

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

Docket No. **CWA-04-2020-0314(b)**

**ATLAS PEAT & SOIL, INC., and
SUPERIOR MULCH, INC.,**

Respondents.

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. Respondents are Atlas Peat & Soil, Inc., and Superior Mulch, Inc. (Respondents), corporations duly organized and existing under the laws of the State of Florida and doing business in the State of Florida. This proceeding pertains to Respondents' joined facility located at 9621 State Road 7, Boynton Beach, Florida 33472.

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 an 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. At all times relevant to this action, the Respondents owned and/or operated a mulch production facility known as Superior Mulch, and a soil production facility known as Atlas Peat & Soil, both located on the same property (Facility), as identified by Standard Industrial Classification (SIC) Codes 2875 and 2499, and located at 9621 State Road 7, Boynton Beach, Florida, at latitude 26.533638 and longitude -80.207979. The Facility, which began operations in May 1989, has outdoor raw material storage, outdoor mixing and grinding operations, fuel storage, a fleet of trucks, and some equipment staging.

16. As a State authorized to implement the CWA NPDES Program, Florida issued to Respondents a Florida Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity pursuant to Florida Administrative Code 62-621.300(5). The Permit (FLR05I452) was issued November 9, 2019. Coverage under the Permit is obtained by submitting a Notice of Intent (NOI) to FDEP. A notice of intent was submitted to FDEP on November 6, 2019.
17. On July 8, 2019, the EPA and FDEP performed a Compliance Stormwater Evaluation Inspection (CSWEI) to evaluate Respondents' treatment and disposal of stormwater at the Facility to assess compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.
18. During the CSWEI of the Facility, EPA's inspectors observed:
 - (a) Outdoor raw material storage, outdoor grinding and mixing operations, fuel storage, a fleet of trucks, and equipment staging with several drainage ditches containing tannic colored water.
 - (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.
19. On April 13, 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 Respondents requesting information related to Respondents' treatment and disposal of stormwater at the Facility to assess compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.
20. Respondents' responses to the Information Request stated that operations began in 1989 and the applicable SIC codes are 2499 and 2875.
21. On June 11, 2020, the Respondents signed an Administrative Order on Consent.

V. ALLEGED VIOLATIONS

22. At all times relevant to this action, each Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
23. At all times relevant to this action, the Respondents owned and/or operated the Facility.
24. As a result of the CSWEI and EPA's review of the information obtained from the Information Request, 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.
25. Based on the CSWEI and review of additional information, the Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, due to Respondents' 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 1995 to 2019, stormwater discharges associated with the Facility's mulch production (Standard Industrial Code 2499, 2875, and 3295) were not covered under a permit nor a No Exposure Certification, and therefore failed to comply with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p).
- (b) 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 that from the time industrial operations at the Facility began, to present, stormwater associated with industrial activity generally discharged from the Facility via sheet flow and from an unnamed drainage ditch. The unnamed drainage ditch outfalls to E-1 Canal (WBID 3262B) to the east side of the Facility. The E-1 Canal connects to the C. Stanley Weaver Canal which connects to Boynton Canal and then to the intercoastal waterway. The intercoastal waterway is a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2. Therefore, the Respondents have violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by discharging stormwater without proper authorization to waters of the United States.

VI. STIPULATIONS

- 26. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
- 27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:
 - (a) admit that EPA has jurisdiction over the subject matter alleged in this CAFO
 - (b) neither admit nor deny the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consent to the assessment of a civil penalty as stated below with the understanding that Respondents are jointly and severally liable for payment of the full civil penalty amount;
 - (d) consent to the conditions specified in this CAFO;
 - (e) waive any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waive the right to appeal the Final Order accompanying this CAFO.
- 28. For the purpose of this proceeding, Respondents:
 - (a) agree that this CAFO states a claim upon which relief may be granted against Respondents;
 - (b) acknowledge that this CAFO constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;

- (c) waive any rights they 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 agree that federal law shall govern in any such civil action;
 - (d) waive any right they 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; and
 - (e) agree to comply with the terms of this CAFO.
29. 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 at the following valid email addresses: Dorn.Lonnie@epa.gov and Jaikaran.Bianca@epa.gov for the EPA, and Kevin@atlaspeatandsoil.com for the Respondents.
30. 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

31. Respondents consent to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of \$53,500, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
32. Payment(s) 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 Respondents send payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondents send payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondents 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
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondents 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
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

Respondents shall send proof of payment, by email within 24 hours of payment of the civil penalty, to:

(a) Shannon L. Richardson
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

(b) Lonnie Dorn
Enforcement and Compliance Assurance Division
Water Enforcement Branch
U.S. EPA Region 4/LSASD
980 College Station Rd.
Athens, Georgia 30605
Dorn.Lonnie@epa.gov

33. “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-04-2020-0314(b).”
34. Pursuant to 33 U.S.C. § 1319(g)(9), if Respondents fail 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.
35. In addition to what is stated in the prior Paragraph, if Respondents fail 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 Respondents’ licenses or other privileges, or suspend or disqualify Respondents 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.

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

37. Effective upon signature of this CAFO by the Respondents, the Respondents agree that the time period commencing on the date of their 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 Respondents 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

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

39. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), 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).

40. Nothing in this CAFO shall relieve Respondents 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.

41. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondents or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

42. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all Parties, and approval of the Regional Administrator.

43. The provisions of this CAFO shall apply to and be binding upon Respondents and their officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

44. The obligations of the Respondents under this CAFO are joint and several.

45. Any change in the legal status of the Respondents, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondents' obligations and responsibilities under this CAFO.
46. By signing this Consent Agreement, Respondents acknowledge 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.
47. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondents 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.
48. By signing this Consent Agreement, all Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
49. By signing this Consent Agreement, Respondents certify that the information they have 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. Respondents acknowledge 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.
50. 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 Respondents 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 Respondents notice of their intent to revoke, which shall not be effective until received by Respondents in writing.
51. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
52. 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.

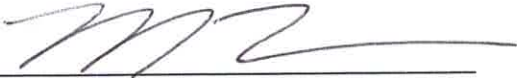
IX. EFFECTIVE DATE

53. 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 Respondents will Each Sign on Separate Pages.**

The foregoing Consent Agreement in the Matter of Atlas Peat & Soil, Inc., and Superior Mulch, Inc., Docket No. CWA-04-2020-0314(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENTS:



Signature
Authorized Representative of both Atlas Peat & Soil, Inc. and Superior Mulch, Inc.

4-27-22

Date

Printed Name: Michelle Lancianese
Title: Secretary for Atlas Peat & Soil, Inc. and Superior Mulch, Inc.
Address: 9621 State Road 7, Boynton Beach, Florida 33472

The foregoing Consent Agreement In the Matter of Atlas Peat & Soil, Inc., and Superior Mulch, Inc.,
Docket No. CWA-04-2020-0314(b), is Hereby Stipulated, Agreed, and Approved for Entry.
FOR COMPLAINANT:

Mary Jo Bragan
Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

**ATLAS PEAT & SOIL, INC., and
SUPERIOR MULCH, INC.,**

Respondents.

Docket No. **CWA-04-2020-0314(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondents. 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 Respondents are 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.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **ATLAS PEAT & SOIL, INC. and SUPERIOR MULCH, INC., Docket No. CWA-04-2020-0314(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties:

To Respondents:

Kevin Cloyd
CPA
9621 State Road 7,
Boynton Beach, Florida 33472
561-215-1838
Kevin@atlaspeatandsoil.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

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Atlanta, Georgia 30303
(404) 562-9680
Jaikaran.Bianca@epa.gov

Shannon L. Richardson, Regional Hearing Clerk
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Atlanta, Georgia 30303-8960