



FLORIDA DEPARTMENT OF Environmental Protection

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

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

June 14, 2024

Sent electronically to: mherzberg@sleiman.com

Mr. Michael Herzberg, Vice President of Development
Green Cedar, LLC
1 Sleiman Parkway, Suite 270
Jacksonville, Florida 32216

SUBJECT: Department of Environmental Protection v. Green Cedar, LLC & Michael Herzberg
OGC File No. 24-0252
WACS ID No. 89755
Suwannee County – Solid Waste Enforcement

Dear Mr. Herzberg:

Enclosed is a copy of the executed Consent Order to resolve Case Number 24-0252. The effective date of this Order is June 14, 2024, and all timeframes 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 Anna McClure, at (904) 256-1608, or by phone at Anna.C.McClure@FloridaDEP.gov. Your continued cooperation in the matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "T.G. Kallemeyn".

Thomas G. Kallemeyn
Assistant Director

Enclosure: Executed Consent Order

cc: FDEP-OGC: Lea Crandall, Agency Clerk
FDEP-OGC: Cameron Betron
FDEP-NED: Tom Kallemeyn, Joni Petry, Chris Azcuy, Anna McClure, Sarah Harris,
DEP_NED
Anthony Sleiman, tsleiman@sleiman.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION)	IN THE OFFICE OF THE NORTHEAST DISTRICT
)	
v.)	OGC FILE NO. 24-0252
)	
GREEN CEDAR, LLC, & MICHAEL W HERZBERG)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Green Cedar, LLC and Michael W. Herzberg (“Respondents”) to reach settlement of certain matters at issue between the Department and Respondents.

The Department finds and Respondents admits 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 each a “person” within the meaning of Sections 403.031(9) and 403.703(23), Fla. Stat.
3. Respondents are the operators of a Construction and Demolition Debris Disposal Facility (“Facility”), located at 10733 68th Path, Live Oak, Florida, in Suwannee County, Florida (“Green Cedar, LLC”). The Facility’s WACS ID Number is 89755.
4. Respondents operated the Facility under Permit No. 181395-014-SO, which expired on August 20, 2023.
5. The Department finds that the following violations occurred:

a) Facility is operating a Construction and Demolition Debris Disposal Facility without an active permit, in violation of Rule 62-701.730(1)(a), Fla. Admin. Code.

(i) An operating permit application for the Facility was submitted to the Department on April 15, 2024. This application is currently under review by Northeast District Solid Waste Permitting staff, and additional information may be requested to complete their review.

b) The Facility had a lack of trained spotters or operators onsite during active operation, in violation of Rule 62-701.730(7)(d), Fla. Admin. Code.

(i) This was noted during the Annual Solid Waste Compliance Inspection conducted by Department staff on December 14, 2023.

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

ORDERED:

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

a) **Within 6 months of the effective date of this Order**, at least two members of the Facility staff shall successfully complete an operator or spotter training course in accordance with Rule 62-701.320(15), Fla, Admin. Code. Upon completion, the Facility shall submit the training certifications to the Department for review.

(i) In lieu of payment for civil penalties, as well as to provide the Department with reasonable assurance for future compliance, the Facility shall pay for two staff members to complete the operator or spotter training course.

7. **Effective immediately with the execution of this Order**, Respondents may continue the Facility operations that were previously authorized under the expired operating permit (Permit No. 181395-014-SO) until a new operating permit becomes effective. The Respondents are required

to maintain compliance with all previous permit conditions, as well as all applicable rules and regulations of Rule 62-701, Fla. Admin. Code.

8. **Within 30 days of the effective date of this Order**, Respondents shall pay the Department \$ 5,250.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$ 4,500.00 for civil penalties and \$ 750.00 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 that warrants a penalty of \$2,000.00 or more, pursuant to 403.121(3)(e), Fla. Stat

9. If the Respondents do not successfully complete the operator or spotter training course and submit the training certifications to Department within the timeframe required by Paragraph 5(a), the Department may demand civil penalties for the violation, pursuant to 403.121(3)(e), Fla. Stat. Respondents shall pay civil penalties owed within 30 days of the Department's issuance of written demand for payment.

10. 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.

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

12. 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.

13. 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 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.

14. 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.

15. 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 alleged violations 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.

16. 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.

17. 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.

18. 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.

19. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., 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, Fla. Stat.

20. 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.

21. 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.

22. 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.

23. 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 323993000 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 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, 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.

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

FOR THE RESPONDENT:



Michael Herzberg
Vice President, Green Cedar, LLC



Date

DONE AND ORDERED this 14th day of June 2024, in Duval, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong
District Director
Northeast District

TBK

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



Clerk

June 14, 2024

Date

Copies furnished to:

FDEP-OGC: Lea Crandall, Agency Clerk, Mail Station 35 [executed copy only]

FDEP-OGC: Cameron Bertron [executed copy only]

FDEP-NED: Anna McClure, Chris Azcuy, Joni Petry, Tom Kallemeyn, Sarrah Harris, DEP_NED