

3. Respondent is the owner and is responsible for the operation of the Pro-Way Recycling & Crushing, a facility that operates a relocatable nonmetallic mineral processing plant ("Facility"). The Facility includes multiple pieces of equipment (e.g. crushers, screeners, etc.) that

were permitted separately under individual relocatable general air permits at time of inspection by EPC staff. The Facility is operated under General Air Permit No. 7775799-002-AG which was issued on February 12, 2017 and will expire on February 11, 2022, General Air Permit No. 7776100-002-AG which was issued on May 29, 2020 and will expire on May 28, 2025, and General Air Permit No. 7776164-001-AG which was issued on June 30, 2020 and will expire on June 29, 2025. The Facility is located at 7314 Nundy Ave, Gibsonton, FL 33534, in Hillsborough County, Florida (“Property”). The property on which the Facility is located is owned by R&W Land Holdings, LLC. All of the Facility's operations are subject to the prohibitions and conditions of the EPC Act and rules promulgated thereunder, Florida Statutes and the rules promulgated thereunder, and any EPC and/or DEP orders or permits (if applicable).

4. On March 10, 2021, an inspection was conducted by EPC staff at the Facility in response to a citizen complaint. Upon inspection it was found that the Respondent failed to utilize spray bars at various conveyor drop points with no water being used to control the emissions from the crusher, screener, or conveyors. EPC staff also noted that the Facility’s grounds were dry and dusty with unconfined emissions generated from wind and movement in the yard. EPC staff also found that the Respondent failed to maintain proper fuel usage records and logbook entry for each monthly inspection required under 40 CFR 60.674(b).

5. On March 19, 2021, EPC staff issued Warning Notice 2021-0044A to the Respondent for the violations listed in Paragraph 6. On March 30, 2021 EPC staff received a response from the Respondent indicating that they intended to repair water system on equipment and would work to minimize dust on the road. The response failed to include the required logbook entries and only provided receipts for the fuel received in March 2021.

6. Based on the findings from Paragraph 4, the EPC finds that the following violation(s) occurred:

a) Respondent failed to properly utilize water and spray bars on the crusher and screener and along some of the conveyor drop points in order to control excess emissions while in operation. These findings are in violation of Sections 62-210.310(3)(f) and (5)(e)3.c.(I), F.A.C; and Sections 1-3.20 and 1-3.21(3), Rules of the EPC.

b) Respondent failed to maintain unconfined emissions by allowing the Facility grounds to become dry and dusty with no water truck noted onsite during the complaint inspection

on March 10, 2021. These findings are in violation of Section 62-210.310(5)(e)3.c.(II), F.A.C; and Section 1-3.21(3), Rules of the EPC.

c) Respondent failed to provide complete records as requested during the complaint investigation conducted on March 10, 2021. Respondent was only able to provide the fuel usage records for March 2021. Respondent also failed to provide the records of the logbook entry for each monthly inspection required under 40 CFR 60.674(b). This is in violation of Section 62-210.310(5)(e)4.b., F.A.C, and 40 CFR 60.676(b)(1).

**THEREFORE**, Having reached a resolution of the matter Respondent and the EPC mutually agree and it is **ORDERED**:

7. Respondent shall comply with the following corrective actions within the stated time periods. Within 15 days of the effective date of this Consent Order, the Respondent shall:

- a) Ensure that any necessary repairs are made to the water suppression system to ensure that all material processed shall be controlled with spray bars located wherever unconfined emissions occur at the feeder(s), the entrance and exit of the crusher(s), the classifier screens, and the conveyor drop points.
- b) Provide photos/documentation demonstrating proper utilization of the water suppression system at each required location during operation of the crusher(s), screener(s), and conveyor(s).
- c) Utilize a water truck or other effective dust suppressant on a regular basis to limit excess emissions from the Facility's grounds during operation.
- d) Provide photos/documentation demonstrating presence and utilization of water truck (or other effective dust suppressant) on regular basis during operation.
- e) Provide records of site-wide fuel consumption of the equipment for the past 12 consecutive months. If no records are available, submit monthly site-wide fuel consumptions records for two consecutive months following the effective date of this Consent Order.
- f) Provide records of required monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system for the

past 12 consecutive months. If no records are available, submit the required monthly inspections for two consecutive months following the effective date of this Consent Order and ensure that the required documentation of the monthly inspections are maintained in a logbook as required by 40 CFR 60.676(b).

8. This Consent Order shall constitute the schedule under which the Respondent shall achieve compliance with the requirements of the Permit and all applicable EPC and DEP rules and regulations. Respondent shall ensure operation of the Facility in compliance with applicable environmental regulations, including but not limited to complying with all applicable rules relating to the concrete batching plant and its associated control equipment.

9. Within 15 days of the effective date of this Consent Order, Respondent shall pay the EPC a total of \$ **5,350.00** in settlement of the matters addressed in this Consent Order. This amount includes \$**4,000.00** for civil penalties and \$**1,350.00** for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order.

10. Respondent agrees to pay the EPC stipulated penalties in the amount of \$250 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraph 7 of this Consent Order. The EPC may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the EPC's issuance of written demand for payment and shall do so as further described in Paragraphs 11 and 12, below. Nothing in this paragraph shall prevent the EPC 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 Consent Order.

11. Respondent shall make all payments required by this Order by cashier's check or money order. Cashier's check or money order shall be made payable to the "**Environmental Protection Commission**" and shall include thereon the notation "Civil Penalty and Costs" and EPC Consent Order No. 21-0310NM6164.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Cody Winter, Air Division, Environmental Protection Commission, 3629 Queen Palm Drive, Tampa, Florida 33619.

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

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 Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the EPC of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility (collectively referred to as “new controlling party”), and (c) provide a copy of this Consent Order with all attachments to the new controlling party. 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 the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the 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 EPC via phone or e-mail by the next working day. Additionally, within seven calendar days of occurrence of an event causing delay or upon becoming aware of a potential for delay, Respondent shall notify the EPC 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 EPC, 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 Consent Order is a settlement of the EPC's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent 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 Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances.

18. The EPC does not, by execution of this Consent Order, warrant or assert in any manner that the Respondent's compliance with this Consent Order will result in compliance with Respondent's permit(s). Notwithstanding the EPC's review or approval of any plans, reports, schedules, policies, or procedures prepared pursuant to this Consent Order, the Respondent and its successors and assigns shall remain solely responsible for any noncompliance with the terms of this Consent Order, all applicable federal, state or local laws, regulations or ordinances.

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

20. The provisions of the Consent Order shall apply to, inure, and be binding upon the parties and their successors and assigns. Each of the parties hereby agrees that in the event one of the parties attempts to enforce the terms of this Consent Order, no defense will be raised as to the validity or enforceability of this Consent Order. This Consent Order shall be construed and enforced under Florida Law.

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

22. All parties agree to pay their own fees and costs, including attorney's fees and costs, related to the violations addressed in this Consent Order and incurred up to the date of execution of this Consent Order, except that Respondent shall pay for any penalties, cost, and fees agreed to in this Consent Order.

23. 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 Consent Order. Respondent also acknowledges and waives its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S. Respondent hereby foregoes, surrenders, waives, and disclaims any and all other hearing and appeal rights under Chapter 120, F.S. or Section 9 of the EPC Act and any and all other suits, appeals, claims, or causes of action in any court of competent jurisdiction, including but not limited to County Court, Circuit Court, the Division of Administrative Hearings, appellate courts, or any other EPC hearing processes against the EPC and DEP arising out of or relating to the violations specifically addressed in this Consent Order, and Respondent, and their counsel, further agree not to encourage or support any such actions by other parties or entities to challenge this Consent Order. If Respondent is charged with violation of this Consent Order, Respondent does not waive its right to prove compliance with the terms of this Consent Order in any court of competent jurisdiction.

24. 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 Consent Order shall be effective until reduced to writing, executed by both Respondent and the EPC, and filed with the Clerk of the EPC.

25. The terms and conditions set forth in this Consent 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 Consent Order shall constitute a violation of Section 403.161(1)(b), F.S., and the EPC Act.

26. This Consent Order is a final order of the EPC pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the EPC 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 EPC.

27. Notice of Rights.

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, F.S.,. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the EPC's final action may be different from the position taken by it in this 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 (the number assigned on the first page of this Consent Order), if known;
- (b) The name, address, and telephone number of the 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 agency to take with respect to the Consent Order.

The petition must be filed (received) at the EPC's Legal Department, 3629 Queen Palm Drive, Tampa, Florida 33619 **or via electronic mail at [legalclerk@epchc.org](mailto:legalclerk@epchc.org) or via facsimile at (813) 627-2602** within 21 days of receipt of this notice. Failure to file a petition within the 21-day period constitutes a person's waiver of any right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, F.S. 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.

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

RESPONDENT:

*PRO WAY RECYCLING & CRUSHING, LLC*

\_\_\_\_\_  
DATE

By:

\_\_\_\_\_  
SIGNATURE

Name:

\_\_\_\_\_  
PRINT NAME

Title:

\_\_\_\_\_

**For EPC staff only**

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION  
COMMISSION OF  
HILLSBOROUGH COUNTY

\_\_\_\_\_  
Janet L. Dougherty  
Executive Director

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

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date