

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

75 Hawthorne Street  
San Francisco, California 94105

\*\* FILED \*\*  
10MAY2018 - 03:15PM  
U.S.EPA - Region 09

IN THE MATTER OF:	)	
	)	DOCKET NO. CWA-09-2018- 0011
Global Organics, LLC d/b/a BioFlora	)	
Goodyear, Arizona	)	<b>COMPLAINT, CONSENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
Respondent.	)	
	)	<i>Class I Administrative Penalty Proceeding</i>
	)	<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>

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY AND PARTIES**

1. This is a Class I civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(A), 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 307 of the Act, 33 U.S.C. § 1317. The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Assistant Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Global Organics, LLC d/b/a/ BioFlora.
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. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits any owner or operator of any source to operate any source in violation of any effluent standard or prohibition or pretreatment standard promulgated under Section 307(b) of the Act, 33 U.S.C. § 1317(b).
6. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled General Pretreatment Regulations.
7. The General Pretreatment Regulations at 40 C.F.R. Part 403 relevant to this matter include:
  - a. 40 C.F.R. § 403.3(q) (Publicly Owned Treatment Works), which defines a POTW to mean a treatment works as defined by CWA § 212, 33 U.S.C. § 1292, which is owned by a State or municipality, including any devices, methods, and /or systems that, at a minimum, store, treat, or dispose of municipal or industrial wastes, including waste in combined storm water and sanitary sewer systems.
  - b. 40 C.F.R. § 403.3(f) (Control Authority), which defines a Control Authority, in relevant part, to mean either, EPA, the State, or the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of 40 C.F.R. § 403.11, *i.e.*, approval by the State if EPA has approved its pretreatment program.
  - c. 40 C.F.R. § 403.3(j) (Industrial User), which defines an industrial user as a source of Indirect Discharge, which in turn is defined at 40 C.F.R. § 403.3(i) to mean the introduction of pollutants into a POTW from any non-domestic source regulated under CWA §§ 307(b), (c), or (d), 33 U.S.C. § 1317(b), (c), or (d).
  - d. 40 C.F.R. § 403.3(v)(i) (Significant Industrial User), which defines a significant industrial user as, in relevant part, an Industrial User subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. subchapter N.
  - e. 40 C.F.R. § 403.5(d) (Local limits), which provides that where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with the General Pretreatment Regulations at 40 C.F.R. § 403.5(c), such [local] limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the CWA.
  - f. 40 C.F.R. § 403.6(b) (Compliance with Categorical Standards), which requires, in relevant part, compliance with categorical standards within the shortest feasible time, not to exceed 90 days from the commencement of discharge.
  - g. 40 C.F.R. § 403.12(b) (Baseline Report), which requires Categorical Industrial Users to submit a baseline report containing specific information to the Control Authority at least 90 days prior to commencing discharge.

- h. 40 C.F.R. § 403.12(d) (Compliance Report), which requires Categorical Industrial Users to submit a report describing compliance with applicable categorical standards, 90 days after commencing discharging.
    - i. 40 C.F.R. § 403.12(e)(1) (Periodic Reporting), which requires Categorical Industrial Users to submit a report, during the months of June and December, indicating the nature and concentration of pollutants in the effluent discharged from the industrial user's facility to the POTW.
8. On December 5, 2002, EPA approved the State of Arizona's pretreatment program administered by the Arizona Department of Environmental Quality (ADEQ). 67 Fed. Reg. 79629 (Dec. 30, 2002). In December 2013, ADEQ approved the City of Goodyear's (City) Pretreatment Program.
9. As part of its Pretreatment Program, the City established local limits for arsenic (0.02 mg/L), zinc (2.4 mg/L), and total suspended solids (680 mg/L), enacted by ordinance on March 3, 2014. Such limits are set forth in Chapter 12A-2-6 of the City Code.
10. EPA established categorical pretreatment standards for facilities manufacturing mixed and blend fertilizers at 40 C.F.R. § 418.76. Discharges of wastewater to the POTW must not exceed 30 mg/L of ammonia as nitrogen or 35 mg/l of total phosphorus.
11. Pursuant to CWA Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19.4, the EPA may assess a Class I civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$37,500 in total, against a person for CWA Section § 307 violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, the EPA may assess a penalty up to \$20,965 per day of violation, not to exceed \$52,414 in total.

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

12. Respondent is an Arizona corporation and therefore, a person within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5). Respondent operates a mixed and blend fertilizer manufacturing facility located at 16121 W. Eddie Albert Way in Goodyear, Arizona, hereinafter "Facility."
13. The City of Goodyear owns and operates a POTW for the purpose of treating industrial and domestic wastewater. At all times relevant to this matter, Respondent discharged industrial wastewater to the POTW operated by the City of Goodyear and is therefore an "industrial user" as defined by 40 C.F.R. § 403(3)(j).
14. Respondent's wastewater contains arsenic, zinc, total suspended solids, nitrogen and phosphorus and therefore contains "pollutants," as defined by CWA § 502(6).
15. Respondent has been engaged in manufacturing mixed and blend fertilizer at the Facility since at least 1998, a date best known to Respondent. Respondent's operations at the Facility

fall within activities classified under 40 C.F.R. § 418.76, and Respondent is therefore an “significant industrial user” for purposes of 40 C.F.R. § 403.3(v)(i).

16. On January 11, 2017, EPA issued an information request pursuant to CWA § 308, 33 U.S.C. § 1318, seeking information about Respondent’s discharges to the POTW. Respondent informed EPA that it discharged approximately 400 gallons per day of wastewater and operated six days per week. Respondent also provided monitoring data indicating that on at least twenty occasions since June 25, 2015, Respondent discharged wastewater that violated effluent limitations established by EPA and/or the City of Goodyear for arsenic, zinc, ammonia, phosphorus, and/or total suspended solids.
17. Respondent failed to submit a baseline report, compliance report, and periodic reports as required by 40 C.F.R. § 403(12) from the time Respondent began operations at the Facility until December 21, 2017.
18. EPA inspected the Facility on July 14, 2017, and observed the fertilizer manufacturing process. During the inspection, Respondent informed EPA that it did not treat wastewater prior to discharging to the POTW.
19. On December 21, 2017, Respondent completed installation of a wastewater recycling system and ceased discharges of process wastewater to the POTW.

#### **IV. ALLEGED VIOLATIONS**

20. Between June 25, 2015 and December 21, 2017, Respondent violated CWA Section 307(d), 33 U.S.C. § 1317(d) on at least twenty-eight (28) days by operating a source in violation of effluent standards and pretreatment standards established under Section 307(b) of the Act, 33 U.S.C. § 1317(b).

#### **V. ADMINISTRATIVE PENALTY**

21. 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 \$39,000 within thirty (30) calendar days of the Effective Date, as defined in Section XIII below, of this CA/FO.
22. 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](http://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.

23. 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.

24. 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

Mike Weiss  
Enforcement Division (ENF 3-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

25. 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.
26. 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.

#### **IX. APPLICABILITY**

27. 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.

#### **VIII. RESPONDENT'S ADMISSIONS AND WAIVERS**

28. 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.

#### **X. RESERVATION OF RIGHTS**

- 29. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves 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.
- 30. 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.

#### **XI. ATTORNEY FEES AND COSTS**

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

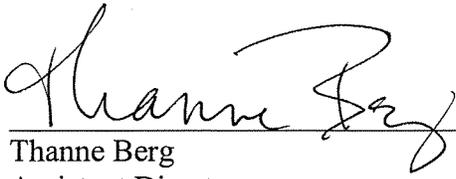
#### **XIII. EFFECTIVE DATE AND TERMINATION**

- 32. 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.

#### **XIV. PUBLIC NOTICE**

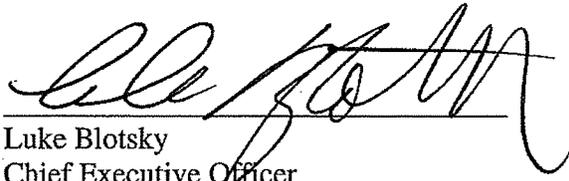
- 33. Pursuant to CWA Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments 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.
- 34. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of Arizona regarding this penalty action.

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

  
\_\_\_\_\_  
Thanne Berg  
Assistant Director  
Enforcement Division

4/5/18  
\_\_\_\_\_  
Date

For Respondent Global Organics, LCC d/b/a/ BioFlora.



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Luke Blotsky  
Chief Executive Officer

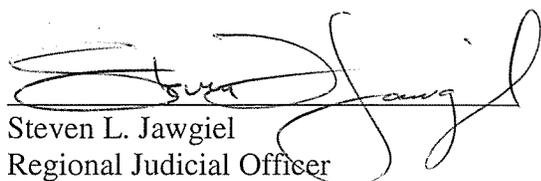
3/5/2018

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Date

**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2018-0011) be entered and that Respondent shall pay a civil penalty in the amount of \$39,000 in accordance with the terms of this Consent Agreement and Final Order.

  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

Date: 05/10/18

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order was sent to Respondent by U.S. Certified Mail, Return Receipt Requested this 10<sup>th</sup> day of MAY, 2018 to:

Scott Mackenzie

Global Organics, LLC d/b/a/ BioFlora

4050 South Sarival Ave

Goodyear, AZ 85338

Certified Mail # 7016 1370 0000 0748 9566

I hereby certify a copy of the Consent Agreement and Final Order was delivered to the following Agency Attorney:

Julia Jackson

Office of Regional Counsel

U.S. EPA Region IX

75 Hawthorne Street

San Francisco, CA 94105

2018-05-10

Date

Steven Armsey

Steven Armsey

Regional Hearing Clerk

U.S. EPA, Region IX

75 Hawthorne St, 12<sup>th</sup> Floor (ORC)

San Francisco, CA 94105