute. The period of informal negotiations shall not exceed sixty (60) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then either Party may ask the Court for final resolution of the issue.

25. Judicial Review. Either SHAA or Easy Mix may seek judicial review of any dispute under this Consent Decree by filing with the Court and serving on the other Party, a motion requesting judicial resolution of the dispute arising under this Consent Decree.

26. No Effect on Deadlines. The invocation of dispute resolution procedures under this Paragraph shall not, by itself, extend, postpone, or affect in any way any obligation of Easy Mix or SHAA under this Consent Decree, unless and until final resolution of the dispute so provides.

VII. MISCELLANEOUS

27. This Consent Decree is entered in full and final settlement of the civil claims for violations of the Clean Water Act, 33 U.S.C. 1365, et seq., as alleged in the complaint filed by

SHAA and any and all Notices of Intent to Sue up through the date of entry of this Consent Decree, but shall not affect rights or obligations not specifically addressed herein, as to which the Parties specifically reserve their rights.

28. If any legal action is commenced to interpret, enforce, or recover damages for the breach of any term of this Consent Decree, the prevailing Party shall be entitled to recover reasonable attorney's fees incurred in connection with that action, in addition to costs of suit.

VIII. CONTINUING JURISDICTION

29. The Court shall retain jurisdiction to effectuate and enforce the terms and conditions and achieve the objectives of this Consent Decree, and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation, or execution of this Consent Decree.

IX. MODIFICATION

30. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties and with approval by the Court.

X. TERMINATION

31. Request for Termination. Easy Mix may serve upon SHAA a request for termination after completion of all Remedial Measures listed in Section IV.

32. Joint Motion for Termination. Following receipt of the request for termination, the Parties shall confer informally concerning the request and attempt in good faith to address any disagreement that the Parties may have as to whether Easy Mix has complied with the requirements for termination of this Consent Decree. If SHAA agrees that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint motion to terminate this Consent Decree.

33. Easy Mix Motion for Termination. In the event that the Parties cannot agree as to whether Easy Mix has complied with the requirements for termination of this Consent Decree, Easy Mix may move to terminate this Consent Decree on its own motion to the Court.

34. In the event the Court grants termination of this Consent Decree, Easy Mix and SHAA agree that the requirements in Paragraph 9 will survive this Consent Decree and remain enforceable and agree Easy Mix, if requested by SHAA, will provide SHAA with a quarterly accounting of throughput demonstrating compliance with the operating reductions identified in Paragraph 9 and which accounting may be subjected to independent audit at SHAA's full expense, including any associated legal fees, if SHAA requests such an audit within 60 days of receipt of a quarterly accounting from Easy Mix.

XI. NOTICES AND SERVICE OF PROCESS

35. Unless otherwise specified in this Consent Decree or otherwise changed by notice to all Parties, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows, using electronic mail where such addresses are provided:

Counsel for SHAA:

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XII. SIGNATORIES

36. Each of the undersigned representatives certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to execute this Consent Decree, and to legally bind to this Consent Decree the Party, affiliate or entity he or she represents.

IT IS SO ORDERED:

Signed this 17th day of August, 2022.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED Parties enter into this Consent Decree and submit it to the Court for entry.

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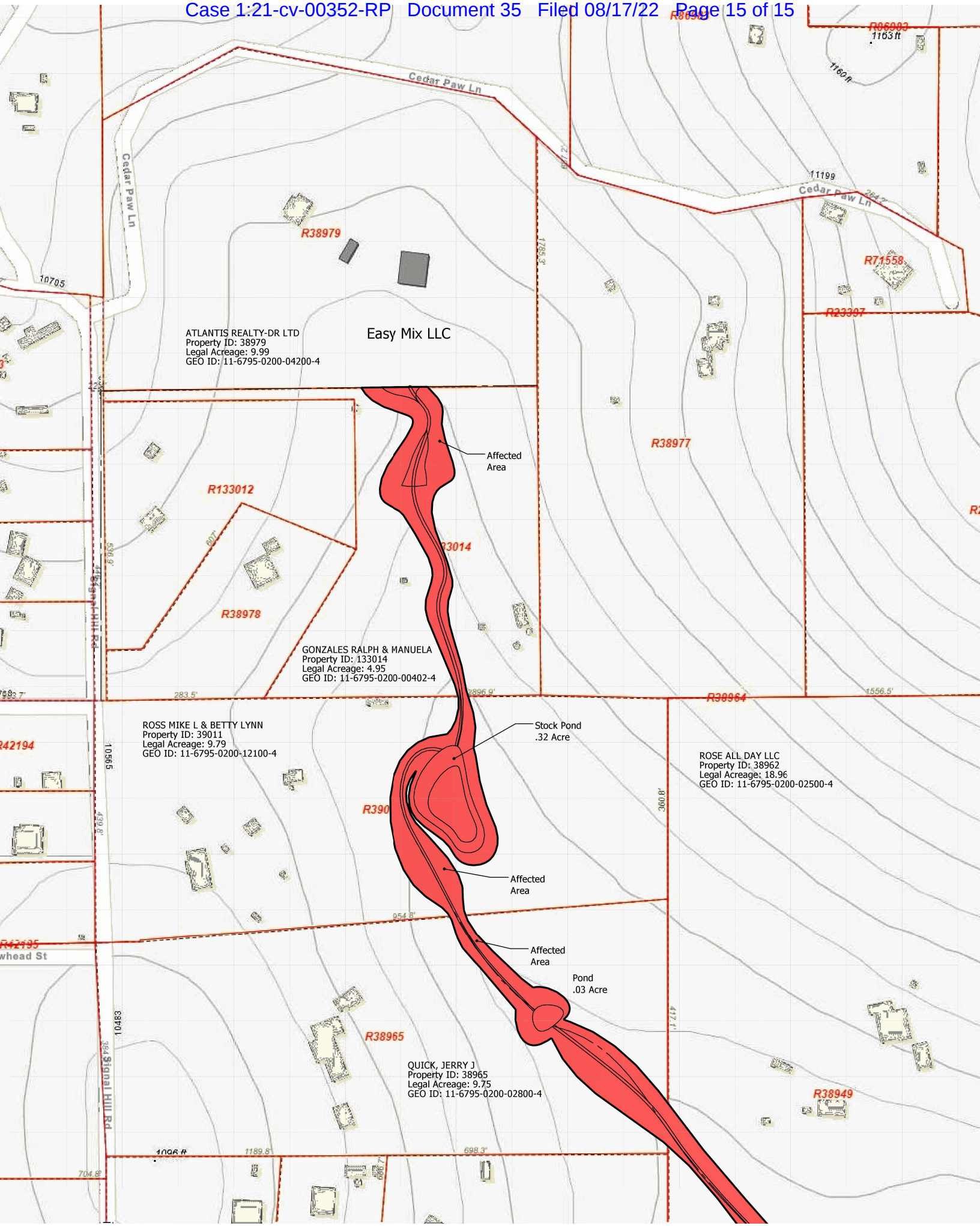
ATTACHMENT A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Cedar Paw Ln
Cedar Paw Ln
R38979
R71558
R23397
ATLANTIS REALTY-DR LTD
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Legal Acreage: 9.99
GEO ID: 11-6795-0200-04200-4
Easy Mix LLC
R38977
Affected Area
R133012
R38978
GONZALES RALPH & MANUELA
Property ID: 133014
Legal Acreage: 4.95
GEO ID: 11-6795-0200-00402-4
R38964
ROSS MIKE L & BETTY LYNN
Property ID: 39011
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Stock Pond
.32 Acre
ROSE ALL DAY LLC
Property ID: 38962
Legal Acreage: 18.96
GEO ID: 11-6795-0200-02500-4
Affected Area
Affected Area
Pond
.03 Acre
R38965
QUICK, JERRY J
Property ID: 38965
Legal Acreage: 9.75
GEO ID: 11-6795-0200-02800-4
R38949
Signal Hill Rd