



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

March 8, 2024

Robert Jenkins, Chief Financial Officer
Monterey Mushrooms, LLC
5949 Sadler Road
Zellwood, Florida 32798
rjenkins@montmush.com

Re: Monterey Mushroom Farm
IW Facility ID #FLA010833
OGC Case #24-0050

Dear Mr. Jenkins:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records.

Should you have any questions or comments, please contact Jenny E. Farrell at 407-897-4173 or via e-mail at jenny.e.farrell@floridadep.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "AW 7L".

On behalf of:

Aaron Watkins
Director, Central District

Enclosure: Executed LFCO OGC #24-0050

cc: Bryantt Padgett, Monterey Mushroom, bpadgett@montmush.com
Bill Lynch, Jones Edmunds, blynch@jonesedmunds.com
Lea Crandall, OGC
FDEP: Jenny E. Farrell, Daun Festa, Anitra Spencer, Allison Chancy, Lu Burson, Randall Cunningham, Johanna Leonard

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT))	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION))	CENTRAL DISTRICT
)	
v.))	OGC FILE NO. 24-0050
)	
MONTEREY MUSHROOMS, LLC))	
_____))	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Monterey Mushroom, LLC. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of Monterey Mushrooms' Orlando Farm, a mushroom growing and processing plant ("Facility"), that produces industrial wastewater. Respondent operates the Facility under Department Wastewater Permit No. FLA010833-007-IW9A which was issued on October 1, 2021 and will expire on September 30, 2026. The Facility is located at 5949 Sadler Road, Zellwood, in Orange County, Florida ("Property"). Respondent owns the Property on which the Facility is located.
4. Respondent plans to discontinue mushroom growing and processing operations at the Orlando Farm on or about February 1, 2024. Respondent has provided a written notice dated January 25, 2024 to the Department advising that Respondent plans to discontinue wastewater generating activities and properly abandon the permitted Facility.

5. The Department finds that the following violations occurred:

a) The facility had an unauthorized discharge on January 3, 2023, in violation of Chapter 62-4.030, F.A.C., any stationary installation which will reasonably be expected to be a source of pollution shall not be operated, maintained, constructed, expanded, or modified without the appropriate and valid permits issued by the Department, unless the source is exempted by Department rule. The Department may issue a permit only after it receives reasonable assurance that the installation will not cause pollution in violation of any of the provisions of Chapter 403, F.S., or the rules promulgated thereunder. A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit.

b) The facility had a second unauthorized discharge on January 6, 2023, in violation of Chapter 62-4.030, F.A.C., any stationary installation which will reasonably be expected to be a source of pollution shall not be operated, maintained, constructed, expanded, or modified without the appropriate and valid permits issued by the Department, unless the source is exempted by Department rule. The Department may issue a permit only after it receives reasonable assurance that the installation will not cause pollution in violation of any of the provisions of Chapter 403, F.S., or the rules promulgated thereunder. A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit.

c) The facility failed to sample the January 6, 2023, discharge within the permit time requirements, in violation of 403.161(1)(b), F.S., It shall be a violation of this chapter, and it shall be prohibited for any person: (b) To fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority.

d) In September 2012, the Department's Waste Cleanup section was notified of exceedances of groundwater standards in Respondent's groundwater monitoring wells and a Limited Remedial Action Plan (LRAP) was proposed on March 6, 2013, to address the

contamination. To date the horizontal extent of contamination at the site has not been adequately delineated in accordance with Chapter 62-780, Fla. Admin. Code including potential off-site impacts.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

6. Respondent shall comply with the following corrective actions within the stated time periods:

a) Immediately following the effective date of this order, the Respondent shall provide the Department for approval, a written abandonment plan specifying what steps will be taken to safeguard public health and safety during and following inactivation or abandonment, as outlined in Chapter 62-620-610(15), F.A.C.

b) The abandonment plan shall at least include the following:

i) The emptying and rendering the two lined wastewater ponds inoperable for the storage or treatment of wastewater.

ii) The removal of a section of piping that leads to the unpermitted manmade wetland system, making the system inoperable, in the case of future development in the area.

c) Within one-hundred and eighty (days) following the approval of the abandonment plan, Respondent shall complete the abandonment of the facility. Once abandonment of the facility is complete notification should be made to the Department and an inspection will be made of the facility to ensure that abandonment has been completed as required.

d) Should another discharge from the ponds occur before full abandonment of the system, the Respondent shall immediately sample the discharge and have the samples analyzed per permit requirements. Sample results shall be submitted to the Department no later than forty-five (45) days after the discharge is discovered. The following parameters should be sampled:

Parameters (units)
Flow (MGD) *
Chlorides (MG/L)
Nitrogen, Total (MG/L)
Nitrogen, Nitrate, Total (as N) (MG/L)
Solids, Total Dissolved (MG/L)
Arsenic, Total Recoverable (UG/L)
Iron, Total Recoverable (MG/L)
Manganese, Total Recoverable (MG/L)
pH (SU)
Carbon, Total Organic (TOC) (MG/L)
Petrol Hydrocarbons, Total Recoverable (MG/L)
Sodium, Total (MG/L)
Solids, Total Suspended (MG/L)
Sulfate, Total (MG/L)
Lead, Total Recoverable (UG/L)

e) Respondent shall immediately cease all discharges from its facility to the ground and/or surface waters of the state that are reasonably expected to cause a violation of the Department's water quality minimum criteria and standards and immediately comply with the requirements of Florida Administrative Code Chapter 62-780.

f) **Within 120 days from the execution of this Order**, Respondent shall initiate delineation of contamination and submit to the Department a Site Assessment Report Addendum ("SARA") that summarizes the extent of Chloride, total dissolved solids (TDS), Nitrate, arsenic, and total iron in groundwater at the site in accordance with Rule 62-780.600(8), Fla. Admin. Code. The Department will review and process the SARA in accordance with Rule 62-780.600(9), Fla. Admin. Code.

g) Upon written approval by Department of the SARA, the Respondent shall commence and complete all applicable further tasks required by Chapter 62-780, Fla.

Admin. Code in accordance with the requirements and time schedules identified in Chapter 62-780, Fla. Admin. Code.

7. Every calendar quarter after the effective date of this Consent Order, and continuing until all corrective actions have been completed, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under this Order, information as to compliance or noncompliance with the applicable requirements of this Order including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work to be performed pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within thirty (30) days of the end of each quarter.

8. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by Paragraphs 6.a-g within two-hundred and seventy (270) days of the effective date of this Order and be in full compliance with Rules 62-4, F.A.C., 62-620, F.A.C., and 62-660, F.A.C., regardless of any intervening events or alternative time frames imposed in this Order, other than those excused delays agreed to by the Department, as described in Paragraph 15.

9. Within thirty (30) days of the effective date of this Order, Respondent shall pay the Department \$11,750.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$11,250 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 2 violations that each warrant a penalty of \$2,000.00 or more.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 6, 7, and 8 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within thirty (30) days of the Department's issuance of written demand for payment and shall

do so as further described in Paragraph 10, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in Paragraph 9 of this Order.

11. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the "OGC number 24-0050" assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at:

<http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to DEP_CD@FloridaDEP.gov, Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803.

13. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

14. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least thirty (30) days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

15. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in

complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

16. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

17. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement

of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

18. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

19. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

20. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

21. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

22. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

23. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

24. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to

formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at The Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803. Failure to file a petition within the 21-day period constitutes a

person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

25. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:



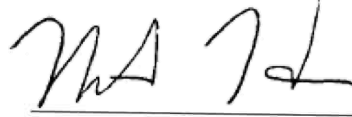
Robert Jenkins
Chief Financial Officer for Monterey Mushrooms, LLC.

3/7/24
Date

----- FOR DEPARTMENT USE ONLY -----

DONE AND ORDERED this 8 day of March, 2024, in
Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

 on behalf of

Aaron Watkins
District Director
Central District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.



Clerk

March 8, 2024
Date

Final clerked copy furnished to:

Lea Crandall, Agency Clerk
Mail Station 35