

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRH PLC,

CRH AMERICAS MATERIALS, INC.,

and

POUNDING MILL QUARRY CORPORATION,

Defendants.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" means Salem Stone or another entity to which defendants divest the Divestiture Assets.

B. "CRH" means defendant CRH plc, an Irish public limited company with its headquarters in Dublin, Ireland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “CRH Americas” means defendant CRH Americas Materials, Inc., a Delaware corporation with its principal place of business in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Pounding Mill” means defendant Pounding Mill Quarry Corporation, a Virginia corporation with its headquarters in Bluefield, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Salem Stone” means Salem Stone Corporation, a Virginia corporation with its headquarters in Dublin, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Closing” means the closing of the transaction between CRH Americas and Pounding Mill pursuant to which CRH Americas acquires the assets of Pounding Mill.

G. “Divestiture Assets” means all assets associated with or utilized by Pounding Mill’s Rocky Gap quarry, including, but not limited to:

1. All real property, including:
 - (a) All real property that is subject to the deed of record, dated December 14, 1991, and registered in Bland County, Virginia in Deed Book 134, Page 138, less and except the right of way of the Norfolk and Western Railway as described in the deed recorded in Deed Book 20, Page 586; and those properties described in deeds

recorded in Deed Book 21, Page 77; Deed Book 31, Page 478;

Deed Book 32, Page 388; and Deed Book 53, Page 220;

(b) All real property that is subject to the deed of record, dated July 8, 1989, and registered in Bland County, Virginia in Deed Book 99, Page 626, except the property described in the deed recorded in Deed Book 34, Page 295; and

(c) All real property that is subject to the deed of record, dated February 8, 2017, and registered in Bland County, Virginia under Instrument Number 170000077, except those properties described in deeds recorded in Deed Book 53, Page 334; Deed Book 53, Page 360; Deed Book 57, Page 138; Deed Book 59, Page 96; Deed Book 59, Page 98; Deed Book 61, Page 397; Deed Book 62, Page 171; Deed Book 60, Page 653; and Deed Book 62, Page 168.

2. All tangible assets that have been primarily used at or in connection with the Rocky Gap quarry at any time since July 31, 2016, including, but not limited to, all equipment, vehicles, and buildings; tooling and fixed assets, personal property, inventory, office furniture, materials, and supplies; geologic maps, core drillings, and core samples; aggregate reserve testing information, results, and analyses; research and development activities; licenses, permits, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including but not limited to all contracts that have been fulfilled in part or in whole with aggregate produced at the Rocky Gap quarry; customer lists, accounts, and credit records; repair and

performance records, records relating to testing or approvals by the West Virginia Department of Transportation or Virginia Department of Transportation, and all other records; and

3. All intangible assets that have been primarily used at or in connection with the Rocky Gap quarry at any time since July 31, 2016, including, but not limited to, all patents, licenses, sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures, research data concerning historic and current research and development, quality assurance and control procedures, design tools and simulation capability, and manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Divestiture Assets to the Acquirer for the purpose of establishing a viable competitor in the aggregate business and to remedy the effects in both the aggregate and asphalt concrete markets that the United States alleges would otherwise result from CRH's acquisition of Pounding Mill's assets. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets will remain an independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by CRH, and that competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States: (1) confirmation that publication of the newspaper notice has been arranged; and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the

date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment as though the same were in full force and effect as the final order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event: (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestiture required by the Final Judgment has been accomplished:

A. Prior to Closing Pounding Mill shall, and after Closing CRH and CRH Americas shall, preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct, and apart from those of CRH's and CRH Americas' other operations. CRH and CRH Americas shall not coordinate their production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Prior to Closing Pounding Mill shall, and after Closing CRH and CRH Americas shall, maintain and operate the Divestiture Assets in such a manner to ensure that they are maintained as an ongoing, economically viable, competitive business and an active competitor in the aggregate business. Defendants shall ensure that management of the Divestiture Assets will not be influenced by CRH or CRH Americas, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution, or sales of products by the Divestiture Assets will be kept separate and apart from CRH's and CRH Americas' operations.

C. Prior to Closing Pounding Mill shall, and after Closing CRH and CRH Americas shall, use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under Divestiture Assets, and shall maintain at 2016 or previously approved

levels for 2017, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Prior to Closing Pounding Mill shall, and after Closing CRH and CRH Americas shall, provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as an economically viable and competitive, ongoing business, consistent with the requirements of Paragraphs V(A) and (B).

E. Prior to Closing Pounding Mill shall, and after Closing CRH and CRH Americas shall, take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

H. Pounding Mill's employees with primary responsibility for the operation of the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Pounding Mill's regular, established job posting policy.

I. Prior to Closing Pounding Mill shall, and after Closing CRH and CRH Americas shall, maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day

of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

J. Defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Divestiture Assets that will be responsible for its compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

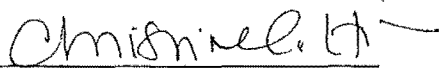
Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until: (1) consummation of the divestiture required by the proposed Final Judgment; or (2) until further order of the Court. If the United States voluntarily dismisses the

Complaint in this matter, defendants are released from all further obligations under this Hold
Separate Stipulation and Order.

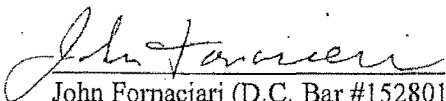
Dated: June 27, 2018

Respectfully submitted,

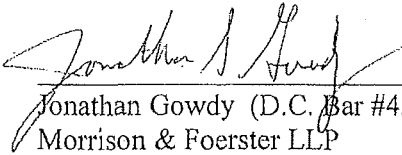
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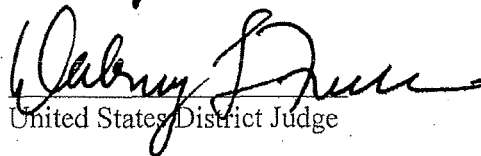
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ORDER

IT IS SO ORDERED by the Court, this 27 day of June, 2018.



United States District Judge