



FLORIDA DEPARTMENT OF Environmental Protection

CENTRAL DISTRICT OFFICE
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FLORIDA 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

December 3, 2020

Dirk Cox, General Manager
Monterey Mushroom, Inc.
5949 Sadler Road
Zellwood, Florida 32798
dcox@montmush.com

Re: Monterey Mushroom Farm
IW Facility ID #FLA010833
OGC Case #20-1108

Dear Mr. Cox:

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 Sean Boyles at 407-897-4164 or via e-mail at sean.boyles@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins
Director, Central District

Enclosure

cc: Bill Lynch, Jones Edmunds, blynch@jonesedmunds.com
Lea Crandall, OGC
Zoey Carr, Central District
Daun Festa, Central District
Sean Boyles, Central District

December 2, 2020

Sean Boyles
Sean.Boyles@FloridaDEP.gov
Environmental Specialist II
Compliance Assurance Program
Florida Department of Environmental Protection | Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Electronic Submittal: DEP_CD@dep.state.fl.us

Re: **Signed Consent Order**
Monterey Mushroom Farm
IW Facility ID #FLA010833
OGC Case No: 20-1108
Orange County

Dear Mr. Boyles:

Jones Edmunds, on behalf of Monterey Mushrooms, Inc., is electronically transmitting a signed copy of the Consent Order ("Order") without comments. The Order was electronically received from the Department on November 23, 2020, as transmitted by Mr. Aaron Watkins, Central District Director. Mr. Dirk Cox, MMI's Regional General Manager, signed the Order on November 27, 2020.

Please contact Dirk Cox, MMI's Regional General Manager, at dcox@montmush.com or 865-408-1871, or me if you have any questions.

Sincerely,

William H Lynch

 Digitally signed by William H Lynch
Date: 2020.12.02 08:09:54 -05'00'

William H. Lynch, PE
blynch@jonesedmunds.com
Senior Consultant
2240 Palm Beach Lakes Boulevard, Suite 300
West Palm Beach, Florida 33409
M: 561-267-8535

XC: Dirk Cox, MMI, dcox@montmush.com

[Y:\13490-MMI\Projects\001-01 Consulting & Engineering Svcs\Permitting\2020 Consent Order-related\MMI transmittal ltr FDEP signed CO 12 02 20 .docx](#)

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. 20-1108
)	
MONTEREY MUSHROOMS, INC.)	
_____)	

CONSENT ORDER

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

The Department finds and Respondent acknowledges 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 Mushroom Farm, a mushroom growing and processing plant (“Facility”), that produces industrial wastewater. Respondent operates the Facility under Department Wastewater Permit No. FLA010833-006-IW9A which was issued on May 19, 2016 and will expire on May 18, 2021. 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. The Department finds that the following violation(s) occurred:
 - a) A Department inspection found that an unauthorized discharge had occurred out of the North pond in violation of Rule 62-620.300(1), F.A.C.

b) Facility failed to sample for the required parameters listed in Permit Condition I.C.1, following an emergency discharge in violation of Chapter 403.161(1)(b), F.S.

c) Facility failed to notify the Department within 24 hours of the permittee becoming aware of the discharge as required in Permit Condition IX.20 and Rule 62-620.610(20), F.A.C.

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

ORDERED:

5. 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 notification to the Central District Office and/or State Watch Office, as appropriate, of any unauthorized discharges. Notifications shall be made as required in Rule 62-620.610(20), F.A.C. and Statute 403.077, F.S.

b) Should another discharge from the ponds occur, 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)

Parameters (units)
Solids, Total Suspended (MG/L)
Sulfate, Total (MG/L)
Lead, Total Recoverable (UG/L)

c) Within thirty (30) days of the effective order, the Respondent shall have completed the below actions:

- I) Remove solids from the pond (Dredging).
- II) Re-train employees on daily inspection procedures, observations, and record-keeping.
- III) Re-train employees on water conservation.
- IV) Issue low flow water nozzles.
- V) Squeegee all floors before washing.
- VI) Inspect all hose bibs for leaks, repair, and replace as necessary (weekly).
- VII) Rent or lease a ride on floor scrubber to clean areas, where possible.

d) Within sixty (60) days of the effective date of this order, Respondent shall develop an emergency water minimization plan and submit this plan to the Department for approval. After Department approval of the emergency water minimization plan, should another unauthorized discharge from the ponds occur, the Respondent shall immediately implement the emergency water minimization plan and continue to do so until the ponds have at least twelve (12) inches of freeboard.

6. Within one hundred-eighty (180) days of the effective order, the Respondent shall complete the below actions:

- a) Install Wharf roof gutters to redirect stormwater away from outdoor Wharf areas that are included in the wastewater capture and conveyance system.
- b) Install a pressure washer in the Mushroom Processing Area (MPA) cleaning room (for cleaning of the MPAs).

c) As possible, increase wastewater recycling for outdoor composting operations for each crop, while still minimizing the effluent to the ponds.

d) Confirm all condensate water is returned to the cooling towers for make-up water.

e) Install additional flow meters for both freshwater and wastewater, to better track and understand usage.

7. Within three hundred and sixty-five (365) days of the effective order, the Respondent shall submit to the Department, a review of all growing and processing operations. This review should include the objective and a plan to reduce annual water usage from the 12 months preceding the execution date of this Order.

8. 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 calendar quarter.

9. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs 5 - 7 within three-hundred and sixty-five (365) 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 16.

10. Within ninety (90) days of the effective date of this Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the

Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

11. Within thirty (30) days of the effective date of this Order, Respondent shall pay the Department \$6,000.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$5,500.00 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 two (2) violations that warrant penalties of \$2,000.00 or more.

12. In lieu of making cash payment of \$5,500.00 in civil penalties as set forth in Paragraph 11, Respondent may elect to off-set the amount of \$5,500.00 by implementing a Pollution Prevention (P2) Project, which must be approved by the Department. P2 is a process improvement that reduces the amount of pollution that enters the environment; by conserving resource (including water, raw materials, chemicals, and energy) use, or by minimizing waste generation (including domestic and industrial wastewater, solid and hazardous waste, and air emissions). A P2 Project must reduce pollution or waste within the process beyond what is required by federal, state, or local law, in order to be eligible for civil penalty offset under this Order. If Respondent chooses to implement a P2 Project, Respondent shall notify the Department of its election by certified mail within fifteen (15) days of the effective date of this Order. Within 30 days of the effective date of this Order, Respondent must pay a total of \$500.00 for costs and expenses incurred by the Department, during the investigation of this matter, and the preparation and tracking of this Order.

13. If Respondent elects to implement a P2 Project as provided in Paragraph 12, Respondent shall submit a completed P2 Project Plan (Plan) within ninety (90) days of the effective date of this Order. The Plan must be completed using Exhibit A, "P2 Project Plan" template.

14. In the event the Department requires additional information to process the Plan described in Paragraph 13, Respondent shall provide a modified Plan containing the information requested by the Department within thirty (30) days of the date of the request.

15. If any balance remains after the entire P2 credit is applied to the allowable portion of the civil penalty, Respondent shall pay the difference within 30 days of written notification by the Department to Respondent that the balance is due.

16. 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 5-8 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 13, 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 11 of this Order.

17. 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 20-1108 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.

18. Except as otherwise provided, all submittals and payments required by this Order shall be sent to, DEP_CD@dep.state.fl.us or Department of Environmental Protection, Central District Office, 3319 Maguire Blvd., Suite 232, Orlando, Florida 32803.

19. 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.

20. 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 (7) 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.

21. 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.

22. 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.

23. 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.

24. 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 \$10,000.00 per day per violation, and criminal penalties.

25. 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.

26. 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.

27. 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.

28. 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.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection (“Department”) gives notice of agency action of entering into a Consent Order with MONTEREY MUSHROOMS, INC. pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the unauthorized discharge at 5949 Sadler Rd., Zellwood, Florida 32798. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Central District, 3319 Maguire Blvd., Suite 232, Orlando, Florida 32803.

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 OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; 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;
- c) An explanation of how the petitioner’s substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;

- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

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 twenty-one (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 Department of Environmental Protection, Central District, 3319 Maguire Blvd., Suite 232, Orlando, Florida 32803. Failure to file a petition within the twenty-one (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.

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

FOR THE RESPONDENT:



Dirk Cox
Regional General Manager

Nov 27, 2020
Date

DONE AND ORDERED this 3rd day of December, 2020, in Orange County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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

December 3, 2020
Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

[This template is to be used as a Long Form Consent Order Exhibit when regulatory corrective actions, or P2 Projects require time to be resolved or developed. This template must be completed to describe P2 Projects once identified. The document must be approved prior to P2 Project implementation. The Plan must contain the following information.]

Exhibit

P2 Project Plan (Plan)

(Note: Provide the information specified and delete existing text within parentheses)

(Facility Name)

(Address)

(Telephone)

(Preparer Name/Title)

A. **Project Description:** (Summarize P2 Projects selected. Describe the processes or operations to be modified, and the specific changes to be made. Include details such as the specific equipment to be installed, materials to be substituted, and the actual changes to be made to processes or operations. Include manufacturer or vendor information, and specifications.)

B. **Environmental and Economic Benefits:** (Explain why and how each Project proposed constitutes P2.

Specify how each material, chemical, water and energy is saved, and from which processes or operations. Specify how each solid and hazardous waste, industrial wastewater and air emissions are generated, the waste type, and from which processes or operations. **Describe generally in paragraph format.**

Estimate the *annual* savings in *resources* - raw materials, chemicals, water, and energy at the process or operation front end. Estimate the *annual* reductions in *wastes* - solid and hazardous waste, wastewater, and air emission reductions at the process or operation back end.

Figures quoted should represent weights or volumes annually, and should be equalized for production rate changes. Associated cost savings should be included. **Describe specifically using the tables provided.**

Complete the first table for each per Project individually. Add or average corresponding figures from each Project table to complete the Plan table, *for multiple Projects.*)

<i>(Project Name)</i>							
Annual Resource Consumption Comparison							
Item	Quantity Used (gal/lb/kwh-specify)			Purchasing Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Water							
Chemicals							

Materials							
Energy							
Total Annual Cost Savings =							
Annual Waste Generation Comparison							
Item	Quantity Generated (gal/lb/tons-specify)			Disposal Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Hazardous Waste							
Industrial Wastewater							
Solid Waste							
Air Emissions							
Total Annual Cost Savings =							
Total Annual Avoided Cost Savings =							

<i>Summary of All P2 Projects</i>							
Annual Resource Consumption Comparison							
Item	Quantity Used (gal/lb/kwh-specify)			Purchasing Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Water							
Chemicals							
Materials							
Energy							
Total Annual Cost Savings =							
Annual Waste Generation Comparison							
Item	Quantity Generated (gal/lb/tons-specify)			Disposal Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Hazardous Waste							
Industrial Wastewater							
Solid Waste							
Air Emissions							
Total Annual Cost Savings =							
Total Annual Avoided Cost Savings =							

C. **Project Cost:** (Include per Project the itemized, subtotal and Project total costs. A projected payback period in months or years needs to be included.)

Provide a grand total cost for all Projects and an averaged projected payback period, *for multiple Projects. Use list or table format for all.*)

D. **Implementation Schedule:** (Provide a brief discussion of the steps necessary to implement the Projects and expected time frames for completion. A table or list format is preferred. The schedule shall include a list of milestones with dates, or timeframes based on Plan approval date, including Progress and Final Report submittals. Provide a description of any anticipated problems and options. *The implementation should take no longer than six months to complete.*)

E. **Project Reporting:**

1. Within 90 days of approval of the Project Plan, the Respondent shall submit a P2 Project Progress Report to the Department that describes the Respondent's progress in implementing the P2 Project and meeting the requirements in the Plan, and includes a list of equipment ordered, purchased, and/or installed.

2. Within 180 days of approval of the Plan, the Respondent shall submit to the Department a P2 Project Final Report that includes the following.

a. A confirmation that the information presented in Sections A-C of the Summary is unchanged, or an updated version with the sections changed appropriately. A statement that the Project(s) was/were implemented successfully. An explanation of any problems encountered and corrections applied.

b. Attached expense reports, receipts, purchasing instruments and other documents itemizing costs expended on preparing and implementing the Project.

3. The Department shall review the Final Report and determine:

a. Whether the project was properly implemented; and

b. Which expenses apply toward pollution prevention credits.

4. A \$1.00 pollution prevention credit for each \$1.00 spent on applicable costs will be applied against the portion of the civil penalty that can be offset.

a. The following costs are allowable to offset the allowable amount of the civil penalty:

i. Preparation of the P2 Project;

ii. Design of the P2 Project;

iii. Installation of equipment for the P2 Project;

iv. Construction of the P2 Project;

v. Testing of the P2 Project;

vi. Training of staff concerning the implementation of the P2 Project; and

vii. Capital equipment needed for the P2 Project.

b. The following costs shall not apply toward P2 credit:

i. Costs incurred in conducting a waste audit;

ii. Maintenance and operation costs involved in implementing the P2 Project;

iii. Monitoring and reporting costs;

iv. Salaries of employees who perform their job duties;

v. Costs expended to bring the facility into compliance with current law, rules and regulations;

vi. Costs associated with a P2 Project that is not implemented;

vii. Costs associated with a P2 Project that has not been approved by the

Department; and

viii. Legal costs.

c. If any balance remains after the entire P2 credit is applied to the allowable portion of the civil penalty, Respondent shall pay the difference within 30 days of written notification by the Department to the Respondent that the balance is due.

5. The Department may terminate the P2 Project at any time during the development or implementation of it, if the Respondent fails to comply with the requirements in this document, act in good faith in preparing and implementing the project, or develop and implement the P2 Project in a timely manner. The Respondent may terminate the P2 Project at any time during its development or implementation.