

Dear Mulch & Soil Producer:

The Mulch & Soil Council (formerly the National Bark & Soil Producers Association) initiated the first national product certification program for horticultural mulches, soils and horticultural growing media. The purpose of the certification program is to provide retailers and consumers with a means of determining which products conform to industry-accepted labeling and nomenclature — in short, which product labels truthfully describe the product being sold.



There are many reasons for mulch and soil companies to participate in the MSC Product Certification Program. Just a few of these reasons include:

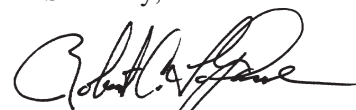
- **Product Differentiation:** In the commodity market that has developed for mulch and soils, certification is a means for quality manufacturers to set their products apart from poor quality, mislabeled products.
- **Product Protection:** Retailers and consumers often cannot tell good from poor products simply by appearance. Certification protects your product name from being identified with poor quality products. In environmentally sensitive times where we are all only one headline away from disaster, certification becomes the only hallmark available to identify quality mulches and soils to the buying public.
- **Category Protection:** Each certification category indicates a different level of value-added products. Certification helps you identify your value-added product lines and recover your value-added costs.
- **Industry Marketing:** The MSC has committed to promoting the quality of certified products to retail buyers and the consumer public. Your participation in the certification program identifies your products as preferred mulches and soils for the buying public.

Certification Is For Almost Everybody

- Companies do not need to be Council members in order to certify their product(s), but members do receive a significant discount on program fees.
- Products must pass stringent screening at the time of application and will be subject to random field testing directly from the market place. Products that cannot meet the *Uniform Voluntary Product Guidelines for Horticultural Mulches, Growing Media and Landscape Soils* cannot be accepted.
- All product claims must be verified by independent, reproducible testing.
- Certification applies to bagged products for consumer markets only. MSC does not presently certify bulk or commercial products.

We hope your company is one that is dedicated to growing the industry through quality products. Please review the enclosed materials and decide if you want to show your customers your commitment to giving them the value they seek.

Sincerely,



Robert C. LaGasse
Executive Director

Mulch & Soil Council • 7809 FM 179 • Shallowater, TX 79363
TEL: 806.832.1810 • FAX: 806.832.5244 • E-mail: info@mulchandsoilcouncil.org

Mulch & Soil Council

Product Certification Program Description



Overview

The MSC Product Certification Program is an industry-based, voluntary program designed to recognize products that meet certain criteria. Marketers and manufactures can register products in the program and those products must meet the requirements spelled out in the *MSC Voluntary Product Guidelines for Horticultural Mulches, Soils, and Growing Media*. Four certification categories are recognized at this time: Standard Horticultural Growing Media, Premium Horticultural Growing Media, Landscape Soils and Soil Amendments, and Horticultural Mulches.

The goal of the program is to provide the general marketplace with evidence of your company's commitment to quality and uniform product guidelines by the display of the MSC logo on your product bags. The program also forms the basis for fair competition in the marketplace for those who participate by following the defined rules. In a competitive market, it is important to inform product buyers, garden writers, academia, and most importantly...the consumer, that your products meet established minimum guidelines for the industry. This program is the only means by which a manufacturer or marketer can display the MSC logo on their products.

Only through compliance to the program's requirements, can registrants earn the right to license use of the MSC logo. The logo can be used for marketing literature and product labeling. In addition, certified products shall be immediately listed and displayed on the MSC's website, thus showing evidence of certification even before possible implementation of the logo on packaging. The MSC also employs an active marketing campaign to communicate the benefits of certification to the marketplace.

Significantly, the program is self-policing through randomized product testing and auditing administered by an independent program administrator highly qualified in the horticultural field. The details of the complete certification process, including audit tests, are outlined in the *MSC Product Certification Flowchart*. The *MSC Product Certification Program – Powers and Authorities* document defines the powers vested in each body involved in the program, such that the entire program has checks and balances and protects the rights of the registrants.

Eligibility and Timing of Application

The program is open to anyone who wishes to enroll that manufactures, markets, or distributes products in the certification categories. Applications for products to be certified can be submitted any time of year. However, for new product introductions, the spring/summer of the year proceeding the year of introduction is recommended. This will allow enough time to get approval from the MSC Program Administrator and implementation of necessary labeling changes before the label(s) are submitted to individual regulatory agencies for formal approval.

Certification Calendar and Fees

Certification is an annual process. As mentioned above, routine audits and testing will determine continued certification status, once products are initially approved. The annual period begins July 1 each year and extends through June 30 the following year.

The entire program is self-funding through use of program fees. There are two specific fees that must be paid by all participants. A non-refundable application fee is charged for all new applications and submitted with the application forms. A new application is necessary whenever a product is enrolled for the first time or substantive changes to an existing label or product formula are made. Application fees will not be charged for annual renewals when no changes are being made to the product.

The annual registration fee is specific to the product category being certified. Renewal notices will automatically be sent to the registrant of the product on June 1 of each year. Renewals must be made by June 30th, in order to avoid automatic removal from certification. Although a product can be certified part-year, the registration fees will not be prorated and will be fully assessed.

All fees are detailed on the *MSC Product Certification Fee Schedule*. All MSC members receive a discount to participate in the program.

Requirements of the Program

As mentioned, four certification categories are recognized. There are both general and specific requirements for products in these categories. As examples of some general requirements (applicable to all products) are weights and measures standards and labeling and nomenclature standards. Specific requirements for each category may include more narrow labeling stipulations, passage of growth tests, and analytical standards. All requirements are spelled out in the *MSC Voluntary Product Guidelines for Horticultural Mulches, Soils, and Growing Media*.

Application & Review

Depending on the certification category, a specific application form is used. The form basically requests pertinent information on the labeling and contents of the product and the quality control program employed. In addition, a physical sample of the product and package label are sent in for review with the package with the appropriate application fee.

The administrator reviews the package for completeness and compliance to the requirements of the program. In addition, if further tests are required to be done on the product, the Administrator can order these tests. A formal notice is returned to the applicant when the Administrator has made a decision.

Contract and Agreement

If the application is successful, a contract (*MSC Product Certification Agreement*) is returned with the acceptance letter. The applicant must sign the contract in order to complete the product certification and pay the established fee. The contract is a critical document. It is agreement to the terms and conditions of the program and limitations to the liability of the MSC in exchange for the license to utilize the MSC logo.

Section I: Enrollment

MSC Certification Flowchart

Use the chart to follow the process from beginning to end. Boxes, arrow, and lines that are solid indicate safe routes with no issues in the process flow. Boxes, arrows and lines that are dashed indicate problem routes.

- 1A. Application Package (New):** Requirements include:
- technical product information sheet (similar to MSC model law paperwork)
 - description of quality control program
 - affidavit that information and sample are representative of the intended product
 - typewritten or draft label with all claims (the final label must be submitted to the Administrator when complete and cannot differ in substance from draft versions approved)
 - declaration of certification category (e.g. premium, standard, mulch, or landscape soil and soil amendment)
 - product sample
 - application fee (non-refundable)

- 2. Administrator Review:** The Administrator has the authority to approve or deny registration based on the following criteria:
- meeting the MSC Voluntary Product Guidelines for Horticultural Mulches, Soils, and Growing Media.
 - the completeness of the application. The Administrator has the right to inquire about the information submitted and request additional information if necessary.
 - Depending on the product category, a growth test may be done by a designated MSC laboratory.
 - Except in cases where a growth test is required, the Administrator must respond within 30 days of receipt of the application.

1B. Renewal: A “renewal notice is sent to registrant 60 days prior to license expiration. Products with no substantive label or formulation change can renew certification without a new application process. Administrator must receive renewal form back with registration fee prior to expiration date.

5. Denial: The applicant can appeal the Administrator’s decision to the “Certification Appeals Board”.

6. Denial: The applicant can make a final appeal to the “MSC Board of Directors”.

7. Denial: The application is rejected and certification is prohibited for the subject product for a period of 2 years from the date of the Board’s official denial.

3. Approval: The registrant is sent an “application acceptance notice”, a licensing agreement to sign, and an invoice for the registration fee(s).

4. Certification: Upon receipt of registration fee and signed licensing agreement, a “product certification notice” is issued. The official designated logo may now be used as detailed in the licensing agreement. The product name is also placed on the certified products list on the MSC website & listed in the *NNQ* newsletter.

Section II: Testing & Auditing

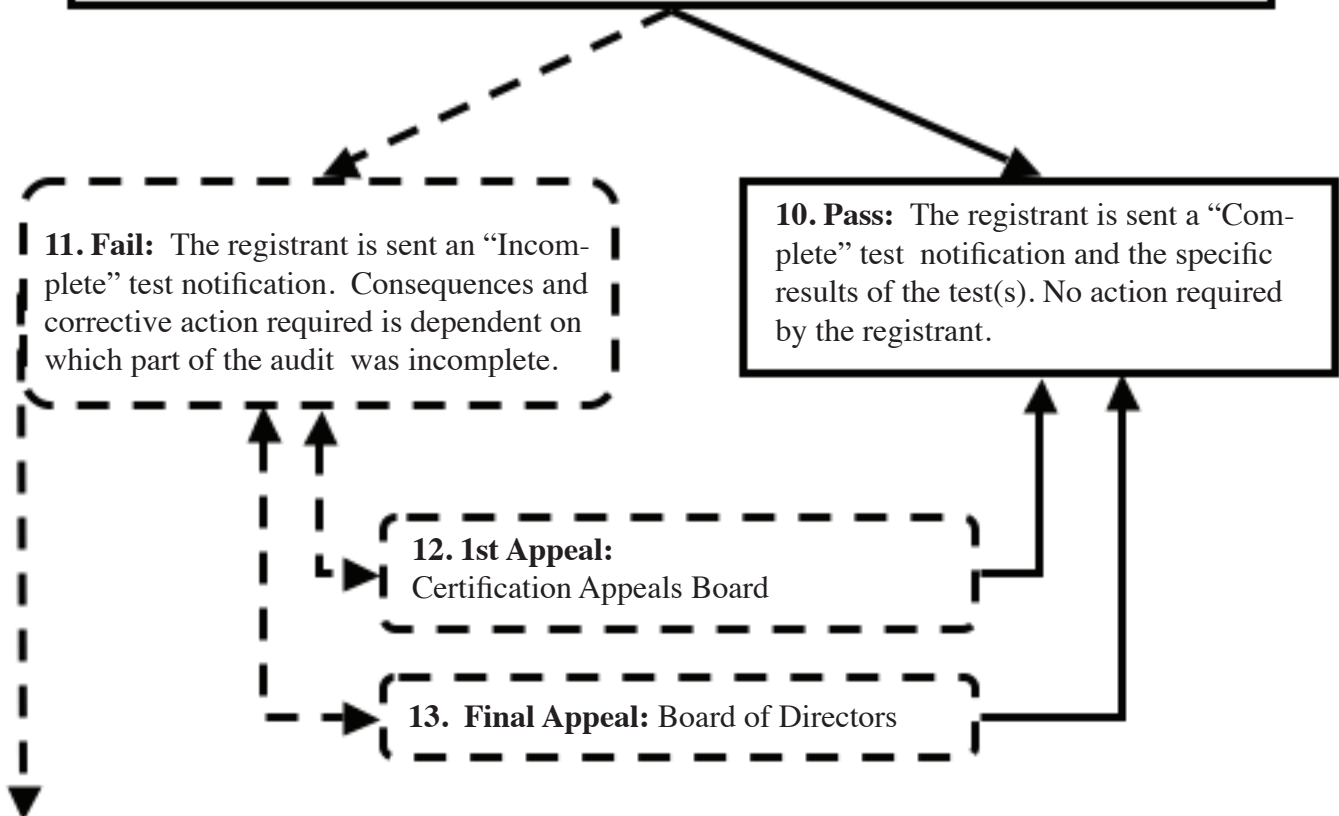
8. Annual Audit:

The Administrator can at any time, but not less than once per year, obtain a random package of the certified product from a retail store or manufacturing facility. The product will be audit tested at the specified MSC laboratory for compliance to the program as outlined in the MSC Voluntary Product Guidelines for Horticultural Mulches, Soils, and Growing Media. This includes:

- a. Comparison of previously approved label to audit label (and any changes to claims, nomenclature, etc.)
- b. NIST weights and measures test
- c. Laboratory analysis (if specified in the guidelines for the particular product category)
- d. Growth test (if specified in the guidelines for the particular product category)

9. Other Audit Triggers:

1. Product Complaints. If the Administrator receives a total of 5 written complaints from separate consumers or industry competitors, the Administrator shall undertake an audit (even if one was completed to fulfill the minimum requirement).
2. Administrator. The Administrator may initiate an audit test at any time that he/she believes necessary when there exists information to suspect non-compliance with the program (such as public knowledge of failing state weights and measures inspections).
3. Certification Committee. The committee can instruct the Administrator to conduct an audit if they have reason to suspect non-compliance to the program.



Section III: Issues and Corrective Actions

14. Labeling:

- a. Immediate probation from certification.
- b. Administrator and Manf. negotiate a timeframe to correct the problem.

15. Lab or Growth Test

- a. An immediate retest is conducted of product purchased from a different location than the first sample. Product remains certified while retest is being conducted.
- b. If manf. second test is incomplete, product is now put on probation from certification.
- c. The Administrator and Manf. negotiate timeframe for correction.

16. Weights & Measures

- a. An immediate retest is conducted of product purchased from a different location than the first sample. Product remains certified while retest is being conducted.
- b. If manf. second test is incomplete, the Administrator may order a larger W&M investigation. Product is now put on probation from certification.
- c. If investigation shows problem is not wide-scale negligence, the Administrator and Manf. negotiate timeframe for correction. Product cannot be reinstated until a third test shows compliance.

17. Resolution: If the product was placed on probation, it is now reinstated as certified. The Administrator may order more frequent audits on products which have failed audits in the past.

18. Decertification: If Manf. is not cooperative, permanent decertification is possible as determined by Certification Committee and Board of Directors

Mulch & Soil Council

Product Certification Program Fee Schedule Effective as of January 1, 2010



Program Costs per Product¹

	MSC Members	Non-Members
Application Fee ² :	\$200	\$400
Annual Registration Fee ³ :		
Premium Horticultural Growing Media	\$750	\$1500
Standard Horticultural Growing Media	\$750	\$1500
Landscape Soil & Soil Amendments	\$750	\$1500
Horticultural Mulch	\$750	\$1500
Initial Application Growth Test (Optional) ⁴	\$200	\$200

Notes:

1. A product refers to a registered product name and covers all package sizes under that name.
2. Application fees are non-refundable in the event the application is denied. Only new product applications or changes to an existing product or label previously certified are assessed application fees. No application fees are paid for annual renewals where no product or label changes have been made. Application fees are payable upon submission of the product application form.
3. Annual registration fees are payable upon acceptance of the application and return of the agreement to the MSC office. The annual period for certification is July 1 to June 30 of the following year. Full registration fees shall be assessed for part-year registrations. Renewal notices are sent to each registrant on June 1 of each year. Renewal fees must be paid by June 30 in order for products to remain actively certified.
4. Initial product applications for all soil categories must pass growth tests described in the MSC *Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media*. Applicants requesting the Certification Administrator to provide testing must add the testing fee with submission of each initial product application. Companies providing their own growth test data need not include the testing fee.

Mulch & Soil Council

CERTIFICATION TESTING

CONTROL SOIL



Applications for certification of horticultural growing media for premium or standard classification require compliance with growth tests defined in the MSC *Uniform Guidelines for Horticultural Mulches, Growing Media and Landscape Soils*, Appendices A & B.

Test protocols compare growth in the applicant medium to a control soil sample defined by the MSC. The control sample is comprised of 60% sphagnum peat moss, 20% perlite and 20% vermiculite, without nutrient change.

Since the quality of the constituent materials can affect the performance of the test, a uniform control sample has been created by the MSC for use in all sample testing conducted by the Council. Certification applicants may also conduct their own testing prior to certification application provided:

- A. Documentation of test protocols used complies with protocols defined in appendices A & B of the MSC guidelines,
- B. Photographic evidence of test results is provided, and
- C. Self-testing utilizes the MSC Control Soil.

All applicants intending to submit laboratory results from a self-testing program must contact the Certification Administrator PRIOR to initiating the test procedures. Failure to advise the Administrator BEFORE testing begins may void the acceptability of the test results. Applicants may contact the MSC Certification Administrator Dr. Bil Fonteno at (919) 515-5368

ACQUIRING THE CONTROL SOIL

The MSC Certification Control Soil may be purchased from the Council in units of one cubic foot (25.7 quarts). Samples are shipped by United Parcel Service (UPS) as a standard ground shipment. The cost of samples includes product, shipping carton, labor and transportation.

1 bag of Control Soil = \$18.00 2 bags of Control Soil = \$30.00

We estimate that the volume of Control Soil required for certification of a single product is 8 - 10 quarts.

Control Soil samples must be ordered through the MSC office at (703) 257-0111.

Pre-payment of shipments is required, and VISA, MasterCard and AmEx are accepted.

Mulch & Soil Council

Product Certification Program

Product Application For Horticultural Mulch



Section I. General Information

Date: _____

Registrant (Company) Name: _____

Address: _____

City, State, and Zip Code: _____

Name of preparer: _____ Phone: _____

Preparer's Title: _____ FAX: _____

Email: _____

Name of product as it appears on package labels: _____

Package sizes (volume or weight): _____

Certification Category Declared (check):

Horticultural Mulch

Certification Period Requested: _____ through June 30, _____

(Note: certification is valid only for the period July 1 through June 30 of the following year unless renewed. Although a product may be registered anytime, full fees shall be assessed for part-year registrations)

Section II. Product Description

This section must be completed to provide information about the product being certified. The information may be used to verify physical product changes and accuracy during routine audits and to establish compliance with proper labeling. Labeling must comply with the *MSC Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media*.

PHYSICAL COMPONENTS (List components in decreasing order of volume. Be specific as to the nature of the material, such as whether it is derived from bark or wood, and to the genus of tree the material is derived from).

	Components	% Content Range	Genus	Particle Size Range (inches)
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Overall Wood Content as a % Volume (range): _____ % to _____ %

Are any reprocessed wood products used in this product? Yes No

If yes, please specifically describe:

A) The origin of this material and whether it meets US EPA and state standards for a consumer product: _____

B) What procedures are followed to prevent contaminants in reprocessed wood products:

Check Other Components Added:

Limestone

Wetting agent

Insecticides, fungicides, herbicides, or plant growth regulators (if added, give name and concentration): _____

Other (describe): _____

Dye/Colorant. If yes, list the name of the die and its % in the overall product: _____

Fertilizer If yes, list added nutrient elements (N, P, K, minors, etc.): _____

A) List other nutrient sources such as manures, compost, sludge, etc., which have variable nutrient content. _____

B) List package label guaranteed analysis if given: _____%N, _____ %P₂O₅, _____%K₂O _____%
other (indicate) _____

Section III. Description of Quality Control Program

Does the manufacturing plant(s) where this product will be made have a formal quality control program yes no

If yes, please provide a description of this process including tests done. Specifically describe weights and measures testing procedures: _____

Section IV. Additional Materials Required with Application Form

APPLICATION FEE - MSC Member: \$200 / Non-member: \$400

Enclose a check in the amount indicated on the fee schedule. This fee is non-refundable in the event certification is denied. Application fees are waived for renewals as long as the product and label do not change. Substantive changes to either the label or product require a new application (including labels, samples, growth test, etc.). No applications will be processed without payment of the correct application fee.

PRODUCT TESTING FEE: MSC Member: \$150 / Non-member: \$250

This fee is nonrefundable and will be used to test for treated wood content of the much submitted and audit samples.

LICENSE FEE: Payment of annual license fee (\$750/MSC member, \$1,500/non-members) will be required after certification is approved.

PLEASE NOTE:

PRODUCT LABEL: Product label must accompany application and appropriate fees. (An empty bag label or legible copy of bag label is acceptable.)

PHYSICAL SAMPLE

DO NOT SHIP PRODUCT SAMPLES WITH YOUR APPLICATION. Upon receipt of application, you will be given shipment information for a 2 cu.ft. product sample.

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Section VI. Affidavit of Truth and Accuracy

I have reviewed this product application and understand its requirements. I acknowledge that the information provided is accurate and truthful.

Signature: _____ Title: _____

Company: _____ Date: _____

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FOR MSC USE ONLY PRODUCT NAME: _____

File Number: _____ Date Application Received: _____

Action: Acceptance Denial Indicate reason for denial: _____

Program Notice Sent (date): _____

Certification Director Approval Signature: _____

MSC Executive Director Signature: _____

Mulch & Soil Council

Product Certification Program

Product Application For

Landscape Soils & Soil Amendments and Horticultural Growing Media



Section I. General Information

Date: _____

Registrant (Company) Name: _____

Address: _____

City, State, and Zip Code: _____

Name of preparer: _____ Phone: _____

Preparer's Title: _____ FAX: _____

Email: _____

Web Site: _____

Name of product as it appears on package labels: _____
(including brand name on label)

Package sizes (volume or weight): _____

Certification Category Declared (check one only):

- Premium Horticultural Growing Media
- Standard Horticultural Growing Media
- Landscape Soil & Soil Amendment

NOTE: A product may be registered at any time, and certification is valid for one year from the date of approval. Recertification is required for additional one-year periods.

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Section II. Product Description

This section must be completed to provide information about the product being certified. The information may be used to verify physical product changes and accuracy during routine audits and to establish compliance with proper labeling. The values provided are for information purposes and are not considered in a pass or fail context compared to the product characteristics given in the *MSC Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media*. However, certified products should conform to these characteristics within the margin of error of laboratory testing. The MSC only recognizes test methodologies referenced in aforementioned guidelines with regard to requested data.

PHYSICAL COMPONENTS (List components in decreasing order or volume. Components that are 3% or less of the total volume may be grouped under "Other"):

Major Components

- | | |
|----------|-----------|
| 1. _____ | 7. _____ |
| 2. _____ | 8. _____ |
| 3. _____ | 9. _____ |
| 4. _____ | 10. _____ |
| 5. _____ | 11. _____ |
| 6. _____ | 12. _____ |

The bark/wood content of this product is:

- A. derived only from virgin forest products and contains no reprocessed wood or C&D materials
- B. derived from reprocessed wood products excluding C&D materials.
- C. derived from reprocessed wood products and may contain C&D materials.
- D. no bark/wood content of any type is used in the manufacture of this product.

For responses A - C, above, please specifically describe:

A) The origin of bark/wood materials processed at your facilities: _____

B) What procedures are followed to detect and prevent heavy metals, regulated pesticides or other contaminants in bark/wood products:

Check Minor Components Added:

- Limestone
- Wetting agent
- Gypsum
- Insecticides, fungicides, herbicides, or plant growth regulators (if added, give name and concentration):

Other (describe): _____

Fertilizer If yes, list added nutrient elements (N, P, K, minors, etc.): _____

A) available as soluble short term nutrients: _____

B) available as controlled release: _____

C) List other nutrient sources such as manures, compost, sludge, etc., which have variable nutrient content.

D) List package label guaranteed analysis if given: ____ %N, ____ %P₂O₅, ____ %K₂O ____ %

other (indicate) _____

PHYSICAL CHARACTERISTICS (at time of manufacturing):

Bulk density (range dry weight per unit volume): ____ to ____ lbs./cubic ft.

Total pore space (range of % by volume): ____ to ____ %

Air Space (range of % by volume): ____ to ____ %

Water holding capacity (range of % by volume): ____ to ____ %

Hydration Index (range): ____ to ____

List how these physical properties may change after manufacturing: _____

CHEMICAL CHARACTERISTICS (at time of manufacturing):

SME Nutrient Analysis:

Nutrient/form	ppm range	Nutrient/form	ppm range
NO ₃ -N	_____	Mn	_____
NO ₄ -N	_____	Cu	_____
P	_____	Mo	_____
K	_____	Zn	_____
Ca	_____	Na	_____
Mg	_____	B	_____
Fe	_____		

Soluble salt range: from ____ to ____ mmhos/cm

Describe how soluble salts in this product may change over time and factors that might affect change: _____

pH range: from ____ to ____

Describe how the pH in this product may change over time and factors that might affect change:

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Section III. Growth Test Results

Certification of all landscape and horticultural growing media requires passing the specific growth test as referenced in the *MSC Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media*. Please answer the following questions:

Who will provide the growth test data for this product: Program Administrator Applicant Company

Which growth test will be (or was) conducted? (check one)

- Premium Horticultural Growing Media
- Basic Horticultural Growing Media
- Landscape Soil and Soil Amendment

Results of applicant company tests are attached: Yes No

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Section IV. Description of Quality Control Program

Does the manufacturing plant(s) where this product will be made have a formal quality control program

- Yes No

If yes, please provide a description of this process including tests done and frequency of testing. Specifically describe weights and measures testing procedure and process for treated wood and heavy metals detection and control: _____

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Section V. Additional Materials Required with Application Form

APPLICATION FEE - MSC Member \$200 / Nonmember \$400

Enclose a check in the amount indicated on the fee schedule. This fee is non-refundable in the event certification is denied. Application fees are waived for renewals as long as the product and label do not change. Substantive changes to either the label or product require a new application (including labels, samples, growth test, etc.). No applications will be processed without payment of the correct application fee.

INITIAL PRODUCT GROWTH TEST (OPTIONAL) - MSC Member \$200 / Nonmember \$300

Initial product applications requesting growth tests by the Program Director must enclose a testing fee for greenhouse growth test. Applicants who will conduct their own growth test do not pay a testing fee.

PLEASE NOTE:

PRODUCT LABEL: Product label must accompany application and appropriate fees. (An empty bag label or legible copy of bag label is acceptable.)

PHYSICAL SAMPLE: DO NOT SHIP PRODUCT SAMPLES WITH YOUR APPLICATION. Upon receipt of application, you will be given shipment information for a 1 cu.ft. product sample.

Section VI. Affidavit of Truth and Accuracy

I have reviewed this product application and understand its requirements. I acknowledge that the information provided is accurate and truthful.

Signature: _____ **Title:** _____

Company: _____ **Date:** _____

.....

FOR MSC USE ONLY PRODUCT NAME: _____

File Number: _____ **Date Application Received:** _____

Action: **Acceptance** **Denial (Indicate reason for denial.)** _____

Program Notice Sent (date): _____ Certification Director Approval Signature: _____

MSC Executive Director Signature: _____

Company: _____ Date: _____

.....

FOR OFFICE USE ONLY

File Number: _____ Date Application Received: _____

Action: Acceptance Denial Indicate reason for denial: _____

Program Notice Sent (date): _____

Administrator Approval Signature: _____

MSC Executive Director Signature: _____

AGREEMENT

FOR LICENSE OF CERTIFICATION TRADEMARK OWNED BY THE MULCH & SOIL COUNCIL



This Agreement between the Mulch & Soil Council hereafter (“Licensor”) and **Company Name**, hereafter (“Licensee”) is for the use of Licensor’s Certification Trademark (the Trademark) to be used in conjunction with the *Voluntary Uniform Product Guidelines for Horticultural Mulches, Growing Media and Landscape Soils* (the Guidelines) shown in Exhibit A, attached hereto and made a part of this Agreement.

WHEREAS, Licensee desires to use the Trademark, a copy of which is attached hereto as Exhibit B, in connection with the sale of Licensee’s goods; and

WHEREAS, Licensor is the proprietor of the Trademark and is willing to permit such use pursuant to the terms of this Agreement,

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Licensor and Licensee.

IT IS AGREED:

1. License. Licensor grants Licensee a non-exclusive, non-transferable, limited license to use the Trademark in connection with Licensee’s advertising, marketing, promotion and sale of products owned by Licensee and which have been certified as a **Product Type** by Licensor (hereinafter, the Certified Product) which Product is:

“PRODUCT NAME”

Licensee will display the Trademark on any product that is sold under or in conjunction with a claim that the product is certified under the standards of the Mulch & Soil Council. In any such case, the Trademark will appear not only on the product’s packaging, but also on any advertisements describing or listing the product.

Licensee will at all times adhere to the guidelines shown on Exhibit A in its use of the Trademark. Licensee hereby agrees that the Guidelines may be amended at any time and further agrees that all such amendments will become a part of this Agreement.

In order to protect the goodwill of Licensor, Licensor retains the right to review and approve all uses of the Trademark. Licensee shall, on a regular and periodic basis, certify to Licensor that the Trademark is being used solely in accordance with this Agreement and the Guidelines.

2. Acknowledgement. Licensee acknowledges that Licensor is the lawful owner of the Trademark, and agrees to take no action inconsistent with Licensor’s ownership such as would subject Licensor to claims by third parties or potential loss of its ownership, or that would otherwise impair the value of the Trademark.

3. Royalty. Licensee will pay royalties to Licensor according to the schedule shown in Exhibit C. This schedule may be amended from time to time by Licensor. Licensee agrees to all amendments of the Royalty schedule shown on Exhibit C.

MULCH & SOIL COUNCIL, 7809 FM 179, Shallowater, TX 79363
Certification Office: 5281 Holly Springs Dr. Douglasville, GA 30135

TEL: 806.832.1810 • FAX: 806.832.5244 • E-mail: info@mulchandsoilcouncil.org • Web: www.mulchandsoilcoun

4. Cooperation. Licensors and Licensees agree to use their best efforts and cooperate in the performance of this Agreement so that its purposes may be successfully carried out.

5. Agency. Licensors and Licensees agree that this Agreement is not intended to create an agency relationship of any kind; and both agree not to contract any obligations in the name of the other, to use each other's credit in conducting any activities under this Agreement, or to represent that Licensor is in the business of providing the products and/or services provided by Licensee.

6. Confidentiality of Certification Records. All test results, applications for certification and certification records shall be considered to be Confidential Information under this Agreement. Licensor shall protect the disclosed Confidential Information by using the same degree of care to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Licensor uses to protect its own confidential information of a like nature, but no less than a reasonable degree of care. Except as permitted by this Agreement, Licensor shall disclose no part of such Confidential Information to anyone except to those of its employees, agents, contractors, and representatives who have (i) a need to know the same, (ii) signed an Agreement under which they shall keep confidential such Confidential Information (iii) before receiving access to the Confidential Information, acknowledged its confidential, proprietary and trade secret nature, (iv) agreed to use such Confidential Information only for the purposes of performing recipient's obligations under this Agreement. This duty and obligation of confidentiality shall indefinitely survive termination of this Agreement.

This Agreement imposes no restriction upon Licensor with respect to disclosure or use of Confidential Information: (i) that is or becomes (prior to such disclosure or use) a matter of public knowledge through no fault of the Licensor; (ii) that is received by the Licensor from a third party without a duty of confidentiality; (iii) that is disclosed by the Licensee to a third party without a duty of confidentiality on the third party; (iv) that is disclosed by Licensor with Licensee's prior written approval; or (v) to the extent disclosed in accordance with the order or requirement of a court, administrative agency, or other governmental body (provided, however, that the Licensee shall provide prompt notice thereof to enable the Licensee to seek a protective order or otherwise prevent such disclosure).

If Confidential Information is required to be disclosed in accordance with the order or requirement of a court, administrative agency or other governmental body, Licensee may challenge such order or requirement to prevent the disclosure of Confidential Information on its own behalf and expense. Licensee may also request Licensor to challenge such order or requirement and Licensor may accept or reject such request at its own discretion. If Licensor accepts Licensee's request to challenge the order or requirement of a court, administrative agency or other governmental body, Licensee shall fully bear all costs and attorney's fees associated with Licensor's challenge.

7. Indemnification and Insurance. Licensee shall indemnify licensor, its officers, agents, employees and members and hold them harmless from and against any and all actual loss, damage, liability, claim, encumbrance, deficiency, cost or expense, including reasonable attorney's fees, resulting from: [1] any breach of any of the representations, warranties, or agreements made herein by licensee; [2] any action, claim or proceeding, asserted or instituted, by any third party related to or growing out of such breach or alleged breach or any other wrongful acts or alleged wrongful acts of licensee; [3] pesticides contained in Licensee's products and/or pesticide claims made by Licensee regarding Licensee's products. For any of Licensee's products that are certified under this Agreement, and which contain any pesticides, Licensee will arrange to have Licensor included as a named insured on Licensee's liability insurance policies.

8. Term. The term of this Agreement shall be 365 days, beginning on the date executed by an authorized representative of the Licensor. This Agreement may be renewed for additional terms of 365 days upon execution by Licensee of the Mulch & Soil Council Product Certification Renewal Agreement on or before the end of the initial or any successive term. In the event Licensee does not execute the Mulch & Soil Council Product Certification Renewal Agreement at the end of the initial or any successive term or if at any time Licensor determines in its sole discretion that the Certified Product fails to meet the requirements of this License Agreement, this Agreement shall be terminated. Licensor reserves the right to terminate this License at any time the Certified Product fails to meet the requirements of this License Agreement. After any such termination,

Licensee may not introduce into the market by sales, shipment, public display or any other manner, any product on which the Trademark is displayed.

9. Waiver. Either party's waiver of, or failure to exercise, any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement.

10. Successors and Assigns. This Agreement shall be binding on the parties, and on their successors and assigns, without regard to whether it is expressly acknowledged in any instrument of succession or assignment.

11. Notices. Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery or by mail. If delivered by mail, notices shall be sent by Express Mail, or by certified or registered mail, return receipt requested, with all postage and charges prepaid, to the following addresses:

Mulch & Soil Council, 7809 FM 179, Shallowater, TX 79363 Attn: Executive Director

COMPANY, ADDRESS, CITY, STATE ATTN: CO. REPRESENTATIVE

11. Governing Law. This Agreement shall be governed in all respects, except as to conflicts of laws, under the laws of the Commonwealth of Virginia.

12. Captions. The captions of each paragraph of this Agreement are inserted solely for the reader's convenience, and are not to be construed as part of the Agreement.

13. Severability. If any provision in this Agreement is determined by a competent authority to be unenforceable, all other provisions of this Agreement shall continue in full force and effect.

14. Amendment. This Agreement constitutes the entire agreement between the parties, and supersedes all prior writings or oral agreements. This Agreement may be amended only by a writing clearly setting forth the amendments and signed by the party against whom enforcement is sought.

15. Warranty. Each party warrants that the individual signing this License Agreement on its behalf is duly authorized to do so.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized agent.

COMPANY NAME

MULCH & SOIL COUNCIL, INC.

By: _____

By: _____


Robert C. LaGasse, Executive Director

Date: _____

Date: _____

Schedule A

SAMPLE CERTIFICATION LOGO
CERTIFIED PRODUCT

	Premium Potting Soil
	Standard Potting Soil
	Landscape Soil & Soil Amendment
	Specialty Soils
	✓ Mulch

This product has been registered and tested for conformance to the standards of the Mulch & Soil Council for the indicated product category. The Mulch & Soil standards do not contain a product category for pesticides, and this certification mark does not apply to pesticide claims. For more information, refer to the MSC website at www.mulchandsoilcouncil.org.

Schedule B

Specifications for the Use of the Product Certification Logo

The use of the Certification Mark (the Mark) in conjunction with the Agreement for License of Certification Mark Owned by the Mulch & Soil Council (MSC) may be exercised only in accordance with these specifications. Any deviation from the Specifications here in will result in revocation of the License from the MSC to Licensee.

1. The Mark may be used only on products that have been certified as conforming to the Uniform Guidelines for Horticultural Mulches, Soils and Horticultural Growing Media published by the MSC. The Licensee will at all times ensure that the Mark is used on a product that has been certified and not in any manner that would suggest a connection between the Mark and any product that has not been certified by the MSC.
2. Because the Mark may be used only on specific certified products, it may not be used in connection with any general advertising campaign conducted by Licensee for all of Licensee’s products.

Schedule C

Royalty Schedule

Program Costs per Product

	MSC Members	Non-Members
Application Fee:	\$200	\$400
Annual Registration Fee:		
Premium Horticultural Growing Media	\$750	\$1500
Standard Horticultural Growing Media	\$750	\$1500
Landscape Soil & Soil Amendments	\$750	\$1500
Horticultural Mulch	\$750	\$1500
Initial Product Growth Test (Optional)	\$200	\$200

MSC Certification Program Powers and Authority

General: The MSC certification program tasks members that participate in the program and fulfill its requirements with certain responsibilities. The program is designed to be a disciplined system with checks and balances to ensure fair treatment of its members but also to maintain enforceable rules of the program. To do this, authority is granted to individuals and bodies which have administrative or oversight functions of the program. The authorities are discussed below with a brief description of function, their respective powers and how each authority is granted.

Administrator

The Administrator is responsible for primary administrative functions of the program. This includes among other things, maintaining all certification files, correspondence between registrants, coordination of tests and audits, acting as an informant to the Certification Committee, Certification Appeals Board and Board of Directors. [Note: The Administrator may also perform the Laboratory function as well, or may be completely independent.]

The Administrator has the following powers and responsibilities:

- to conduct annual audits anytime and audit more frequently than once per year on any product with approval of the Board of Directors
- to determine the adequacy and completeness of applications, responses, data, and general compliance with the program
- to perform general inquiries of registrants at any time about products registered in the program
- to report the progress and actions of the Administrator's office to the Board of Directors, Certification Appeals Board and Executive Director on a quarterly basis

Registrants can appeal decisions by the Administrator with the Certification Appeals Board. The Administrator is nominated by the Certification Committee and confirmed by the Board of Directors.

Laboratory

The Laboratory is a designated facility (or facilities) where all tests described in the "MSC Voluntary Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media" are conducted. This facility executes tests officially sanctioned by the MSC. [Note: The Laboratory may also perform the Administrator function as well, or may be completely independent.]

The Laboratory has the following responsibilities:

- to conduct tests under the protocols approved by the MSC Standards Committee on registered products
- to determine the pass or fail status of all tests
- to provide a technical opinion to the Administrator, Certification Committee, Certification Appeals Board, Standards Committee or Board of Directors regarding possible reasons for test failures and remedies.

Registrants may not appeal decisions by the Laboratory but must work through the Administrator instead. The Laboratory is nominated by the Standards Committee and confirmed by the Board of Directors.

Certification Committee

The Certification Committee is responsible for researching, drafting, and proposing the mechanics of the certification process. They will also act as an oversight committee to the Administrator. As determined by the Administrator or their own action, they will convene by teleconference or meeting to render decisions necessary in the program.

The Certification Committee has the following rights and powers:

- to recommend changes in the certification program to the Board of Directors

- to provide guidance to the Administrator
 - to develop and promote on-going marketing of the program to the public and industry
- The Certification Committee is an Ad Hoc committee of the association and is appointed by the President of the Association and confirmed by the Board of Directors.

Certification Appeals Board

The Certification Appeals Board is the first line of appeals for any applicant denied certification by the Administrator. It shall function as an adjudication body which shall convene in person or by teleconference within 30 days of receipt of an applicant's request for appeal.

The Certification Appeals Board has the following powers and responsibilities:

- to receive appeals from registrants that challenge decisions by the Administrator
- to convene a session to hear arguments presented by the Administrator and the Applicant
- to uphold or over-rule decisions by the Administrator
- to provide guidance to the Administrator

The Certification Appeals Board shall consist of 3 persons (members or non-members) appointed for 3-year, staggered terms by the Board of Directors.

Standards Committee

The Standards Committee is responsible for researching, drafting, and proposing guidelines and test methods in the "MSC Voluntary Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media". As necessary, this committee shall convene by teleconference or meetings to render decisions necessary in the program.

The Standards Committee has the following rights and powers:

- to recommend changes to the "MSC Voluntary Uniform Product Guidelines for Horticultural Mulches, Soil, and Growing Media"

The Standards Committee is an Ad Hoc committee appointed by the President of the Association and confirmed by the Board of Directors. It is made up of MSC members and non-members as determined by the Board. The President and Board of Directors shall determine this committee's existence on an as needed basis. Interest in committee membership shall be made in writing to the President or the Executive Director of the Association.

Executive Director

The Executive Director shall be responsible for the financial management of the program and the chief coordinator of all bodies involved. With regard to the certification program, he shall:

- prepare and administer the annual program budget
- receive and disburse all program funds
- monitor program compliance with the policies and procedures of the association
- provide advice and counsel to the Board of Directors, Certification Appeals Board, committees and Administrator

The Executive Director is appointed by the Board of Directors.

Board of Directors

The Board of Directors is charged with overall management of the association's affairs.

With regard to product certification only, the Board of Directors has the following rights and powers, and is considered the final authority:

- to receive appeals from registrants that challenge decisions by the Certification Appeals Board
- to uphold or over-rule decisions by the Certification Appeals Board
- to provide guidance to the Administrator, Certification Committee and Certification Appeals Board

Directors are elected positions as determined by the bylaws of the association.