

In the Matter of:

Docket No. **CWA-04-2024-1021(b)**

**FLORIDA MULCH, INC.,
ST. CLOUD, FLORIDA.**

Respondent.

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), (CWA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Water Enforcement Branch of the United States Environmental Protection Agency, Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 309(g)(2)(A) of the CWA.
5. Respondent is Florida Mulch, Inc. (Respondent), a corporation duly organized and existing under the laws of the State of Florida and doing business in the State of Florida. This proceeding pertains to Respondent's facility located at 4754 North Kenansville Road, St. Cloud, Florida 34773 (Facility).

III. GOVERNING LAW

6. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant

Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing the EPA or authorized state to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Florida, through the Florida Department of Environmental Protection (FDEP), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.
8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a “discharge of pollutants” as “[a]ny addition of any pollutant to navigable waters from any point source ... ”
9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure from which pollutants are or may be discharged.”
10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”
11. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), an NPDES permit is required for “a [stormwater] discharge associated with industrial activity” which, as defined at 40 C.F.R. § 122.26(b)(14), means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.
12. Pursuant to 40 C.F.R § 122.26(b)(14)(ii), “[f]acilities classified within Standard Industrial Classification ... 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373,” are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. § 122.26(b)(14).
13. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Florida was provided a prior opportunity to consult with the Complainant regarding this matter.
14. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

IV. FINDINGS OF FACTS

15. As the State authorized to implement the CWA NPDES Program, the FDEP issued the Florida Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity (Permit) pursuant to Florida Administrative Code 62-621-.300(5). The Permit became effective May 8, 2020, and expires on June 1, 2025. Coverage under the Permit is obtained by submitting

a Notice of Intent (NOI) to FDEP.

16. The Permit is a Florida statewide NPDES general permit governing stormwater point source discharges associated with industrial activities. To be eligible to discharge under the Permit, a facility must: (1) have a stormwater discharge associated with industrial activity from its primary industrial activity, as defined in Appendix A of the Permit, provided that the primary industrial activity is included in Appendix D of the Permit; or (2) be notified by the FDEP that it is eligible for coverage under Sector C of the Permit. The Permit also authorizes stormwater discharges from any industrial activity designated by FDEP where the designation is based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Waters of the State.
17. At all times relevant to this action, the Respondent owned and/or operated a mulch production facility known as Florida Mulch Inc., as identified by Standard Industrial Classification (SIC) Codes 2875 and 2499, and located at 4754 North Kenansville Road, St. Cloud, Florida 34773, at latitude 28.09366 and longitude -81.050830. The Facility, which began operations around 1996, has outdoor raw material storage, outdoor chipping and mixing operations, fuel storage, and some equipment staging.
18. On July 10, 2019, the EPA and FDEP performed a Compliance Stormwater Evaluation Inspection (CSWEI) to evaluate Respondent's compliance with the requirements of Section 301(a) of the CWA, 33 U.S.C § 1311(a) and the regulations promulgated under the CWA at 40 C.F.R. § 122.26.
19. During the CSWEI of the Facility, EPA's inspectors observed:
 - (a) Outdoor raw material storage, outdoor chipping and mixing operations, fuel storage, and equipment staging with several internal drainage ditches containing tannic colored water which flowed to a discharge point located on the southwest side of the Facility.
 - (b) The Facility is a mulch production facility (SIC Code 2499 and 2875) but had not submitted an NOI for coverage under the existing Permit or obtained a No Exposure Certification.
20. On April 14, 2020, the EPA sent a Notice of Potential Violation and Information Request Letter (Information Request), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to the Respondent.
21. Based on the CSWEI and due to the hydrology of the Facility and historic rainfall data, the EPA determined that stormwater associated with industrial activity generally discharged from the Facility through a drainage ditch and outfall on the southwest side of the Facility, to Bull Creek, a traditional navigable water and water of the United States as defined by Section 502(7) and the CWA, 33 U.S.C. § 1362(7) and its implementing regulation at 40 C.F.R. § 230.3(s) (2014).
22. The Respondent requested coverage under the Florida Multi-Sector Generic Permit (MSGP) for Stormwater Discharge Associated with Industrial Activity, through the submission of a Notice of Intent to FDEP on May 8, 2020. As a State authorized to implement the CWA NPDES Program,

FDEP issued Respondent a notice of permit authorization under permit number FLR051619 on May 8, 2020.

23. On June 16, 2020, Respondent entered into an Administrative Order on Consent (AOC) with the EPA, Docket No. CWA-04-2020-0308, to correct violations of Section 402 of the CWA, 33 U.S.C. § 1342, at the Facility and to comply with the Permit. The AOC did not resolve Respondent's liability for civil penalties.

V. ALLEGED VIOLATIONS

24. At all times relevant to this action, the Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
25. At all times relevant to this action, the Respondent owned and operated the Facility.
26. As a result of the CSWEI, EPA's review of the information obtained from the Information Request, and EPA's review of historic rainfall data, the EPA has determined that stormwater associated with industrial activity was discharged from the Facility into waters of the United States, within the meaning of Section 402 of the CWA, 33 U.S.C. § 1342, and its implementing regulations.
27. Based on the CSWEI and review of additional information, the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), due to Respondent's failure to comply with the CWA implementing regulations, and due to discharges not authorized by a NPDES permit. Specifically, the EPA alleges the following violations:
- (a) From September 2019 to May 2020, stormwater discharges associated with the Facility's mulch production (Standard Industrial Codes 2875 and 2499) were not covered under a permit nor a No Exposure Certification, and therefore failed to comply with the requirements of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).
 - (b) In the EPA Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements, 0.5 inches during a 24-hour period is used as the general benchmark for likely stormwater runoff to result in a discharge. Based on historic rainfall data available from the National Weather Service for this area, thirteen (13) days during the period of September 2019 to May 2020 had one or more daily rain events greater than 0.5 inches. In accordance with Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations, the EPA has determined from the CSWEI, the hydrology of the Facility, and historic rainfall data that stormwater associated with industrial activity discharged from the Facility through a drainage ditch and outfall on the southwest side of the Facility on thirteen (13) days during the period of September 2019 to May 2020. The discharges were to Bull Creek, a traditional navigable water and water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7). Therefore, the Respondents have violated Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), by discharging

stormwater without proper authorization to waters of the United States.

VI. STIPULATIONS

28. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
29. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the conditions specified in this CAFO;
 - (e) waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waives its rights to appeal the Final Order accompanying this CAFO.
30. For the purpose of this proceeding, Respondent:
- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (d) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO;
 - (e) agrees to comply with the terms of this CAFO; and
 - (f) 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.

31. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.
32. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CAFO based on comments received during the public comment period.

VII. TERMS OF PAYMENT

33. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of \$35,000, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
34. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by standard U.S. Postal Service delivery, the payment shall be addressed to:

United States Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-standard mail delivery (e.g. FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: U.S. Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

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

Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
REX (Remittance Express): 1-866-234-5681

If paying on-line with a debit card or credit card: No username, password, or account number is necessary for this option. On-line payment can be accessed via www.pay.gov, entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

35. Respondent shall send proof of payment within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov and

Lonnie Dorn
Enforcement and Compliance Assurance Division
Water Enforcement Branch
U.S. EPA Region 4/LSASD
Dorn.Lonnie@epa.gov

36. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, 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 Facility name and “Docket No. CWA- 04-2024-1021(b).”

37. Pursuant to 33 U.S.C. § 1319(g)(9), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any portion overdue:

(a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed

currently prevailing rates.

- (b) Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9); and
- (c) Attorneys' Fees and Costs of Collection. The United States' attorneys' fees and costs of collection.

38. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency, 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 to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 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, 40 C.F.R. § 13.17; and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

39. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

40. Effective upon signature of this CAFO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the Effective Date shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA related to the matters addressed in this CAFO and that, in any action brought by EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

VIII. EFFECT OF CAFO

41. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

42. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but, shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
43. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
44. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
45. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
46. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
47. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
48. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agree that this CAFO does not contain any confidential business information or personally identifiable information.
49. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
50. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
51. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

52. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
53. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
54. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

55. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**Remainder of Page Intentionally Left Blank.
Complainant and Respondent will Each Sign on Separate Pages.**

The foregoing Consent Agreement In the Matter of Florida Mulch, Inc., Docket No. CWA-04-2024-1021(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature: Willard Palmer Date: 11-14-2024

Willard Palmer
President and CEO for Florida Mulch, Inc.
4754 North Kenansville Road, St. Cloud, Florida 34773

The foregoing Consent Agreement In the Matter of Florida Mulch, Inc., Docket No. CWA-04-2024-1021(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

For _____
Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

FLORIDA MULCH, INC.,

Respondents.

Docket No. **CWA-04-2024-1021(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §22.4(b) and §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **FLORIDA MULCH, INC., Docket No. CWA-04-2024-1021(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent:

Ryan Bird
4085 US Hwy 1, Ste 101
Rockledge, FL 32955
321-844-2288
Ryan@ryanbirdlaw.com

To EPA:

Lonnie Dorn
Waterways and Wetlands Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
980 College Station Rd.
Athens, Georgia 30605
706-355-8683
Dorn.Lonnie@epa.gov

Ms. Bianca Jaikaran
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W. Atlanta, Georgia 30303
404-562-9680
Jaikaran.Bianca@epa.gov

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov