

FEB 08 2022

LA DEPT OF ENV QUALITY
LEGAL DIVISION

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

SMITTY'S SUPPLY, INC.

AI # 25963

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

- * Settlement Tracking No.
- * SA-MM-21-0085
- *
- * Enforcement Tracking Nos.
- * WE-CN-12-01230
- * MM-CN-17-00667
- *
- *
- *
- *

SETTLEMENT

The following Settlement is hereby agreed to between Smitty's Supply, Inc. ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a corporation that owns and/or operates a blending and packaging facility for oil and other engine lubricants located in Roseland, Tangipahoa Parish, Louisiana ("the Facility").

II

On October 29, 2012, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-12-01230 (Exhibit 1).

On January 19, 2018, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. MM-CN-17-00667 (Exhibit 2).

III

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00), of which Two Thousand Seven Hundred Sixteen and 27/100 Dollars (\$2,716.27) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), the Consolidated Compliance Orders & Notices of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VI

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VII

This settlement is being made in the interest of settling the state's claims and avoiding for

both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

VIII

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Tangipahoa Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

SMITTY'S SUPPLY, INC.

BY: Chad Tate
(Signature)

Chad Tate
(Printed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 1 day of February, 20 22, at Roseland, Louisiana.

[Signature]
NOTARY PUBLIC (ID # _____)

A. Bradley Bernal
Notary Public, State of Louisiana
Notary ID No. 60141
Louisiana Bar Roll No. 26199
Commission Expires 01/2023

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

BY: [Signature]
Celena J. Dage, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 11th day of May, 20 22, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 92503)
AMBER G. LITCHFIELD
Notary Public
State of Louisiana
Notary ID # 92503
East Baton Rouge Parish

(stamped or printed)

Approved: [Signature]

Lourdes Iturra de, Assistant Secretary



BOBBY JINDAL
GOVERNOR

PEGGY M. HATCH
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

EDMS
Toni
Dawn

CERTIFIED MAIL (7005 1820 0002 2365 6814)^{October 29, 2012}
RETURN RECEIPT REQUESTED

SMITTY'S SUPPLY, INC.
c/o A. Bradley Berner, Attorney at Law
Registered Agent
123 South Oak Street
Hammond, LA 70403

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. WE-CN-12-01230
AGENCY INTEREST NO. 25963**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **SMITTY'S SUPPLY, INC. (RESPONDENT)** for the violations described therein.

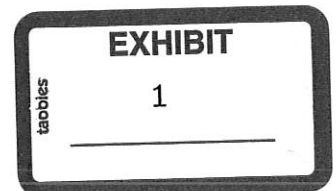
Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or referral to the Department of Justice for appropriate legal actions.

Any questions concerning this action should be directed to Toni Booker at (225) 219-3088.

Sincerely,

Celena J. Cage
Administrator
Enforcement Division

CJC/TMB/tmb
Alt ID No. LAG480352/LAR200000
Attachment



**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF

**SMITTY'S SUPPLY, INC.
TANGIPAHOA PARISH
ALT ID NO. LAG480352**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.**

*
*
* **ENFORCEMENT TRACKING NO.**
*
* **WE-CN-12-01230**
*
* **AGENCY INTEREST NO.**
*
* **25963**
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**CONSOLIDATED
COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **SMITTY'S SUPPLY, INC. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates a lubricating oil packaging facility located at Hwy 51 N in Roseland, Tangipahoa Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LAG480352 on or about January 9, 2004, which was modified on or about July 30, 2004. LPDES permit LAG480352 expired on July 31, 2006, but was administratively continued. On or about May 24, 2011, LPDES permit LAG480352 was reissued to the Respondent with an expiration date of November 30, 2015. Under the terms and conditions of the LPDES permit LAG480352, the Respondent is authorized to discharge treated sanitary wastewater, equipment wash water, and storm water runoff

associated with industrial activity into an open ditch, thence into the Tangipahoa River, waters of the state. In addition, the Respondent received automatic coverage under the LPDES Storm Water General Permit for Small Construction Activities (LAR200000) for construction activities that disturb less than five (5) acres of land.

II.

The Respondent was issued **COMPLIANCE ORDER WE-C-10-00124** on or about December 19, 2011, for failure to maintain records; failure to implement a Storm Water Pollution Prevention Plan (SWPPP); failure to properly operate and maintain facilities and systems of treatment and control; failure to provide appropriate containment; failure to report flow estimates; exceedance of effluent limitations; failure to submit accurate or timely Discharge Monitoring Reports (DMRs); and failure to submit Non Compliance Reports (NCRs). The Respondent was ordered to take any and all steps necessary to meet and maintain compliance with LPDES permit LAG480352 and to submit properly completed DMRs, and a written report including a detailed description of cited violations in **COMPLIANCE ORDER WE-C-10-00124**. The Department received a written response from the Respondent on or about January 27, 2012. **COMPLIANCE ORDER WE-C-10-00124** is a final action and not subject to further review.

III.

An inspection conducted by the Department on or about October 12, 2012, in response to a citizen's suit, revealed that the Respondent failed to implement a SWPPP. Specifically, a new warehouse was being constructed, and an area of approximately four (4) acres of land had been disturbed. There were no storm water controls in place in the area and, the foundation was being built up with dirt from offsite. The Respondent's SWPPP was last updated on February 25, 2007. The Respondent's failure to implement a SWPPP is a violation of LPDES permit LAR200000 (Part III Section A.2.), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A.

IV.

An inspection conducted by the Department on or about October 12, 2012, in response to a citizen's suit, revealed that the Respondent failed to amend the Spill Prevention and Control (SPC) Plan whenever there is a modification in facility design. Specifically, the SPC plan was last updated on October 20, 2004, and does not currently include the rail spur or several of the

new storage tanks in use at the facility. The Respondent's failure to amend the SPC Plan is a violation of LPDES permit LAG480352, La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A., and LAC 33:IX.905.E.

V.

An inspection conducted by the Department on or about October 12, 2012, in response to a citizen's suit, and a subsequent file review conducted by the Department on or about October 22, 2012, revealed the following effluent limitation exceedances as reported by the Respondent on DMRs:

Date	Outfall	Parameter	Permit Limit	Sample Value
7/1/2011- 12/31/2011	01A	BOD	45 mg/L	50 mg/L
	01B	BOD	45 mg/L	65 mg/L
	01C	BOD	45 mg/L	57 mg/L
4/1/2012- 6/30/2012	009B	COD	125 mg/L	145 mg/L

Each exceedance of the permit effluent limitations is a violation of **COMPLIANCE ORDER WE-C-10-00124**, LPDES permit LAG480352 (Part I, Section B, and Part III, Section A.2), La. R. S. 30:2076(A)(3), and LAC 33:IX.501.A.

VI.

A file review conducted by the Department on or about October 22, 2012 revealed that the Respondent failed to submit accurate DMRs. Specifically, the DMRs for the fourth quarter of 2011 were submitted with the incorrect permit number. The Respondent's failure to submit accurate DMRs is a violation of LPDES permit LAG480352 (Part I, Section C and Part III, Sections A.2. and D.4.), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

I.

To immediately take upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with LPDES permit LAG480352 and the Water Quality Regulation including but not limited to, complying with all effluent limitations and submitting accurate DMRs.

II.

To implement storm water controls immediately upon receipt of this **COMPLIANCE ORDER**, in accordance with your SWPPP and LPDES permit, and to submit to the Enforcement Division, within (30) days after receipt of this **COMPLIANCE ORDER**, documentation that storm water controls are installed and are being maintained as required by your SWPPP and LPDES permit.

III.

To amend the SPC Plan, in accordance with LAC 33:IX.905-907, for this facility, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, and to submit to the Enforcement Division a copy of the amended SPC Plan within forty-five (45) days after receipt of this **COMPLIANCE ORDER**.

IV.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attention: **Toni Booker**
Enforcement Tracking No. WE-CN-12-01230
AI No. 25963

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the **Enforcement Tracking Number** and **Agency Interest Number**, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. WE-CN-12-01230
Agency Interest No. 25963

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004; or after, civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Toni Booker at (225) 219-3088 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

III.

The Department is required by La. R.S. 30:2025(E) (3) (a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of

monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement.

IV.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 29 day of October, 2012.



Cheryl Sonnier Nolan
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Toni Booker



JOHN BEL EDWARDS
GOVERNOR

CHUCK CARR BROWN, PH.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE
January 19, 2018

CERTIFIED MAIL (7016 2140 0000 3607 4083)
RETURN RECEIPT REQUESTED

SMITTY'S SUPPLY, INC.
c/o A. Bradley Berner, Attorney at Law
Agent for Service of Process
1250 Southwest Railroad Avenue Suite 230A
Hammond, LA 70403

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. MM-CN-17-00667
AGENCY INTEREST NO. 25963**

Dear Sir/Madam:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **SMITTY'S SUPPLY, INC. (RESPONDENT)** for the violations described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

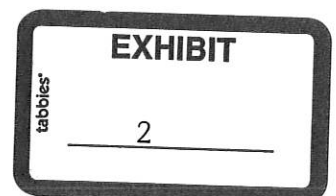
Any questions concerning this action should be directed to Kelly O'Neal at (225) 219-3932.

Sincerely,

A handwritten signature in black ink, appearing to read "Celena J. Cage".

Celena J. Cage
Administrator
Enforcement Division

CJC/KAO/jsc
Alt ID No. LAG480352
Attachment



c: Smitty's Supply, Inc.
P.O. Box 530
Roseland, LA 70456

**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF

**SMITTY'S SUPPLY, INC.
TANGIPAHOA PARISH
ALT ID NO. LAG480352**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.**

*
*
* **ENFORCEMENT TRACKING NO.**
*
* **MM-CN-17-00667**
*
* **AGENCY INTEREST NO.**
*
* **25963**
*

**CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **SMITTY'S SUPPLY, INC. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates Smitty's Supply, Inc., a blending and packaging facility for oil and other engine lubricants, located at 63399 Highway 51 N in Roseland, Tangipahoa Parish, Louisiana. The Department reauthorized coverage under LPDES General Permit LAG480352 on May 24, 2011, with an effective date of December 1, 2010 and an expiration date of November 30, 2015. On or about March 18, 2016, the Department notified the Respondent that coverage would not be extended under reissued LAG480352 due to incidents resulting in non-compliance at the facility. In correspondence dated March 18, 2016, the Respondent was informed that if an individual permit application was submitted to the Department within sixty (60) days, coverage under the expired permit LAG480352 would be administratively continued until an individual permit is issued by the Department. The Respondent submitted an individual application for Minor Industrial Facilities on or about May 20,

2016, and coverage under LAG480352 was administratively continued. Under the terms and conditions of LPDES General Permit LAG480352, the Respondent is permitted to discharge treated sanitary wastewater and storm water runoff into a drainage ditch, thence to the Tangipahoa River, all waters of the state.

II.

The Respondent was issued **COMPLIANCE ORDER WE-C-10-00124** on or about December 19, 2011. The Department received a response from the Respondent dated February 14, 2012. **COMPLIANCE ORDER WE-C-10-00124** is a final action of the Department and not subject to further review.

III.

The Respondent was issued **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-12-01230** on or about October 29, 2012. The Department received a response from the Respondent dated December 7, 2012. **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-12-01230** is a final action of the Department and not subject to further review.

IV.

The Department issued **WARNING LETTER MM-L-17-00667** on or about July 27, 2017, for violations discovered during inspections conducted on or about December 29, 2016, and February 9, 2017. A response was received by the Department on or about August 28, 2017.

V.

On or about December 20, 2016, the Department received a citizen complaint, incident number T-174690, regarding the facility burying waste, not disposing of waste properly, installing new equipment without following regulations, and oil products running off property and into ditch systems.

VI.

A file review conducted by the Department on or about January 4, 2018, found that the Respondent failed to comply with LPDES permit LAG480352. Specifically, the Respondent failed to submit semiannual Discharge Monitoring Reports (DMRs) for the following monitoring periods:

Date	Outfall(s)
June 2017	01A, 01B, 01C, & 01D
December 2016	01A, 01B, 01C, & 01D
June 2014	01D

The failure to submit DMRs is a violation of LPDES permit LAG480352 (Section C, pages 26-29 of 29), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4.a.

VII.

A file review conducted by the Department on or about January 4, 2018, found that the Respondent failed to sample as required by LPDES permit LAG480352. Specifically, the Respondent failed to sample all parameters for the following monitoring periods:

Date	Outfall(s)
December 2015	01A, 01B, 01C, & 01D
June 2015	01A, 01B, 01C, & 01D
December 2014	01A, 01B, 01C, & 01D
June 2014	01B

Each failure to sample is a violation of LPDES permit LAG480352 (Section C, pages 26-29 of 29), La. R.S. 30:2076 (A)(3), and LAC 33:IX.501.A.

VIII.

A file review conducted by the Department on or about January 4, 2018, found that the Respondent exceeded the effluent limitations contained in LPDES permit LAG480352. These effluent exceedances, as reported by the Respondent on Discharge Monitoring Reports (DMRs), are summarized below:

Date	Outfall	Parameter	Permit Limit	Reported Value	Units
June 2016	01B	BOD monthly average	30	315	mg/L
	01B	BOD daily max	45	315	mg/L
	01B	TSS monthly average	30	130	mg/L

	01B	TSS daily max	45	130	mg/L
	01C	BOD monthly average	30	77	mg/L
	01C	BOD daily max	45	77	mg/L
	01C	TSS monthly average	30	54	mg/L
	01C	TSS daily max	45	54	mg/L
	01A	Fecal Coliform monthly average	200	>200	colonies/100 mL
	01A	Fecal Coliform daily max	400	>400	colonies/100 mL
	01B	Fecal Coliform monthly average	200	>200	colonies/100 mL
	01B	Fecal Coliform daily max	400	>400	colonies/100 mL
	01C	Fecal Coliform monthly average	200	>200	colonies/100 mL
	01C	Fecal Coliform daily max	400	>400	colonies/100 mL
	01D	Fecal Coliform monthly average	200	700	colonies/100 mL
	01D	Fecal Coliform daily max	400	700	colonies/100 mL
June	01A	Fecal Coliform monthly average	200	5000	colonies/100 mL
2014	01A	Fecal Coliform daily max	400	5000	colonies/100 mL

Each effluent exceedance is a violation of LPDES permit LAG480352 (Section B, page 11 of 29), La. R.S. 30:2076 (A)(3), and LAC 33:IX.501.A

IX.

Inspections conducted by the Department on or about December 29, 2016, and February 9, 2017, in response to a citizen's complaint, and a subsequent file review conducted on or about January 4, 2018, found that the Respondent did cause or allow the unauthorized discharge of oil-contaminated water to waters of the state. Specifically, during the December 29, 2016, inspection, secondary containment was being drained across a parking lot and into the U.S. Highway 51 roadside ditch (see Picture 9, Attachment 3 of the inspection report). The water coming from the containment had a colorful sheen (see Picture 4, Attachment 3 of the inspection report). A facility representative stated that the facility drains the containment areas after rainfall to prevent overflowing. Also observed during the inspection, was the discharge of oil-contaminated water from the southeast corner of the facility to the U.S. Highway 51 roadside ditch (see Pictures 1 & 5, Attachment 3 of the inspection report). Downstream from the facility, the roadside ditches had a visible sheen, an accumulation of emulsified

oil, and contained multiple oily absorbent booms (see Pictures 6 & 7, Attachment 3 of the inspection report). During the February 9, 2017, inspection, an accumulation of emulsified oil and oil-saturated absorbent pads was observed in the U.S. Highway 51 roadside ditch at an outfall (see Picture 7, Attachment 5 of the inspection report). At another outfall, a multi-colored sheen was observed on the water in the U.S. Highway 51 roadside ditch (see Picture 1, Attachment 5), and the soil and vegetation was coated in oil residue (see picture 4, attachment 5). Each unauthorized discharge of oil-contaminated water constitutes a violation of La. R.S. 30:2076 (A)(1)(a), and LAC 33:IX.501.C. A response to **WARNING LETTER MM-L-17-00667** stated that an oil-water separator was installed to address this violation.

X.

Inspections conducted by the Department on or about December 29, 2016, and February 9, 2017, in response to a citizen's complaint, and a subsequent file review conducted on or about January 4, 2018, found that the Respondent failed to meet all conditions of the Storm Water Pollution Prevention Plan (SWPPP), and failed to implement the Spill Prevention and Control (SPC) plan as follows:

- A. Spilled oil, leaking containers, and poor housekeeping practices were observed during the inspections. Also, during the inspection on or about December 29, 2016, waste was observed overflowing from a concrete-mounted trash compactor. The concrete area surrounding the trash compactor was covered in oil (see pictures 18 & 19, Attachment 3 of the inspection report). During the follow-up inspection conducted on or about February 9, 2017, the trash compactor was still in poor condition. Oily, plastic, and metal products were overflowing from the trash compactor into a nearby drain (see pictures 20 & 21, Attachment 5 of the inspection report). A response to **WARNING LETTER MM-L-17-00667** stated that overflowing items were picked up, and the surrounding area was cleaned up. Housekeeping inspections are being performed twice a day to maintain the trash compactor.
- B. During the inspection conducted on or about December 29, 2016, three (3) secondary containment areas, which contained a large amount of standing water and oil, were being drained into a concrete ditch in the center of the tank farm. From the concrete ditch, the oil-contaminated water drained to the U.S. Highway 51 roadside ditch. Also, oil-contaminated water from a secondary containment was observed flowing, unsupervised, across the parking lot and into the U.S. Highway 51 roadside ditch. All drains from

diked areas with valves are to be kept in the closed position except during periods of supervised discharge.

- C. The secondary containment areas were found to have residual oil and other oily materials. Secondary containment shall be maintained and kept free of residual oil or other contaminants to prevent accidental discharge.
- D. Multiple cracks were found in containment dikes and oil products were observed leaking out of these cracks. All potential sources of pollutant releases shall be inspected and maintained on a regular basis to assure proper operation and prevent the discharge of pollutants. A response to **WARNING LETTER MM-L-17-00667** stated that leaking containment areas were repaired by sealing the cracks and repairing the valves in containment.

Paragraphs A, B, C, and D, are all failures to meet all conditions of the SWPPP and are violations of LPDES permit LAG480352 (Other Conditions, Section Q, pages 13 & 14 of 23), La. R.S. 30:2076 (A)(3), and LAC 33:IX.2701.A. Paragraphs B, C, and D are all failures to implement the SPC plan and are violations of La. R.S. 30:2076(A)(3) and LAC 33:IX.905.B.

XI.

On or about December 29, 2016, and February 9, 2017, the Department conducted inspections at the facility to determine the degree of compliance with the Act and the supporting Regulations. While the investigation by the Department is not yet complete, the following violations were noted during the course of the inspections:

- A. The Respondent caused and/or allowed the disposal of regulated solid waste without a permit and/or other authority from the Department, in violation of La. R.S. 30:2155 and LAC 33:VII.315.C. Specifically, at the time of the December 29, 2016 inspection, oily wastewater was observed in contact with water and soil in the exterior ditches outside of the facility. Additionally, saturated absorbent booms were observed in the ditch. At the time of the February 9, 2017 inspection, emulsified oil and oil-saturated absorbent pads were noted in the Highway 51 ditch outside the facility. The soil and vegetation in the ditch was coated in an oil residue. A response to **WARNING LETTER MM-L-17-00667** stated that the absorbent pads were removed and contaminated soil was collected and disposed of at the Tangipahoa Parish Regional Solid Waste Facility. Additionally, an

oil-water separator was installed to help eliminate the risk of future discharges of oil. This violation has been addressed.

- B. The Respondent failed to store solid waste in containers that keep out water and prevent leakage, in violation of LAC 33:VII.503.A.2.c. Specifically, a concrete-mounted trash compactor located at the westernmost side of the facility was open at the time of both inspections. Additionally, the trash compactor was overflowing and spilling its contents onto the pavement and the concrete area surrounding the trash compactor was covered in oil. A response to **WARNING LETTER MM-L-17-00667** stated the overflowing items were picked up and the surrounding area was cleaned up. Housekeeping inspections are being performed twice a day to maintain the trash compactor. This violation has been addressed.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Louisiana Solid Waste and Water Quality Regulations. This shall include, but not be limited to, correcting all of the violations described in the "Findings of Fact" portion.

II.

To immediately cease, upon receipt of this **COMPLIANCE ORDER**, any unauthorized discharges from the Respondent's facility to waters of the state.

III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, the Annual Site Compliance Evaluations, Quarterly Visual Examination inspections, and Training Logs for the last three (3) years as outlined in the Respondent's Storm Water Pollution Prevention Plan.

IV.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, the Spill Prevention, Control and Countermeasures Plan Training Logs and

Monthly Safety Audits for the last three (3) years as outlined in the Respondent's Spill Prevention Control and Countermeasures Plan.

V.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, properly completed DMRs for the monitoring periods of the last three (3) years mentioned in Paragraph VI of the "Findings of Fact" portion of this Order. If you are submitting copies of DMRs, please be advised that each copy of the DMR shall be signed and certified. If no sampling or monitoring was conducted during a monitoring period, the Respondent should indicate this in the space provided for "Comment and Explanation of Any Violations."

VI.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: Kelly O'Neal
Re: Enforcement Tracking No. MM-CN-17-00667
Agency Interest No. 25963

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. MM-CN-17-00667
Agency Interest No. 25963

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty

in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Kelly O'Neal at (225) 219-3932 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

III.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

IV.


The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement

amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount may be entered on the attached **"CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE"** form. The Respondent must include a justification of the offer. **DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

V.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 19th day of January, 2018.



Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Kelly O'Neal

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL COMPLIANCE
 ENFORCEMENT DIVISION CONSOLIDATED COMPLIANCE ORDER &
 POST OFFICE BOX 4312 NOTICE OF POTENTIAL PENALTY
 BATON ROUGE, LOUISIANA 70821-4312 REQUEST TO CLOSE



Enforcement Tracking No.	MM-CN-17-00667	Contact Name	Kelly O'Neal
Agency Interest (AI) No.	25963	Contact Phone No.	(225) 219-3792
Alternate ID No.	LAG480352		
Respondent:	SMITTY'S SUPPLY, INC.	Facility Name:	Smitty's Supply, Inc.
	c/o A. Bradley Berner, Attorney at Law	Physical Location:	63399 Hwy 51 N
	Agent for Service of Process		
	1250 Southwest Railroad Avenue Suite 230A	City, State, Zip:	Roseland, LA 70456
	Hammond, LA 70403	Parish:	Tangipahoa

STATEMENT OF COMPLIANCE

STATEMENT OF COMPLIANCE	Date Completed	Copy Attached?
A written report was submitted in accordance with Paragraph VI of the "Order" portion of the COMPLIANCE ORDER.		
All necessary documents were submitted to the Department within 30 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) III and VI of the "Order" portion of the COMPLIANCE ORDER.		
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:		

SETTLEMENT OFFER (OPTIONAL)

(check the applicable option)

<input type="checkbox"/>	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC.33:I.Subpart1.Chapter7.
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY («Tracking_»), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY («Tracking_»), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance. <ul style="list-style-type: none"> • Monetary component = \$ _____ • Beneficial Environmental Project (BEP) component (optional)= \$ _____ • DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted. The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY («Tracking_») and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

CERTIFICATION STATEMENT

I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any

<i>other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.</i>		
Respondent's Signature	Respondent's Printed Name	Respondent's Title
Respondent's Physical Address	Respondent's Phone #	Date
MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:		
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division P.O. Box 4312 Baton Rouge, LA 70821 Attn: Kelly O'Neal		



WHAT IS A SETTLEMENT AGREEMENT?

Once the Department has determined that a penalty is warranted for a violation, the Assistant Secretary of the Department, with the concurrence of the Attorney General, may enter into a settlement agreement with the Respondent as a means to resolve the Department's claim for a penalty.

HOW DOES THE SETTLEMENT AGREEMENT PROCESS WORK?

To begin the settlement agreement process, the Department must receive a written settlement offer. Once this offer is submitted, it is sent for approval by the Assistant Secretary of the Office of Environmental Compliance. The formal Settlement Agreement is drafted and sent to the Attorney General's office where the Attorney General has a 90 day concurrence period. During this time, the Respondent is required to run a public notice in an official journal and/or newspaper of general circulation in each affected parish. After which, a 45 day public comment period is opened to allow the public to submit comments. Once the Department has received concurrence, the settlement agreement is signed by both parties. The Department then forwards a letter to the responsible party to establish a payment plan and/or beneficial environmental project (BEP).

WHAT SHOULD I INCLUDE IN A SETTLEMENT AGREEMENT?

The Department uses the penalty determination method defined in LAC 33:1.705 as a guideline to accepting settlement offers. The penalty matrix is used to determine a penalty range for each violation based on the two violation specific factors, the nature and gravity of the violation and the degree of risk/impact to human health and property.

DEGREE OF RISK OR IMPACT TO HUMAN HEALTH OR PROPERTY	NATURE AND GRAVITY OF THE VIOLATION		
	MAJOR	MODERATE	MINOR
MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
MINOR	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100

Degree of Risk to Human Health or Property

Major: (actual measurable harm or substantial risk of harm) A violation of major impact to an environmental resource or a hazard characterized by high volume and/or frequent occurrence and/or high pollutant concentration.

Moderate: (potential for measurable detrimental impact) A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions

Minor: (no harm or risk of harm) A violation of minor impact are isolated single incidences and that cause no measurable detrimental effect or are administrative in nature.

Nature and Gravity of the Violation

Major: Violations of statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement to such an extent that little or no implementation of requirements occurred.

Moderate: Violations that result in substantially negating the intent of the requirements, but some implementation of the requirements occurred.

Minor: Violations that result in some deviation from the intent of the requirement; however, substantial implementation is demonstrated.

The range is adjusted using the following violator specific factors:

1. history of previous violations or repeated noncompliance;
2. gross revenues generated by the respondent;
3. degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
4. whether the Respondent has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the violation; and
5. whether the violation and the surrounding circumstances were immediately reported to the department, and whether the violation was concealed or there was an attempt to conceal by the Respondent.



Louisiana Department of Environmental Quality • Office of Environmental Compliance • Enforcement Division

Post Office Box 4312 • Baton Rouge, Louisiana 70821-4312

Phone: 225 | 219 | 3715 Fax: 225 | 219 | 3703