

NEWS, NOTES & QUOTES



National Newsletter of the Mulch & Soil Council

DECEMBER 2021

*Happy
Holiday
Wishes*

COUNCIL NEWS

The Mulch & Soil Council wishes all our members a very Merry Holiday Season and a Happy New Year.



On behalf of the Board of Directors and staff of the Mulch & Soil Council, we want to **THANK YOU** for your participation and support this past year. Without your membership, we would not be able to work with Federal and State agencies, provide industry education and training, respond to industry issues or develop industry guidelines to help protect and advance your business opportunities. We look forward to continuing to be of service to you and representing the industry's interests for 2022.

Holiday Closing

With predictions for over 100 million people traveling over the next few weeks, we encourage everyone to drive safely. **The MSC office will close December 23 and reopen January 3.** We look forward to serving you in the coming year.

MSC Committee Meetings

The next meetings of MSC committees will be held in Savannah, GA, on Wednesday afternoon, January 19, 2022, starting at 1:30pm. The tentative schedule of events include:

- 1:30pm-2:30pm MSC Certification Committee
- 2:45pm-3:45pm MSC Standards Committee
- 4:00pm-5:00pm MSC Transportation Committee

Unless otherwise announced, all meetings of the Mulch & Soil Council are open to any member in good standing; however, a committee may call an executive session on advice of counsel to discuss sensitive issues when necessary. Participation of observers in discussions is determined by the committee chair. If you plan to attend any or all committee meetings, we would appreciate your letting the office know in order for us to allow enough seating space for everyone. Contact membership@mulchandsoilcouncil.org to reserve your seat.



MSC January Board Meeting



LEGISLATIVE UPDATE VIDEO COMING

The MSC Board of Directors will convene its next meeting on January 20 at 8:00a.m. -12:00p.m. in Savannah, GA. If any member has an issue they would like the Board to consider, please submit your topic to Executive Director Robert LaGasse at execdir@mulchandsoilcouncil.org no later than 5:00p.m. Central Time on January 4th. All meetings of the MSC Board of Directors are open to any member in good standing; however, the Board may call an executive session on advice of counsel to discuss sensitive issues when necessary. Participation of observers in discussions is determined by the Board president. If you plan to attend, we would appreciate your letting the office know in order for us to allow enough seating space for everyone. Contact membership@mulchandsoilcouncil.org to register.

Annual Meeting participants may recall that one session planned for the topic, "Everything You Need to Know About DC and How It Affects MSC Members" was changed onsite due to a last-minute conflict for our speaker. Thanks, again, to David Crow for volunteering to fill the gap with another insightful CROW REPORT.

Our Annual Meeting Program Chair Kimberly Rygielski has continued working to have the 50th MSC Annual Meeting program in Memphis completed as planned and announced that a video presentation of the final meeting topic will be available to Council members by the end of December.

Presently, experts from the Scotts Miracle-Gro Company including Jim Esquea, VP of Public Affairs, and Ann Aquillo, VP of Government Relations, are producing a video overview of what is currently going on in Washington, DC, including the balance of power, topics and items they are tackling and (more importantly) what MSC members SHOULD be paying attention to at the federal level.

This presentation will be available for viewing by ALL Council members. Watch your e-mail for a program announcement and instructions on how to view this very important presentation. We also want to extend special thanks to our Program Chair Kimberly Rygielski for working so hard to complete the outstanding program for the Mulch & Soil Council's 50th Annual Meeting in Memphis last September.



*Jim Esquea, VP
SMG Public Affairs*



*Ann Aquillo, VP
SMG Government Relations*

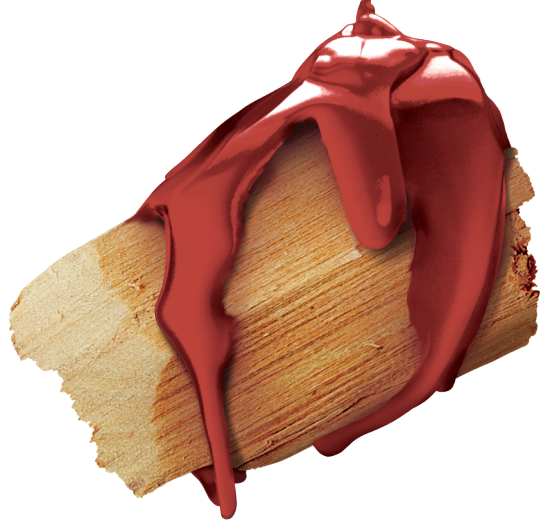
IS CRAFTING DROP A SIGN?

The Mulch & Soil Industry had tremendous sales growth in 2020 along with other home-based activities such as gardening, houseplant sales and CRAFTING supplies. With the Covid-19 Pandemic restrictions forcing people to work, educate and isolate at home, the public turned to home-based activities to supplement their food supply, occupy their time and distract them from current events.

In the crafting world, Joann's is a major player and 2020 expanded their NEW customer base by 8 million crafters — just for Joann's alone. As a result, Joann's has spent the past year expanding and upgrading its stores and improving its e-commerce services only to experience a very surprising 14% DECREASE in third-quarter revenues in 2021 compared to the same time in 2020.

Does Joann's performance in the third quarter indicate that the huge spike in crafting interest was more of a flash-in-the-pan? As kids and adults get back to their schools, more normal social activities and vacations/travel in their lives, when and how will they readjust their time and spending priorities for the long term?

As reported at our annual meeting, many millennials amassed significant savings while being homebound during the pandemic. That savings is now being spent on new homes and increased activities like travel. So, the decline in Joann's revenues could be a



It's true.

The science inside Colorbiotics® mulch colorant is engineered one brilliant, resilient drop at a time.

Trust what's true.™

colorbiotics.com/true

A brand of
MBCC GROUP

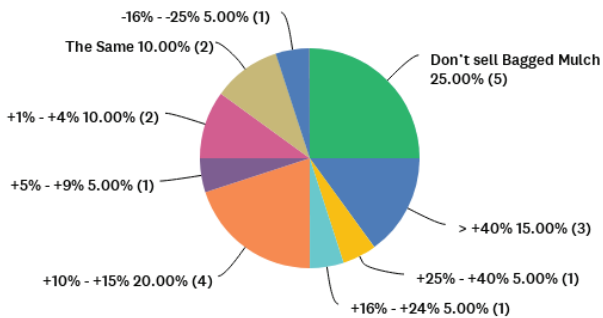
signal that consumers have started reordering their priorities, at least to some degree, in a way that may not sustain the pandemic-related market growth for home activities in 2020.

The last major spike in Mulch & Soil Industry sales was post 911 at an estimated growth of 25%-30% compared to a typical annual rate of 5%-8%. That spike sustained increased sales from 2001 to 2004 along with a comparable growth in consumer vegetable gardening for the same period. Based on our history in 2001, Council members might expect to maintain the sales volume of 2020 with modest year-over-year sales increases to continue for several years, but like crafting, that will depend on how consumers continue to allocate their time and spending priorities.

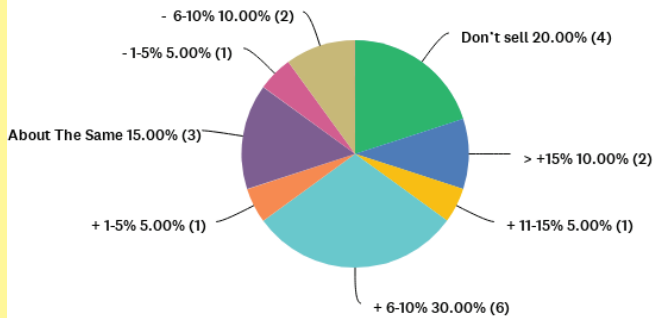
The first hint that the market may slow came in late April of this year with reports of unexpected declines in product orders. MSC surveyed the membership in an attempt to verify any unexpected market change. Here are the survey results:

2020 - 2021 MSC Sales Growth Survey Report

Q1 BAGGED MULCH sales for January 1 – June 30:



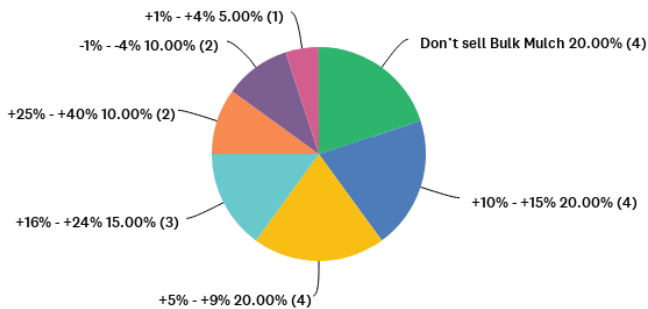
2021 January1 to June 30 sales of Total BAGGED MULCH



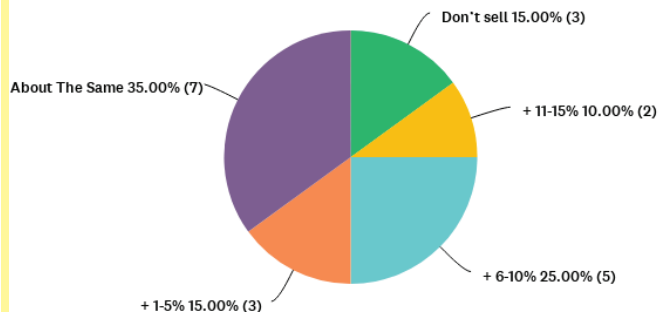
For 2020, high season bagged mulch sales were expected to increase by 5%-8% pre-pandemic. Actual reported sales increases ranged from 0%-9% for 25% of respondents, 10%-24% for 25% of respondents, 25%-40% for 5% of respondents and >40% increases for another 15% of respondents. Only 5% reported a decrease in sales volume.

Following the historic sales increases in 2020, the 2021 bagged mulch sales were expected to return to a 5%-8% increase over 2020 sales. Our survey results showed 15% of respondents had 1% to 10% less sales, 20% had 0% - 5% increase, 30% of respondents had the expected rate of increase (6% - 10%) and 15% had increased sales volumes greater than 10% over 2020.

Q2 BULK MULCH sales for January 1 – June 30:



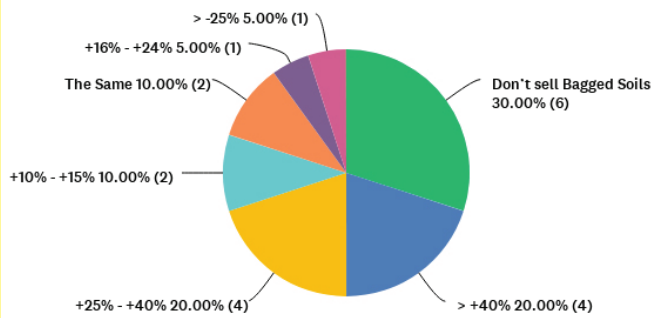
2021 January1 to June 30 sales of Total BULK MULCH



For 2020, high season bulk mulch sales were expected to increase by 5%-8% pre-pandemic. Actual reported sales increases ranged from 0%-9% for 25% of respondents, A better-than-expected 10%-24% for 35% of respondents, and 25%- >40% for 10% of respondents. Decreased sales volumes of 1% - 4% were reported by 10% of respondents for 2020.

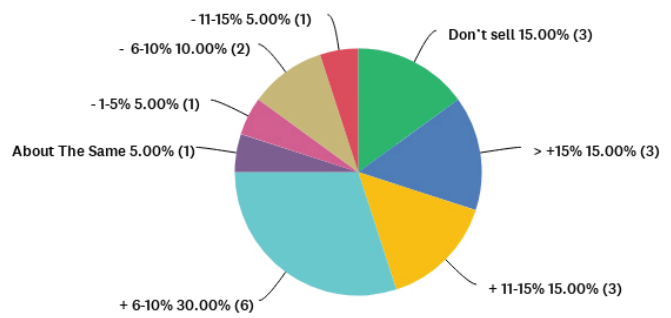
Following the significant sales increases in 2020, the 2021 bulk mulch sales were expected to return to a 5%-8% increase over 2020 sales. Our survey results showed 50% of respondents had the same or less than 5% increase, 25% of respondents had the expected rate of increase and 10% had increased sales volumes of 11%-15% over 2020. No respondents reported a decreases of bulk mulch sales volume for 2021 compared to 2020.

Q3 BAGGED SOILS sales for January 1 – June 30:



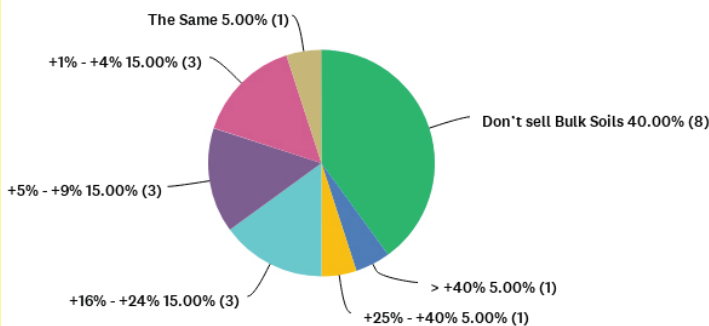
For 2020, high season bagged soils sales were expected to increase by 5%-8% pre-pandemic. Actual reported sales increases ranged from 0% increase for 10% of respondents, 10%-15% increase for 10% of respondents, 16%-24% increase for 5% of respondents, 25%-40% for 20% of respondents and >40% increases for another 20% of respondents. Only 5% reported an decrease in sales volume.

2021 January 1 to June 30 sales of Total BAGGED SOIL



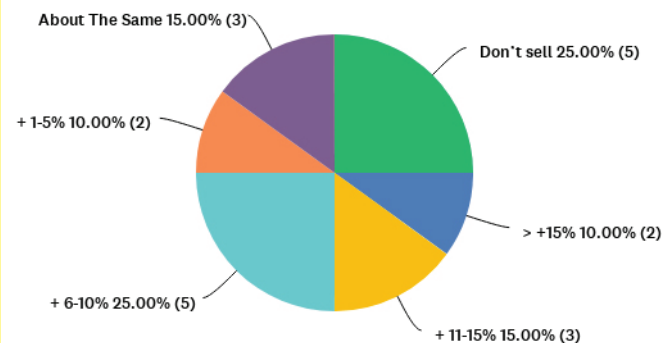
Following the significant sales increases in 2020, the 2021 bagged soils sales were expected to be higher than average rate of 5%-8% to perhaps 10% - 15% increase over 2020 sales which was supported by reports of higher than usual early prime season orders. Our survey results showed 15% of respondents exceeded expectations, 15% of respondents had the expected rate of increase, but 30% fell short at a still respectable 6% - 10%, and 5% had the same sales (0% increase). Four of the 20 respondents reported negative sales increases of 1%-5% for 1, negative growth of 6% - 10% for 2 and negative 11% - 15% for 1 company with less sales in 2021 than 2020.

Q4 BULK SOILS sales for January 1 – June 30:



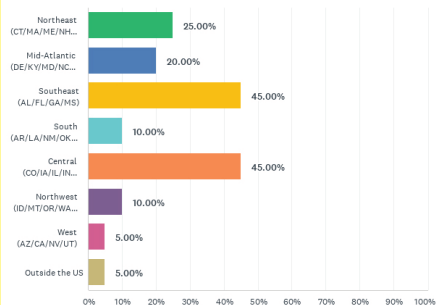
For 2020, high season bulk soils sales were expected to increase by 5%-8% pre-pandemic. Actual reported sales increases ranged from 0%-9% for 35% of respondents, 16%-24% for 15% of respondents, 25%-40% for 5% of respondents and >40% increases for another 5% of respondents.

2021 January 1 to June 30 sales of Total BULK SOIL

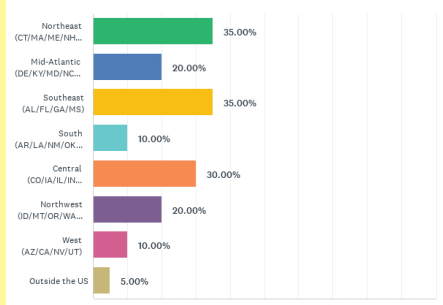


Following the sales increases in 2020, the 2021 bulk soils sales were expected to return to a 5%-8% increase over 2020 sales. Our survey results showed 15% of respondents had the same sales as 2020, 35% of respondents had the expected rate of increase, 15% had increased sales volumes 11%-15%, and another 10% had increases >15% over 2020. None of the survey respondents reported any decrease on sales growth over 2020.

Q20 Where are your facilities located? (check all that apply)



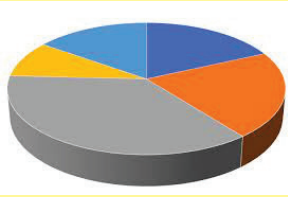
Q8 Where are your facilities located? (check all that apply)



Regional distribution of the responses for 2020 (left) and 2021 (right) were consistent with the membership distribution for the Council.

INDUSTRY NEWS

AXIOM ON MILLENNIALS & HOME IMPROVEMENT



CSPMA ISSUES HARVEST REPORT FOR 2021



Much has been written about millennials and the fact that they are the most populous consumer segment in the U.S.

- 25% of the U.S. population are millennials
- 75% of the U.S. work force will be millennials by 2025
- Millennials spend \$600 billion in the U.S. each year
- Millennials bought 38% of all homes in 2020
- Millennials account for 22% of all homes sold in 2020

What about Millennials and home improvement? According to Axiom's 2021 Home Improvement Survey:

- 44% consider themselves expert or experienced DIYers
- 46% started and finished a home improvement project
- 66% plan to do an interior project
- 44% plan to do an exterior project
- 32% plan to do a landscaping or gardening project

For more information or a copy of Axiom's Home Improvement Survey, please email mreiber@axiomcom.com.

The Canadian Sphagnum Peat Moss Association (CSPMA), whose members represent more than 80 percent of the North American peat production, has provided the annual release of the level of harvest for the 2021 season.

A survey of members was conducted on the status of their 2021 Actual Harvest as a percentage of their 2021 Expected Harvest on August 31. The harvest overall varied regionally, differentiating between Eastern and Western Canadian harvest areas. Eastern harvest areas were below the industry expectations, while in the West the harvest exceeded or fully achieved industry expectations.

REGIONAL RESULTS:

In Western Canada (MB, SK & AB), all regions met or exceeded targeted volumes (Manitoba, 102%; Saskatchewan, 109%; Alberta, 108%). Spring was relatively early and reasonably dry in all three provinces enabling a good start. A significant, and in some cases record breaking heat and drought period across Western Canada, extended through much of the summer and into early fall 2021. These favorable conditions supported the positive results.

In Manitoba, weather conditions (including provincially mandated fire watches) limited harvest and plant operations, constraining capacity. Industry and Government of Manitoba officials are now working on a protocol regime to deal with potential future extreme conditions.

In New Brunswick, both North and South regions were below expected harvest volumes (New Brunswick North, 80%; New Brunswick South, 76%). Varied weather patterns combined with the late start and the remnants of Hurricane Ida, constrained harvest throughout the Maritimes. The harvest on Québec's South Shore (97%) and North Shore (80%) were below expectations. Several summer storms, particularly on the north shore, did not permit either region in achieving their targeted volumes. Similar weather patterns affected the Ontario (87%) harvest.

South of the boarder, Minnesota, U.S., (79%) experienced a lower-than-expected harvest because of weather patterns.

As in the past, CSPMA members are committed to working cooperatively with their commercial business partners. CSPMA members continue to harvest peat moss in a responsibly managed way that delivers social and economic benefits to many communities across North America. In addition, CSPMA members are engaged in increas-



COLORTROM
400

VOLUME Production

Has Come to the Yard



The Amerimulch ColorTrom 400
Capable of 400+ Yards per Hour

VOLUME producers can learn more at chromascape.com/colortrom.

CHR·MASCAPE

service@chromascape.com • 888.421.0010

Harvest Report (Cont'd)

ing harvesting capacity through investments in plant infrastructure, harvesting equipment, bog openings, and personnel training.

DEFINITIONS:

2021 Actual Harvest: The volume of CFT of harvest that corporately was achieved as of August 31, plus, what can reasonably be expected to be harvested for the last few weeks of the season considering normal harvesting conditions.

2021 Expected Harvest: The volume of CFT that equates to a) market needs, plus, b) anticipated buffer as at the end of the 2021 season, minus, c) inventory on hand at the start of the 2021 season (what was left of the 2020 buffer).

The [Coalition for Sustainable Organics \(CSO\)](#) reports that the NOSB rejected allowing biochar by a 4 to 10 vote and classified the product as prohibited manure ash. Historically, ash from manure has been prohibited based on the belief that too much carbon and nitrogen are lost relative to the application of manure directly to the land. The biochar process did involve heating to produce a very concentrated stable form of carbon that could significantly improve long term stable carbon content in the soil to improve aeration, provide a beneficial biological surface for microorganism growth and diversity and enhance water retention. The majority of NOSB members expressed concern that organics should not support products that help large scale animal operations resolve their waste issues and/or to discourage technologies that may reduce supplies of manure for compost or direct applications to soils. For more information, contact [Lee Frankel at CSO](#).

TotalEnergies and its U.S. partner Clean Energy are launching the construction of their first biomethane production unit, in Friona, Texas (between Amarillo & Lubbock). The biomethane will be used as an alternative fuel for mobility, thus contributing to decarbonize road transportation.

Located on the Del Rio Dairy farm, the facility will be fueled by the onsite supply of livestock manure to produce more than 40 GWh of biomethane per year. The biomethane will be distributed in the United States by Clean Energy through its network of fueling stations, enabling the supply of renewable gas to between 200 and 300 trucks per year.

The company claims by processing cow manure, a significant source of methane emissions, and substituting fossil fuels with renewable energies, the project will avoid some 45,000 tonnes of CO₂ emissions per year.

"This project at Del Rio Dairy helps to address the increasing demand for RNG (renewable natural gas) by fleets and is a great example of our partnership with TotalEnergies, one of the world's leading and most sustainably-minded energy companies," said Andrew J. Littlefair, president and CEO, Clean Energy. "RNG, one of the cleanest fuels on the planet, manages greenhouse gas emissions and tackles global warming. The added RNG production from Del Rio will help us meet our target to provide this 100 percent negative carbon emissions fuel at all of our North American stations by 2025."

Through the acquisition of an interest in Clean Energy in May 2018, TotalEnergies became the largest shareholder of the U.S. leader in natural gas vehicle fuels, with a stake of some 19 percent today. In March 2021, the two partners set up a 50/50 joint venture to speed up the development of biomethane production in the United States

When it comes to reliable cars, the newest and latest aren't always best. Electric vehicles fare poorly in the latest reliability study from Consumer Reports. But there's a twist: It's not the battery or motor that makes EVs less reliable. It's the glitchy new gadgets that carmakers, especially Tesla, pack in to make their vehicles feel modern and appeal to early adopters. EVs tend to have touchscreen controls for climate, seat controls and other devices that once were mechanical, leading to problems.

COW MANURE DERIVED BIOCHAR REJECTED



TOTALENERGIES, CLEAN ENERGY BE- GIN CONSTRUCTION OF BIOGAS UNIT



EVs RANK LOW IN CR STUDY





“A lot of EVs are at the high end of market and have a lot of new tech, like new ways to open the doors,” said Jake Fisher, senior director of auto testing at Consumer Reports. “It’s causing problems.”

Electric vehicles usually come with the latest infotainment systems, large touch screens and features like over-the-air updates that can send new software from the cloud. The software and equipment is relatively new, and Consumer Reports says automakers haven’t worked the bugs out.



The Tesla Model X and Y SUVs and Model S sedan all rank below average in reliability. Only the Model 3 ranks average and gets a recommended rating, Fisher said. It’s not just Tesla. The Audi E-Tron and Volkswagen ID.4 EVs also were below average, Consumer Reports said. One exception: The Ford Mustang Mach-E electric vehicle did well. Among the other U.S. brands, GM’s Chevrolet finished 14th, Ford 18th and Stellantis NV’s popular Jeep brand was 26th.

Overall, Japanese brands took eight of the top 10 spots in the rankings. Lexus was first, followed by Mazda, Toyota, Infiniti and Buick. Honda, Subaru, Acura, Nissan and Mini round out the list. GM’s Buick and BMW’s Mini were the only non-Japanese automakers in the top 10.

Fisher said Japanese brands tend to make fewer engineering changes, even with new models, and have been slower to add new technology, so their vehicles have fewer problems.

IS LABOR REALLY UNAVAILABLE OR JUST UNWILLING?

The current labor shortage is one of the main issues for American businesses. Whether it is general warehouse labor, equipment operators, clerical staff or truck drivers, more jobs exist than people to fill the positions. But there are MILLIONS of people not working. How and why is this happening?



As a response to the Covid-19 Pandemic, the state and federal governments have dumped unprecedented levels of cash into the workforce through stimulus checks, direct subsidies, rent abatement, and highly expanded unemployment benefits. Add to that the increasing values of homes and investment holdings, and economists point out the American workforce is flush with cash. If anything, the recent increases in savings have been larger at the bottom of the economic spectrum than at the top, according to recent surveys.

With this unexpected bumper of financial security, many people in lower-paying jobs, like the service industry, decided not to go back to their old jobs. Some even quit the jobs they worked through the pandemic. They looked back on their old job pay, hours, and benefits with dissatisfaction and decide not to go back to work until they have a more ideal position.

According to the NY Times, Paul Krugman, the Nobel Prize-winning economist and Times Opinion columnist, has described the trend as [“the revolt of the American worker.”](#) Betsey Stevenson, a University of Michigan professor, calls it [the “take this job and shove it” economy.](#)

So, the U.S. does not have a pure labor shortage so much as it has a shortage of workers [willing to accept the working conditions](#) that today’s economy often demands. Instead you hear potential workers saying, “I can’t work Saturdays for \$18 an hour,” or “Sorry, I won’t work overtime,” or “If I have to drive your truck for 60 hours a week, I don’t want the job!”

LABOR (Cont'd)

CENTRAL FREIGHT CLOSES AFTER NEARLY A CENTURY IN BUSINESS

Though many workers gained an unexpected financial cushion during the pandemic, it wasn't that large, and the subsidies have all stopped. Without a job, the money will run out, but what about the new attitudes people acquired after being away from work for more than a year? How long will those persist?

Some people may never return to the workforce, such as retiring Boomers. However, conventional thinking believes that eventually more workers will feel the need to return to the labor force, but they may find a job market where employers have the advantage with the decline of organized labor unions, more corporate consolidation and technology rapidly passing by or obsoleting lower level workers. If neither side changes, the great unknown is which will come first: workers holding out until all their resources are depleted or businesses holding out until their productivity collapses and customers abandon them. The key may be which companies can find a common ground that improves the work place without bankrupting their business.

Central Freight Lines is ceasing operations after nearly a century in business, according to reports Dec. 11. The Waco, Texas-based less-than-truckload carrier notified drivers, employees and customers that it would start to wind down operations Dec. 13. That also means 2,100 employees will be laid off right before Christmas.

Visitors to the company's website were greeted with the message, "Central Freight Lines is winding down its business. As of Monday, December 13, we will no longer be picking up freight. We will continue to deliver the freight we have in our system. Thank You."

In 2020, Central was ranked the 21st among LTL carriers with roughly \$255M in revenues. The company has full-state coverage in 14 states and partial coverage in three more across the south, south-central and southwestern U.S. [Central Freight Lines ranks No. 98 on the Transport Topics Top 100 list of the largest for-hire carriers in North America](#). CFL President Bruce Kalem cited years of operating losses for shuttering the operation, according to reports.

LEGISLATIVE/REGULATORY NEWS



The CROW Political Report

By David Crow
DC Legislative &
Regulatory Services

EPA has made the decision to issue an Interim Waters of the U.S. (WOTUS) rule which is nothing more than part one of a two-part process to repeal and replace the Navigable Waters Protection Act (NWPA). As you know, the NWPA repealed and replaced the 2015 Obama-Biden WOTUS rule; so, we have come full circle, for the time being anyway.

EPA and the Army Corps of Engineers (ACOE) say stakeholders desire a durable definition of WOTUS that will stand the test of time and protect all water bodies. EPA and the ACOE state that 333 projects, a number that has now reached above 380, would allow water modifications to land which would cause immediate and irreversible harm. The claim is that the NWPA leaves wetlands unprotected and allows landowners to make private modifications that would cause harm. The Interim rule seeks to make these projects jurisdictional meaning EPA and the ACOE would only allow them to go forward with a permit or not at all.

Step one of the new rule, the Interim rule, would vacate NWPA using the Arizona and New Mexico District Court's ruling as justifications. Both Districts vacated the NWPA due to projected harm caused by ephemeral water pollution impacting water downstream. The essential argument is that all water bodies are connected even if they don't have an obvious surface water connection. EPA stated that the NWPA did not address significant water policy issues, ignored essential science, and failed to address

the different degrees of connectivity impacting water bodies. And NWPA did not come to grips with important ephemeral issues.

The Interim rule strongly resembles the 2015 WOTUS. It uses the 1986 Waters of the U.S. definition, in place since the Reagan Administration, adds the safeguards from the Supreme Court Rapanos definition, by Justice Anthony Kennedy, stating that all waters should be under federal protection if there is a *Significant Nexus* connecting them. Environmentalists interpret that to mean that virtually all water bodies are connected even if they don't have a surface connection. The crux of the disagreement between the current EPA and ACOE from the NWPA is that waters that are relatively permanent, standing or continuously flowing and waters with a continuous surface connection to such waters, that either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or geological integrity of traditional navigable waters, interstate waters, or the territorial seas, are not adequately protected.

Many people believe EPA is taking this action because they fear one or more District Courts will reverse Arizona and New Mexico's Vacatur and reimpose NWPA. If you will recall, when the 2015 rule was implemented, fully half the states were exempt because of District Court rulings. This may very well happen once again.

To recount, at the moment, EPA and ACOE have reinstated the 2015 WOTUS rule meaning virtually all water is under the jurisdiction of EPA and ACOE and that *any major decision to alter land with regard to water must have a permit*. It also means that non-point source pollution will be more stringently regulated by the EPA and ACOE.

This process has a long way to go as it always has because of the changes in Administrations and because of conflicting District Court opinions.

Republican members of the Senate Environment and Public Works Committee and House Infrastructure Subcommittee have weighed in heavily on behalf of the user community and are asking states to participate in the Regional Roundtables to force EPA and ACOE to justify the Interim rule based on the irreversible harm argument and with regard to economic consequences. These efforts are ongoing and will continue into next year.

Soon the Federal Register will release the Interim Rule, we will have 60 days to comment, then the Interim rule will take effect. EPA and ACOE plan to add a second rule that will strengthen the Interim rule later in 2022.

**OSHA FIGHTS FIFTH
CIRCUIT'S STAY**



On November 23, OSHA filed an (overlength) [emergency motion](#) to dissolve the Fifth Circuit's stay of OSHA's vaccine mandate, taking three distinct positions. OSHA principally argues, as expected, that it is likely to succeed on the merits because, OSHA reasonably concluded that:

1. the standard is necessary to address a grave danger,
2. the Fifth Circuit's statutory interpretation was flawed, and
3. its "constitutional concerns" were mistaken.

OSHA also argues there was ample support for its determinations, and that the balance of equities tips in its favor.

OSHA also stakes out a middle position, arguing that the Sixth Circuit should modify the stay so that the masking-and-testing requirement can remain in effect during the pendency of this litigation. If nothing else, OSHA argues, the Sixth Circuit should not block its ruling giving employers the *option* to adopt COVID-19 policies. This would shield employers from state and local requirements that limit employers' authority to require vaccination, face covering, or testing.

As a final fallback, OSHA asks for clarification of the Fifth Circuit's order that OSHA "take no steps to implement or enforce" the regulation. OSHA would like the Sixth Circuit to allow it to provide pre-enforcement information to the public about

its “sometimes technical rules” so that people “can understand those rules and the agency’s reasoning.” It also wants to take “purely internal steps,” such as drafting appropriate guidance or training call-center employees. OSHA says this is necessary so that if the stay is lifted, “the agency can provide accurate and consistent guidance and enforcement.”

Other Vaccine Issues:

There are a lot of moving pieces related to the OSHA Vaccine and Testing Emergency Temporary Standard (ETS), as well as travel vaccine and testing requirements. I have tried to capture the latest state of play on each of these issues as they currently stand.

Comment Period of the Vaccine and Testing ETS

OSHA [announced](#) that it extended the comment period on the ETS to January 19, 2022. The Coalition for Workplace Safety, which is led by the U.S. Chamber of Commerce, Associated Builders and Contractors, National Association of Homebuilders, American Bankers Association and the National Retail Federation, is preparing comments that will be open to other organizations to sign onto. It is my understanding that those comments will focus on asking OSHA to make the rule more manageable and to extend the compliance dates due to the fact that the rule is currently stayed by a Federal court.

ETS Legal Challenges

Based on the briefing schedule set by the US Court of Appeals for the Sixth Circuit, the earliest we would likely see a ruling on the stay is December 13 (see more details on the briefing schedule [here](#)). Once a final decision is made by the 6th Circuit, it will likely be appealed to the U.S. Supreme Court, which could rule in a matter of days.

Federal Government Vaccine Mandate

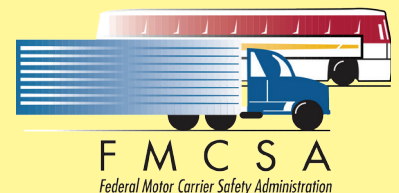
The deadline for federal workers to be vaccinated or face suspension or firing was November 22. The Administration reported that 97% of the Federal workforce is currently vaccinated. In addition, the White House Office of Management and Budget is encouraging Federal agencies to continue educating and counseling staff on the Administration’s vaccine mandate until January, and not proceed with any terminations before the end of the year. This mandate is also under a court stay resulting from a suit brought by 10 states.

Vaccines and Travel Restrictions

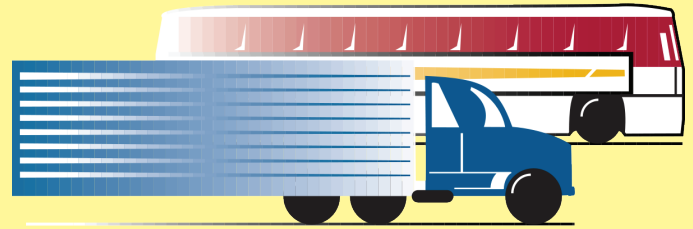
The Department of Homeland Security currently requires non-essential travelers, who are not U.S. citizens or legal permanent residents (LPRs), entering the U.S. by land or air to be fully vaccinated. The Administration announced last month that this vaccination requirement will be extended to essential workers as of January 22.

In reaction to concerns about the omicron variant, the Administration announced that all travelers to the United States, including U.S. citizens and LPRs, be tested within 24 hours of entering the country, regardless of their vaccination status. In addition, the Administration announced a 7- day self-quarantine requirement after entering the U.S.

As reported last month in an MSC Special Advisory Bulletin, the Federal Motor Carrier Safety Administration (FMCSA) soon will begin enforcing new rules on entry level driver training (ELDT). Effective February



7, 2022, all applicants for a Class A or Class B commercial driver's license (CDL) must first have a certificate of completion from a FMCSA-listed driver training program before they can take the knowledge or skills test to get their license. That also includes any tests to upgrade a Class B to a Class A license and any first-time school bus (S), passenger (P) or hazardous materials (H) endorsements.



F M C S A
Federal Motor Carrier Safety Administration

In the face of an unprecedented shortage of over 80,000 truck drivers in the midst of an historic supply chain crisis, these new federal ELDT requirements for the commercial driver license (CDL) add another poorly-timed obstacle to getting the trucking industry stabilized. Currently, anyone seeking a new CDL license needs only to pass the knowledge and skills test to get a license. While driver training schooling may be recommended, it is not required. The cost of formal driver training schools is typically around \$7,000 which can create an entry barrier for desperately needed new drivers.

Since learning of the new regulations last month, the MSC has been investigating potential to defer enforcement of the new rule for at least a year. The MSC's special counsel on transportation issues is Richard (Rick) Schweitzer who reports that contacts with the American Trucking Association (ATA) indicated that large for-hire trucking companies that make up the bulk of ATA's membership are either not hiring entry-level drivers or already training their own drivers or using existing training programs from other carriers, vocational schools, or driver training entities. ATA would not support a delay in implementation of the ELDT rule.

Rick also noted that FMCSA developed this rule as a result of a negotiated rule-making, a process where the agency facilitates discussions with all affected interest groups and negotiates a proposed rule that is then published for comment in the Federal Register. Even though the original rulemaking was done in 2015 & 2016, the participating entities are generally reluctant to oppose a final rule that they helped to create.

Similarly, the members of the National Private Truck Council do not usually hire entry-level drivers and many of them have their own driver training programs in place; so, NPTC has no incentive to support a delay in implementing the new ELDT rule.

Recently, Rick had the opportunity to present this issue to about 20 trade association representatives at a meeting of hazmat shippers and carriers. No one voiced an interest in attempting to get FMCSA to delay the rule. Thus, if MSC petitioned FMCSA for a delay, even though we have strong arguments, we would likely be acting alone and might well have opposition from ATA.

Rick's vast experience with DOT and FMCSA was a major factor in achieving the Council's victory last year to exempt mulch and soil products from HOS regulations as farm supplies during high season shipments. While he advises that it is highly unlikely that a petition to delay the ELDT rule would be successful, we may be able to collaborate with other organizations to minimize the impact of the new rule.

The MSC is investigating one such option now and will report our findings to the membership in January. In the meantime, if you have any employees or know other people who have military or civilian experience driving larger motor vehicles or delivery trucks and want to obtain (or renew) their CDL, they should take the driver skills test before February 2022.

On November 15th, President Biden signed H.R. 3684 better known as the “Infrastructure Investment and Jobs Act,” a long awaited \$1.2 trillion bipartisan infrastructure bill. This comes after a House final vote of 228-206 with thirteen Republicans voting with the majority of Democrats and six Democrats voting against the bill. The legislation will deliver \$550 billion of new federal investments in America’s infrastructure over five years including money for roads, bridges, mass transit, rail, airports, ports, and waterways. The key provisions of the bill are outlined below.

Locks and Dams

- More than \$700 million in existing hydropower facilities to improve efficiency, maintain dam safety, reduce environmental impacts, and ensure generators continue to provide emission-free electricity.
- \$75 million for the Water Infrastructure Finance and Innovation Program for Dam Safety.
- \$500 million for safety of dams in accordance with the Reclamation Safety of Dams Act of 1978.
- \$250 million for the construction, repair, improvement, maintenance of irrigation and power systems, dams sanitation, and other facilities.

Inland Waterways Trust Fund

- \$2.5 billion of 100% federal funding provided for construction and major rehabilitation inland waterways projects. Further, Capital Investment Strategy (CIS) navigation projects will be given priority and WCI will work with the Corps and the Inland Waterways Users Board (IWUB) to help to ensure this process.
- The Corps’ Operations and Maintenance account for all business line items within the Civil Works mission also received significant funding in the infrastructure bill of \$4 billion. Inland waterways projects and dredging are eligible to compete for funding that will be allocated in the Corps spend plan.
- Currently, there are four ongoing construction projects (Olmsted Locks & Dam, Locks & Dams 2,3, and 4, Monongahela River Navigation Project, Kentucky Lock Addition, and Chickamauga Lock) in various stages of completion. Assuming current appropriation trends continue, all ongoing construction projects will be completed by 2025.

Pollinators, Invasive Species and Vegetation Management

- Under the bill, the Secretary of Transportation will establish a program to provide grants to eligible entities to carry out activities to benefit pollinator on roadsides and highway rights-of-ways. This includes invasive plant elimination and integrated vegetation management programs that include “targeted and judicious use of herbicides” to address weed issues and “any other pollinator-friendly practices the Secretary determines to be appropriate.”
- The bill will make available \$200 million for the U.S. Department of the Interior (DOI) and the U.S. Department of Agriculture (USDA) for invasive species detection, prevention, and eradication, including conducting research and providing resources to facilitate detection of invasive species at points of entry and awarding grants for eradication of invasive species on non-federal land and on federal land.
- The bill requires the development and availability of best practices, and a priority ranking of pollinator-friendly practices on roadsides and highway rights-of-way.

Wildfire Management

- The bill establishes forest management activities that are intended to prevent and minimize the damage from wildfires to include application of pesticides, biopesticides, or herbicides.

- \$3.37 billion for wildfire risk reduction, including to use National Oceanic and Atmospheric Administration satellites; acquire radio equipment; remove flammable vegetation; and provide financial assistance to states, local governments, and tribes for wildfire mitigation activities
- The Agriculture Department's U.S. Forest Service would receive \$2.85 billion for the national forest system and \$1.53 billion for state and private forestry.
- The Interior Department would receive \$1.46 billion for wildland fire management.

PFAS

Through the funding of several types of clean water and drinking water grant and revolving fund programs, EPA will work to support states and local communities to provide safe drinking water. EPA states in its fact sheet that "[p]eople will be protected from PFAS or 'forever chemical' contamination." The funding includes the following:

- PFAS Clean Water State Revolving Fund (SRF): \$1 billion.
- PFAS Drinking Water SRF: \$4 billion.
- PFAS Small and Disadvantaged: \$5 billion.

Climate Grants

- The bill includes \$100 million for pollution prevention activities and grants, \$20 million per fiscal year (FY) beginning in 2022 (until expended) through FY 2026. The U.S. Environmental Protection Agency's (EPA) November 6, 2021, fact sheet states that this means that "[m]ore businesses will be able to get assistance to reduce toxic pollutants, cut water usage, improve efficiency, and lower costs, which will improve their operations while better protecting the communities in which they operate."
- Invest \$550 million in the Energy Efficiency and Conservation Block Grant Program (EECBG) and \$500 million in the State Energy Program to provide grants to communities, cities, states, U.S. territories, and Indian tribes to develop and implement clean energy programs and projects that will create jobs.
- Fund a \$3 billion expansion of the Smart Grid Investment Matching Grant Program, focusing on investments that improve the flexibility of the grid. These include upgrading existing transmission and distribution systems, and other actions, like deploying energy storage.
- Provide \$21.5 billion in funding for clean energy demonstrations and research hubs focused on next generation technologies needed to achieve our goal of net-zero by 2050, including:
 - \$8 billion for clean hydrogen, which will turbo-charge our progress toward heavy trucking and industrial sectors that run without producing carbon pollution.
 - More than \$10 billion for carbon capture, direct air capture and industrial emission reduction, providing skills-matched opportunities for fossil fuel workers.
 - \$2.5 billion for advanced nuclear energy.
 - \$1 billion for demonstration projects in rural areas and \$500 million for demonstration projects in economically hard-hit communities.

Superfund

- As a revenue generator (over \$14 billion) the new law will impose a per ton Superfund tax on 42 chemicals beginning in July 2022 and expiring at the end of 2031. Based on an analysis they did this summer, the American Chemistry Council (ACC) estimates that the new tax would place a \$1.2 billion annual tax on producers, which would likely be passed on to consumers. ACC also said the tax would create conditions conducive to shutdowns for 44 plants producing chemicals, minerals, metals or other materials subject to those taxes while giv-

ing an unfair advantage to foreign producers, such as China, not subject to the tax.

PPE

- The new law establishes a long-term U.S. investment strategy for the domestic production of PPE items critical to the U.S. national response to a public health crisis, including the COVID-19 pandemic. These PPE items include surgical masks, respirator masks and powered air purifying respirators and required filters, face shields and protective eyewear, gloves, disposable and reusable surgical and isolation gowns, head and foot coverings, and other gear or clothing used to protect an individual from the transmission of disease. OMB shall submit to Congress a report on the procurement of PPE, including the U.S. long-term domestic procurement strategy for PPE produced in the United States, including strategies to incentivize investment in and maintain U.S. supply chains for all PPE sufficient to meet the needs of the United States during a public health emergency, an estimate of long-term demand quantities for all PPE items procured by the United States, and recommendations for Congressional action required to implement the U.S. government's procurement strategy.

Highways Safety and Congestion Mitigation Program

The bill would authorize about \$6.9 billion over five years for the National Highway Traffic Safety Administration (NHTSA) and related driver safety programs.

Total authorized funding from fiscal 2022 through 2026 would include the following amounts from the Highway Trust Fund:

- \$1.89 billion for highway safety programs.
- \$1.76 billion for national priority safety programs.
- \$970 million for highway safety research and development.
- \$205.8 million for NHTSA administrative expenses.

The bill would require states to include in their highway safety programs efforts to:

- Encourage widespread and correct use of child restraints.
- Reduce crashes caused by misuse or misunderstanding of new vehicle technology.
- Provide information relating to child heatstroke death in vehicles.
- Reduce injury caused by drivers not moving over for stopped service vehicles.
- Educate drivers about the risks associated with marijuana-impaired driving.

From fiscal year 2022-2026:

- \$250 million from HTF for grants to reduce congestion in the busiest metropolitan areas.
- \$6.42 billion from federal-aid highway funds for a new program to reduce transportation-related carbon emissions. Eligible projects would include truck stop electrification systems, trail facilities for pedestrians and bicyclists, congestion management technologies, intelligent transportation system capital improvements, energy-efficient alternatives to streetlights, electric vehicle charging infrastructure, and port electrification.
- An "Advanced Research Projects Agency-Infrastructure" would be established within the Transportation Department. It would support research projects that develop innovative solutions to reduce long-term costs of infrastructure development, mitigate transportation's lifecycle effects on the environment, such as to greenhouse gas emissions, and promote resilience from physical and cyber threats.
 - The measure would authorize "such sums as are necessary" for ARPA-I. The agency's budget request and appropriations would be separate from the rest of the Transportation Department. Funds couldn't be used

INFRASTRUCTURE (CONT'D)

to build a new facility for five years after the bill's enactment.

- **Smart Transportation:** The measure would authorize a total of \$500 million over five years for the Strengthening Mobility and Revolutionizing Transportation (SMART) Grant Program that would support demonstration projects on smart technologies that improve transportation efficiency and safety, such as autonomous vehicles and smart grids to support electric vehicles.
- **Permits & Environmental Reviews:** The measure would establish a center within the Transportation Department to improve interagency coordination and expedite projects related to permits and environmental reviews for major transportation infrastructure projects. The center could also provide technical assistance for compliance with the National Environmental Policy Act.

The focus now shifts to enacting the rest of President Biden's economic agenda, also known as the "Build Back Better" plan, through the budget reconciliation process. DCLRS will continue to monitor this bill. The House passed this legislation this morning. The bill now heads to the Senate where there could be additional changes and Democratic leaders continue to negotiate with two key Democratic Senators, Senators Manchin (WV) and Sinema (AZ), in order to get the bill passed through the equally divided Senate. Senate Majority Leader Schumer said he hopes the Senate will pass the package by Christmas. We will continue to keep you updated on the status of the budget reconciliation bill.

MEMBER NEWS

HELP WANTED

Scotts Miracle-Gro is looking for a *Regulatory Affairs Analyst, Growing Media* who will join its Regulatory team in Marysville, OH. This position is responsible for obtaining and maintaining federal/state/territory registrations of Scotts products, focusing on growing media and soils. This individual will develop registration strategies in order to meet the timing needs of the business with minimal oversight. This individual continues to develop internal and external relationships with key stakeholders. For information on the job and qualifications to apply, [CLICK HERE](#).

New Member Welcome

The Mulch & Soil Council is pleased to welcome the following Producer Member company as a new member of the Council:

Resource Recycling
Contact: Micah Hollinger
156 Neubrecht Rd
Lima, OH 45801
sheldonk.resource@gmail.com
resourcemulch.com

Certified Product News

Recertified Products

Austin Wood Recycling, Ltd.
Garick Corporation
Garick Corporation
Garick Corporation
Garick Corporation
Homer Industries, LLC
Homer Industries, LLC
Landscapers Pride
Phillips Bark Processing Co., Inc.

Mulch

Texas Native Cafe Brown Mulch
Brown Landscape Mulch
Vigoro Premium Black Mulch by Garick Corporation
Vigoro Premium Brown Mulch by Garick Corporation
Vigoro Premium Red Mulch by Garick Corporation
Vigoro Premium Brown Mulch by Homer Industries
Vigoro Premium Red Mulch by Homer Industries
Hardwood Mulch
Vigoro Premium Black Mulch by Phillips Bark Processing Co.

Certified Product News

Recertified Products

Phillips Bark Processing Co., Inc.
Phillips Bark Processing Co., Inc.
The Scotts Company
The Scotts Company
The Scotts Company
The Scotts Company
The Scotts Company
The Scotts Company
The Scotts Company

Mulch
Vigoro Premium Brown Mulch by Phillips Bark Processing Co.
Vigoro Premium Red Mulch by Phillips Bark Processing Co.
Nature Scapes Color Enhanced Mulch - Classic Black
Nature Scapes Color Enhanced Mulch - Deep Forest Brown
Nature Scapes Color Enhanced Mulch - Sierra Red
Scotts Nature Scapes Color Enhanced Bark Nuggets - Deep Forest Brown
Texas Select Classic Black Mulch
Texas Select Deep Forest Brown Mulch
Texas Select Sierra Red Mulch

Landscape Soils

Miracle-Gro Lawn Products, Inc.
Miracle-Gro Lawn Products, Inc.
Miracle-Gro Lawn Products, Inc.
Miracle-Gro Lawn Products, Inc.
Rod McLellan Company
Rod McLellan Company
Scotts Miracle-Gro Products, Inc.
Scotts Miracle-Gro Products, Inc.

Miracle-Gro Aerate
Miracle-Gro Balance
Miracle-Gro Hydrate
Miracle-Gro Nourish
Supersoil Enriched Planting Compost
Supersoil Garden Amender 0.03-0.03-0.03
Miracle-Gro Garden Soil Roses 0.10-0.09-0.07
Miracle-Gro Garden Soil, Trees & Shrubs 0.09-0.05-0.07

Premium Soils

Miracle-Gro Lawn Products, Inc.
Rod McLellan Company

Nature's Care Organic Raised Bed Soil 0.09-0.08-0.09
Supersoil Potting Soil

Withdrawn Products

The Mulch and Soil Company
The Mulch and Soil Company

Mulch

Suwannee River Mulch Magic
Suwannee River Pine Bark Mini-Nuggets

—

MARK YOUR CALENDAR



*Happy
Holidays
from the
Mulch & Soil Council*

