



Florida Department Of Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

December 30, 2020

Sent electronically to: ArrowMaterials@cfl.rr.com

Mr. John Arrigoni, Owner
Arrow Materials & Excavating, Inc.
3481 Old Kings Road South
Flagler Beach, Florida 32136

RE: FDEP vs. Arrow Materials and Excavating, Inc.
Arrow Materials & Excavating, Inc. - OGC File No. 20-0868
WACS No. 105073
Flagler County – Solid Waste Enforcement

Dear Mr. Arrigoni:

Enclosed is a copy of the executed Consent Order to resolve Case Number 20-0868.

The effective date of this Order is December 11, 2020, and all time frames will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Emerson Raulerson, at Emerson.Raulerson@FloridaDEP.gov, or by phone at (904) 256-1581. Your continued cooperation in the matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "James R. Maher".

James R. Maher, PE
Assistant Director

Enclosure: Executed Consent Order

ec: FDEP-OGC: Lea Crandall, Agency Clerk
FDEP-NED: Arlene Wilkinson, DEP_NED



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

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Secretary

November 20, 2020

Sent electronically to: ArrowMaterials@cfl.rr.com

Mr. John Arrigoni, Owner
Arrow Materials & Excavating, Inc.
3481 Old Kings Road South
Flagler Beach, Florida 32136

RE: FDEP vs. Arrow Materials and Excavating, Inc.
Arrow Materials & Excavating, Inc. - OGC File No. 20-0868
WACS No. 105073
Flagler County – Solid Waste Enforcement

Dear Mr. Arrigoni:

Enclosed is the Consent Order to resolve the issues in the subject OGC File. Please review the Consent Order and, if you find it acceptable, sign and return the original document to this office within 14 days of receipt.

If you wish to modify the Consent Order, please respond to this office in writing within 14 days, explaining your concerns including any proposed changes.

If you have any questions concerning the Consent Order, please contact Emerson Raulerson, at (904) 256-1581, or by email, at Emerson.Raulerson@FloridaDEP.gov. Your continued cooperation in the matter is greatly appreciated.

Sincerely,

A handwritten signature in blue ink that reads "James R. Maher".

James R. Maher, PE
Assistant Director

ec: FDEP-NED: Jeff Schroer, Heather Webber, Richard Ussery, Monique Jordan,
Vincent Clark

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHEAST DISTRICT
)	
v.)	OGC FILE NO. 20-0860
)	
ARROW MATERIALS AND)	
EXCAVATING, INC.,)	
JAM 2018, LLC and)	
JOHN ARRIGONI.)	
)	
_____)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Arrow Materials & Excavating, Inc., Jam 2018, LLC and John Arrigoni (collectively, the “Respondents”) to reach settlement of certain matters at issue between the Department and Respondents.

The Department finds and Respondents admit the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes (“Fla. Stat.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“Fla. Admin. Code”). The Department has jurisdiction over the matters addressed in this Order.
2. Respondents are “persons” within the meaning of Sections 403.031(5) and 403.703(22), Fla. Stat.
3. Respondents are operators and responsible for the care, monitoring, and maintenance of an unregistered yard trash processing facility located at 379 County Road 200, Bunnell, Florida, 32110, in Flagler County, Florida (“Facility”). The Facility’s Department ID Number is 105073.
4. The Department finds that the following violation(s) occurred:
 - a) Since on or about December 13, 2017, solid waste has been stored and processed at the Facility without registration or permit and without authorization by the Department in violation of Rules 62-701.300(1)(a) and 62-709.300(1)(a), Fla. Admin. Code.

b) Since on or about December 13, 2017, more than 3,000 tons and 12,000 cubic yards of unprocessed yard trash has been stored onsite in violation of Rule 62-709.320(2)(e) Fla. Admin. Code.

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

ORDERED:

5. Respondents shall comply with the following corrective actions within the stated time periods:

a) Respondents shall forthwith comply with all applicable statutes and Department rules, including those regarding Solid Waste Management Facilities and Organics Processing and Recycling Facilities in Fla. Admin. Code Chapters 62-701 and 62-709. Respondents shall correct and redress all violations in the time periods outlined below.

b) Within 30 days of the effective date of this Order, Respondents shall register with the Department as a yard trash processing facility.

c) **Within 30 days of the effective date of this Order**, Respondents shall submit a report, certified by a Florida Licensed Professional Surveyor, establishing the volume of yard trash presently stored on the site (the Initial Report).

d) **Every six (6) months, following the Initial Report, Respondents shall submit to the Department a report identifying the removal and proper disposal of the equivalent of a minimum of 1/6 of the volume of the waste that was documented in the initial report per reporting period (i.e., a combined minimum of 1/6 for the first reporting period, 2/6 for the second reporting period, etc.). The report shall also include the volume and destination of debris removed during the preceding six months. Reports shall be submitted within 30 days of the end of the reporting period**

e) **Within three (3) years (1,095 days) of the execution date of this Order**, Respondents shall remove and properly dispose of all existing yard debris identified in the Initial Report from the site.

f) Any additional yard waste accepted and processed at the Facility shall be stored, processed and removed from the Facility in accordance with the Criteria for Organics and Recycling Facilities in Fla. Admin. Code 62-709 (e.g., maintaining a 20-foot wide, all-weather perimeter access road; limiting the waste pile widths to a maximum 100 feet wide and the heights to that which can be reached by the onsite equipment without riding on the pile; submitting annual reports of the monthly incoming and outgoing material; etc.).

6. Within 30 days of the effective date of this Order, Respondents shall pay to the Department \$2,250.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$2,000.00 for civil penalties and \$250.00 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 one violation which warrants a penalty of \$2,000.00 or more.

7. Respondents agree to pay the Department stipulated penalties in the amount of \$50.00 per day for each and every day Respondents fail to timely comply with any of the requirements of paragraph 5 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondents shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraphs 8 and 9, 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 6 of this Order.

8. Respondents 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 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.

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Department of Environmental Protection, Northeast District, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

10. Respondents 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.

11. 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, Respondents shall, at least 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 Respondents of the obligations imposed in this Order.

12. If any event, including administrative or judicial challenges by third parties unrelated to Respondents, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondents shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondents 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 Respondents (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, Respondents 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 Respondents intend 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 Respondents, 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 Respondents must take to avoid or minimize the delay, if any. Failure of Respondents to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondents' rights to request an extension of time for compliance for those circumstances.

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

14. 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 Respondents of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

15. 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.

16. Respondents are fully aware that a violation of the terms of this Order may subject Respondents to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

17. Respondents acknowledge and waive their rights to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondents also acknowledge and waives their rights to appeal the terms of this Order pursuant to section 120.68, Fla. Stat.

18. 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 the Respondents and the Department, and filed with the clerk of the Department.

19. 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, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Fla. Stat.

20. This Consent Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., 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, Fla. Stat. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

21. 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, Fla. Stat. 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, 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 Florida Department of Environmental Protection, Northeast District, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256. 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, Fla. Stat. 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, Fla. Stat. 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, Fla. Stat., and Rule 62-110.106(12), Florida Administrative Code.

22. Rules referenced in this Order are available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

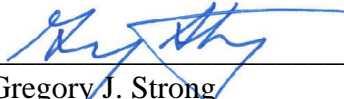
FOR THE RESPONDENTS:


John Arrigoni, Owner
Arrow Materials & Excavating, Inc.

12/9/20
DATE


DONE AND ORDERED this 11th day of December 2020, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong
District Director
Northeast District

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



Clerk

December 11, 2020
Date

Copies furnished to:

FDEP-OGC: Lea Crandall, Agency Clerk (executed copy only)



**Florida Department of
Environmental Protection
Inspection Checklist**

FACILITY INFORMATION:

Facility Name: ARROW MATERIALS & EXCAVATING, INC.

On-Site Inspection Start Date: 07/17/2019

On-Site Inspection End Date: 07/17/2019

WACS No.: 105073

Facility Street Address: 295 COUNTY ROAD 200

City: BUNNELL

County Name: FLAGLER

Zip: 32110

INSPECTION PARTICIPANTS:

(Include ALL Landfill and Department Personnel with Corresponding Titles)

Principal Inspector: Emerson Raulerson, Inspector

Other Participants: Al Becker, Yard Man

INSPECTION TYPE:

Complaint Investigation Inspection for Other - Unauthorized Disposal/Processing

ATTACHMENTS TO THE INSPECTION CHECKLIST:

This Cover Page to the Inspection Checklist may include any or all of the following attachments as appropriate.

Note: Checklist items with shaded boxes are for informational purposes only.

13.0 - SECTION 13.0 - COMPLAINT INVESTIGATIONS

Inspection Date: 07/17/2019

13.0 - SECTION 13.0 - COMPLAINT INVESTIGATIONS**Requirements:**

The requirements listed in this section provide an opportunity for the Department's inspector to indicate the conditions found at the time of the inspection. A "Not Ok" response to a requirement indicates either a potential violation of the corresponding rule or an area of concern that requires more attention. Both potential violations and areas of concern are discussed further at the end of this inspection report.

Item No.	SOLID WASTE PROHIBITIONS (unless "grandfathered" in, see 62- 701.300(18))	Ok	Not Ok	Unk	N/A
13.1	Unauthorized storing, processing, or disposing of solid waste except as authorized at a permitted solid waste management facility or a facility exempt from permitting under this chapter? 62-701.300(1)(a)		✓		
13.2	Authorized or unauthorized storing, processing, or disposing of solid waste in a manner or location that causes air quality standards to be violated or water quality standards or criteria of receiving waters to be violated? 62-701.300(1)(b)	✓			
13.3	Unauthorized disposal or storage prohibited, except yard trash, within 500 feet of a potable water well? 62-701.300(2)(b)	✓			
13.4	Unauthorized disposal or storage in a dewatered pit without liner or leachate controls? 62-701.300(2)(c)	✓			
13.5	Unauthorized disposal or storage prohibited in any natural or artificial body of water including groundwater and wetlands? (Does not apply to standing water after a storm event.) 62-701.300(2)(d)	✓			
13.6	Unauthorized disposal or storage prohibited, except yard trash, within 200 feet of any natural or artificial body of water, including wetlands without permanent leachate controls, except impoundments or conveyances which are part of an on-site, permitted stormwater management system or on-site water bodies with no off-site discharge? 62-701.300(2)(e)	✓			
13.7	Unauthorized storage or disposal on the right of way of any public highway, road or alley? 62-701.300(2)(f)	✓			
13.8	Unauthorized open burning of solid waste prohibited except in accordance with Department requirements? 62-701.300(3)	✓			
13.9	Are the following unauthorized wastes or special wastes properly managed? (Check any that are Not OK)				
13.9.1	CCA treated wood being ground into mulch, compost, or any wood product that is applied to the ground or burned 62-701.300(14)	✓			
13.10	Unauthorized storage or disposal of yard trash within 100 feet of potable water wells (except on-site), and/or 50 feet of water bodies? 62-701.300(12)	✓			
13.11	Waste tire prohibitions:				
13.11.1	Maintaining a waste tire site consisting of more than 1500 tires that is not an integral part of a permitted waste tire processing facility. 62-711.400(1)	✓			
13.11.2	Disposing of waste tires except as permitted at a permitted solid waste management facility. 62-711.400(2)				✓
13.11.3	Storing waste tires only as a part of a waste tire collection center, permitted waste tire processing facility, permitted solid waste management facility, or other exempt facility. 62-711.400(4)				✓
13.11.4	Contracting with only registered or exempt waste tire collectors for the transportation, disposal, or processing of more than 25 waste tires. 62-711.400(5)				✓
13.12	Is disposal of bodies of domestic animals, upon the death of such animals due to disease, accomplished pursuant to Section 823.041(1), F.S.? 62-701.520(5)(a)				✓
13.13	Is disposal of dead poultry and hatchery residue accomplished pursuant to Section 583.181(2), F.S.? 62-701.520(5)(b)				✓
13.14	Are bodies of captive wildlife, of fish or marine mammals, as well as bodies of domestic animals that have not died due to disease, either used, burned, disposed of in a Class I landfill, or disposed of on the property where they died, or other properties approved of by the Department, provided they are buried at least two feet below the surface of the ground and above the water table? 62-701.520(5)(c)				✓
13.14.5	For biological waste disposal complaints, the Facility or Responsible Party was provided a copy of the Department's Disposal of Deceased Domestic Animals Guidance Document dated November 9, 2018. (Note: The Guidance Document is to provide direction regarding the disposal of deceased domestic animals pursuant to Chapter 62-701.520(5), F.A.C. and Chapter 823.041, F.S.)				

Inspection Date: 07/17/2019

Item No.	SOLID WASTE PROHIBITIONS (unless "grandfathered" in, see 62- 701.300(18))	Ok	Not Ok	Unk	N/A
	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A				
13.15	Are all additional specific conditions (not otherwise addressed above) in the permit, registration, Department order or certification, if any, being followed? 62-701.320(1), 403.161, F.S.				✓

Inspection Date: 07/17/2019

Pre-existing Violations:

Rule: 62-701.300(1)(a)

Question Number: 13.1

Explanation: This inspection was conducted as a follow-up to the original December 13, 2017 complaint inspection, which identified unauthorized solid waste activities. During that inspection, it was discovered that the facility is storing and processing over 100,000 cubic yards of yard trash/land clearing debris without the proper registration, permit or any written authorization from the Department. FAC Rule 62-701.300(1)(a) specifies that "No person shall store, process, or dispose of solid waste except at a permitted solid waste management facility or a facility exempt from permitting under this chapter." This pre-existing violation still remains valid.

Corrective Action: While the facility has made progress processing, reshaping and reducing debris pile heights, waste remains stored without authorization. The facility owner was verbally informed to properly dispose of all waste on property within 30 days and obtain disposal receipts. Report corrective action to the Department via telephone or email immediately upon completion to arrange a confirmatory re-inspection.

Attachments:

Site Photo 1 (2017)



Site Photo 2 (2017)



Site Photo 3 (2017)



Site Photo 4 (2017)



Inspection Date: 07/17/2019

Site Photo 5 (2018)



Site Photo 6 (2018)



Site Photo 7 (2018)



Site Photo 8 (2018)



Site Photo 9 (7/2019)



Site Photo 10 (7/2019)



Inspection Date: 07/17/2019

Site Photo 11 (7/2019)



Site Photo 12 (7/2019)



COMMENTS:

This inspection was a follow-up inspection to complaint ID #3033 alleging unauthorized waste activities on the property. While the activity itself would be authorized with the proper registration, the piles of yard trash/land clearing debris is higher than that which could be reached with onsite equipment and are wider than the maximum allowed 100-foot width.

Inspection Date: 07/17/2019

Signed:

Emerson Raulerson

PRINCIPAL INSPECTOR NAME

Inspector

PRINCIPAL INSPECTOR TITLE**PRINCIPAL INSPECTOR SIGNATURE**

DEP

ORGANIZATION

08/16/2019

DATE

Al Becker

REPRESENTATIVE NAME

Yard Man

REPRESENTATIVE TITLE

NO SIGNATURE REQUIRED

REPRESENTATIVE SIGNATURE

Arrow Materials & Excavating

ORGANIZATION

NOTE: By signing this document, the Site Representative only acknowledges receipt of this Inspection Report and is not admitting to the accuracy of any of the items identified by the Department as "Not Ok" or areas of concern.

Report Approvers:

Approver: Jeff Schroer

Inspection Approval Date: 08/22/2019