

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
)  
) Docket No. CWA 07-2010-0156  
)  
) S-S-S, Lumber Company, Inc. )  
) 10415 Highway 79 South. ) FINDINGS OF VIOLATION,  
) Louisiana, Missouri 63353 ) ORDER FOR COMPLIANCE  
)  
) Respondent )  
)  
)  
) Proceedings under Section 309(a) of the )  
) Clean Water Act, 33 U.S.C. § 1319(a) )  
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**Preliminary Statement**

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Sections 308(a) and 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent is S-S-S, Lumber Company, Inc. ("SSS") a corporation registered under the laws of the State of Missouri (Missouri) and authorized to conduct business in Missouri.

**Statutory and Regulatory Framework**

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity,” in part, as “the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” A facility classified as Standard Industrial Classification 14 is considered to be engaging in “industrial activity” for purposes of paragraph (b)(14)(iii).

9. The Missouri Department of Natural Resources (MDNR) is the state agency with authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The MDNR issued Permit No. MO-0127132 to SSS for the discharge of stormwater under the NPDES program, on June 6, 2008. The Permit governs stormwater discharges associated with industrial activity for mining, crushing, and shipping of limestone rock, and storing and shipping of fertilizer and salt.

### **Factual Background**

11. Respondent corporation is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility engaged in the operation of a limestone quarry engaged in the mining, crushing, and shipping of limestone rock, known as S-S-S, Lumber Company, Inc. located at 10415 Highway 79, Louisiana, Missouri (the Site) with SIC codes of 1422, 4491, 1442, and 5032.

13. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s facility and flow into the Mississippi River, an unnamed tributary to the Mississippi River, Noix Creek, and an unnamed tributary to Noix Creek. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

14. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharges pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Permit No. MO-0127132 for the mining, crushing, and shipping of limestone rock, and the storing and shipping of fertilizer and salt was issued to Respondent on June 6, 2008, and will expire on June 5, 2013.

20. On January 25 and 26, 2010, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate compliance with the CWA.

### **Findings of Violation**

#### **Effluent Limit Violations**

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

#### **Outfall 001**

22. The Respondent’s NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 001 to an unnamed tributary to the Mississippi River. The limitations became effective upon permit issuance:

a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 50 mg/L.

b. Ammonia as N shall be limited to a daily maximum of 7.5 mg/L and a monthly average of 3.7 mg/L between November 1 and March 31.

- c. Nitrate as N shall be limited to a daily maximum of 15.0 mg/L and a monthly average of 10.0 mg/L.
- d. Phosphorus as P shall be limited to a daily maximum of 1.0 mg/L and a monthly average of 1.0 mg/L.
- e. Aluminum shall be limited to a daily maximum of 0.75 mg/L and a monthly average of 0.75 mg/L.

23. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 001 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
9/4/08	70 mg/L daily max	880 mg/L
9/08	50 mg/L monthly average	474.5 mg/L
3/24/09	70 mg/L daily max	212 mg/L
3/09	50 mg/L monthly average	212 mg/L
4/10	50 mg/L monthly average	55 mg/L

24. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 001 exceeded the permitted limitations for ammonia as N as follows:

Date	Limit	Reported Value
3/08	3.7 mg/L monthly average	5.8 mg/L

25. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 001 exceeded the permitted limitations for Nitrate as N as follows:

Date	Limit	Reported Value
3/31/08	15.0 mg/L daily max	16 mg/L
3/08	10.0 mg/L monthly average	16 mg/L

26. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 001 exceeded the permitted limitations for Phosphorous as P as follows:

Date	Limit	Reported Value
9/4/08	1.0 mg/L daily max	1.1 mg/L

27. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 001 exceeded the permitted limitations for Aluminum as follows:

Date	Limit	Reported Value
9/4/08	0.75 mg/L daily max	6.3 mg/L
9/08	0.75 mg/L monthly average	3.635 mg/L
3/24/09	0.75 mg/L daily max	3.16 mg/L
3/09	0.75 mg/L monthly average	3.16 mg/L
4/3/10	0.75 mg/L daily max	1.08 mg/L
4/10	0.75 mg/L monthly average	1.08 mg/L

Outfall 006

28. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 006 to the Mississippi River. The limitations became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 50 mg/L.
- b. Chemical Oxygen Demand (COD) shall be limited to a daily maximum of 120 mg/L and a monthly average of 90 mg/L between November 1 and March 31.
- c. Nitrate as N shall be limited to a daily maximum of 15.0 mg/L and a monthly average of 10.0 mg/L.
- d. Phosphorous as P shall be limited to a daily maximum of 1.0 mg/L and a monthly average of 1.0 mg/L.
- e. Aluminum shall be limited to a daily maximum of 0.75 mg/L and a monthly average of 0.75 mg/L.

29. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 006 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
3/3/08	70 mg/L daily max	410 mg/L
3/08	50 mg/L monthly average	410 mg/L

30. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 006 exceeded the permitted limitations for COD as follows:

Date	Limit	Reported Value
9/29/08	120 mg/L daily max	150mg/L
9/08	90 mg/L monthly average	150 mg/L

31. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 006 exceeded the permitted limitations for Nitrate as N as follows:

Date	Limit	Reported Value
3/3/08	15.0 mg/L daily max	22 mg/L
3/08	10.0 mg/L monthly average	22 mg/L
3/24/09	15.0 mg/L daily max	66.4 mg/L
3/09	10.0 mg/L monthly average	66.4 mg/L
9/20/09	15.0 mg/L daily max	724 mg/L
9/09	10.0 mg/L monthly average	724 mg/L

32. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 006 exceeded the permitted limitations for Phosphorous as P as follows:

Date	Limit	Reported Value
3/3/08	1.0 mg/L daily max	1.2 mg/L
3/08	1.0 mg/L monthly average	1.2 mg/L

33. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 006 exceeded the permitted limitations for Aluminum as follows:

Date	Limit	Reported Value
3/3/08	0.75 mg/L daily max	4.2 mg/L
3/08	0.75 mg/L monthly average	4.2 mg/L
3/24/09	0.75 mg/L daily max	0.953 mg/L
3/09	0.75 mg/L monthly average	0.953 mg/L
9/20/09	0.75 mg/L daily max	1.75 mg/L
9/09	0.75 mg/L monthly average	1.75 mg/L

#### Outfall 007

34. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 007 to the Mississippi River. The limitations became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 50 mg/L.
- b. Chemical Oxygen Demand (COD) shall be limited to a daily maximum of 120 mg/L and a monthly average of 90 mg/L between November 1 and March 31.

- c. Settleable Solids shall be limited to a daily maximum of 1.5 mg/L and a monthly average of 1.0 mg/L.
- d. Nitrate as N shall be limited to a daily maximum of 15.0 mg/L and a monthly average of 10.0 mg/L.
- e. Phosphorous as P shall be limited to a daily maximum of 1.0 mg/L and a monthly average of 1.0 mg/L.
- f. Aluminum shall be limited to a daily maximum of 0.75 mg/L and a monthly average of 0.75 mg/L.

35. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 007 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
3/31/08	70 mg/L daily max	200 mg/L
3/08	50 mg/L monthly average	200 mg/L
9/4/08	70 mg/L daily max	2,000 mg/L
9/08	50 mg/L monthly average	1,085 mg/L

36. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 007 exceeded the permitted limitations for COD as follows:

Date	Limit	Reported Value
9/4/08	120 mg/L daily max	1000 mg/L
9/08	90 mg/L monthly average	735 mg/L
3/24/09	120 mg/L daily max	211 mg/L
3/09	90 mg/L monthly average	211 mg/L

37. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 007 exceeded the permitted limitations for Settleable Solids as follows:

Date	Limit	Reported Value
9/4/08	1.5 mg/L daily max	1.9 mg/L
9/08	1.0 mg/L monthly average	1.05 mg/L

38. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 007 exceeded the permitted limitations for Nitrate as N as follows:

Date	Limit	Reported Value
9/4/08	15.0 mg/L daily max	140 mg/L
9/08	10.0 mg/L monthly average	76 mg/L
3/24/09	15.0 mg/L daily max	51.1 mg/L
3/09	10.0 mg/L monthly average	51.1 mg/L
9/20/09	15.0 mg/L daily max	36.2 mg/L
9/09	10.0 mg/L monthly average	36.2 mg/L

39. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 007 exceeded the permitted limitations for Phosphorous as P as follows:

Date	Limit	Reported Value
9/4/08	1.0 mg/L daily max	4.2 mg/L
9/08	1.0 mg/L monthly average	2.27 mg/L

40. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 007 exceeded the permitted limitations for Aluminum as follows:

Date	Limit	Reported Value
3/31/08	0.75 mg/L daily max	2.6 mg/L
3/08	0.75 mg/L monthly average	2.6 mg/L
9/4/08	0.75 mg/L daily max	19 mg/L
9/08	0.75 mg/L monthly average	9.79 mg/L
3/4/09	0.75 mg/L daily max	5.31 mg/L
3/09	0.75 mg/L monthly average	5.31 mg/L
9/20/09	0.75 mg/L daily max	1.97 mg/L
9/09	0.75 mg/L monthly average	1.97 mg/L

Outfall 008

41. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 008 to an unnamed tributary to the Mississippi River. The limitations became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 50 mg/L.
- b. Aluminum shall be limited to a daily maximum of 0.75 mg/L and a monthly average of 0.75 mg/L.

42. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 008 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
9/29/08	70 mg/L daily max	120 mg/L
9/08	50 mg/L monthly average	101 mg/L
3/09	50 mg/L monthly average	57 mg/L

43. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 008 exceeded the permitted limitations for Aluminum as follows:

Date	Limit	Reported Value
3/24/09	0.75 mg/L daily max	0.938 mg/L
3/09	0.75 mg/L monthly average	0.938 mg/L

Outfall 009

44. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 009 to the Mississippi River. The limitations became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 50 mg/L.

45. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 009 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
7/24/08	70 mg/L daily max	250 mg/L
7/08	50 mg/L monthly average	250mg/L
9/08	50 mg/L monthly average	59 mg/L

Outfall 010

46. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 010 to an unnamed tributary of Noix Creek. The limitations became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 50 mg/L.
- b. Chemical Oxygen Demand (COD) shall be limited to a daily maximum of 120 mg/L and a monthly average of 90 mg/L between November 1 and March 31.

47. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 010 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
9/3/08	70 mg/L daily max	73 mg/L

48. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 010 exceeded the permitted limitations for COD as follows:

Date	Limit	Reported Value
9/3/08	120 mg/L daily max	230 mg/L
9/08	90 mg/L monthly average	185 mg/L

Outfall 012

49. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 012 to an unnamed tributary of Noix Creek. The limitations became effective upon permit issuance:

- a. Aluminum shall be limited to a daily maximum of 0.75 mg/L and a monthly average of 0.75 mg/L.

50. Samples taken during the inspection referenced in Paragraph 21 revealed that Respondent's discharge at Outfall 012 exceeded the permitted limitations for Aluminum as follows:

Date	Limit	Reported Value
1/25/10	0.75 mg/L daily max	1.2 mg/L

Outfall 015

51. The Respondent's NPDES Permit MO-0127132, Part A, Effluent Limitations and Monitoring Requirements, set the following limits for discharge from Outfall 012 to the Mississippi River. The limitations became effective upon permit issuance:

- a. Total Suspended Solids (TSS) shall be limited to a daily maximum of 70 mg/L and a monthly average of 70 mg/L.

52. A review of Discharge Monitoring Reports revealed that Respondent's discharge at Outfall 015 exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

Date	Limit	Reported Value
4/5/10	70 mg/L daily max	274 mg/L
4/10	70 mg/L monthly average	274 mg/L

53. Respondent's discharge of pollutants in excess of permit limits are violations of the terms and conditions of the Respondent's NPDES permit, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

#### **Failure to Properly Report Noncompliance to the Permitting Authority**

54. The facts stated in paragraphs 11 through 53 above are herein incorporated.

55. Respondent's Permit MO-0127132 in the Standard Conditions for NPDES Permits, Part I, Section B, "Management Requirements," Subsection 2.a states that if a permittee, for any reason, does not comply with or will be unable to comply with any daily maximum effluent limitation specified in the permit, the permittee shall provide written notice to MDNR with the following information, in writing, within five (5) days of becoming aware of such conditions: (i) a description of the discharge and cause of noncompliance; and (ii) the period of noncompliance, including the exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

56. EPA's inspection referenced in Paragraph 20, determined that the Respondent has not been reporting non-compliance with the daily maximum effluent limitations in accordance with its Permit. As discussed in Paragraphs 22-52, above, Respondent has had multiple exceedances of permitted daily maximum effluent limits.

57. Respondent's failure to report noncompliance to MDNR is a violation of its Permit MO-0127132, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Improper Reporting**

58. The facts stated in paragraphs 11 through 20, above, are herein incorporated.

59. Respondent's Permit MO-0127132 in Section A. "Effluent Limitations and Monitoring Requirements" requires for all outfalls that the parameter of Temperature be reported in degrees Celsius.

60. EPA's inspection referenced in Paragraph 20, determined that the Respondent has been reporting Temperature in degrees Fahrenheit.

61. Respondent's improper reporting is a violation of its Permit MO-0127132, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Failure to Conduct Monthly Site Inspections**

62. The facts stated in paragraphs 11 through 20 are herein incorporated.

63. Section C. 6. (e) of Permit No. MO-0127132 requires Respondent to include in its Stormwater Pollution Prevention Plan (SWPPP) a schedule for monthly site inspections and a brief written report. The inspections must include observation and evaluation of best management practices' (BMP) effectiveness, deficiencies, and corrective measures that will be taken. Deficiencies must be corrected within seven days. Inspection reports must be kept on site with the SWPPP and must be made available to MDNR personnel upon request.

64. Section C.5 of Permit No. MO-0127132 requires Respondent to report as "no discharge" when a discharge does not occur during the reporting period.

65. Respondent's SWPPP in Section 5.1.4 describes the monthly inspection procedures used at the facility.

66. EPA's inspection referenced in Paragraph 20, found that the Respondent did not conduct monthly inspections in December 2008 and January 2009. Further, EPA's inspection discovered that not all of the outfalls were inspected each month. The table attached hereto as Attachment A describes in detail the inspections that Respondent failed to conduct since February 2008 and documents which inspections failed to include inspections of all outfalls.

67. EPA's inspection referenced in Paragraph 20, found that the Respondent did not properly determine or report a no discharge event.

68. Respondent's failure to conduct monthly site inspections is a violation of its Permit MO-0127132, as such is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Failure to Properly Conduct Sampling**

69. The facts stated in paragraphs 11 through 20 are herein incorporated.

70. Permit No. MO-0127132 requires SSS to conduct grab samples for pH, twice per year when a discharge occurs at Outfall 001, 003, 006, 007, 008, 009, 010, 011, 012, 013, 014, and 015.

71. 40 C.F.R. § 136.3 identifies the proper procedures to test pH levels. The holding time for pH samples is limited to 15 minutes.

72. The documents collected during EPA's inspection show that SSS held pH samples longer than 15 minutes in July 2008, September 2008, March 2009, and September 2009.

73. Respondent's failure to follow proper sampling procedures is a violation of its Permit MO-0127132, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Failure to Maintain Best Management Practices**

74. The facts stated in paragraphs 11 through 20 are herein incorporated.
75. Respondent's Permit MO-0127132 Section C. 6. requires that Respondent develop and implement a SWPPP. Section C.6.(b) of the Permit states that the SWPPP must include a listing of BMPs and a narrative explaining how BMPs will be implemented to control and minimize the amount of potential contaminants that may enter stormwater.
76. Section 3.3 of Respondent's SWPPP lists the stockpile of salt as a potential source of contamination and states that the "salt and pile is covered and runoff does not leave the property."
77. During EPA's inspection referenced in Paragraph 20, it was observed that a large portion of the salt pile was left uncovered. No loading equipment was present during the inspection.
78. Respondent's failure to maintain best management practices is a violation of its Permit MO-0127132, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Failure to Install Best Management Practices**

79. The facts stated in paragraphs 11 through 20 are herein incorporated.
80. Respondent's Permit MO-0127132 Section C.6 requires that Respondent develop and implement a SWPPP. Section C.6.(b) of the Permit states that the SWPPP must include a listing of BMPs and a narrative explaining how BMPs will be implemented to control and minimize the amount of potential contaminants that may enter stormwater.
81. During EPA's inspection referenced in Paragraph 20, it was observed that water was seeping from the toe of the dam at Outfall 010. No BMPs were in place to prevent this runoff and the flow was not directed toward the permitted outfall.
82. During EPA's inspection referenced in Paragraph 20, EPA observed runoff from the sand and gravel piles near Outfalls 002 and 005 re-entering the Mississippi River. There were no BMPs in place to minimize or prevent runoff from the sand and gravel piles.
83. During EPA's inspection referenced in Paragraph 20, EPA observed a drainage swale near Outfall 003 that had no BMPs to prevent runoff or to direct runoff to the permitted outfall.
84. During EPA's inspection referenced in Paragraph 20, EPA observed that the discharge from Outfall 009 where it enters the Mississippi River is not monitored and there are no BMPs present.

85. During EPA's inspection referenced in Paragraph 20, EPA observed drainage from the southern portion of the rock quarry that had no BMPs and was not directed to a permitted outfall.

86. Respondent's failure to install best management practices is a violation of its Permit MO-0127132, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Failure to Amend Permit to Reflect Conditions at Site**

87. The facts stated in paragraphs 11 through 20 and 80 through 86 are herein incorporated.

88. Respondent's Permit No. MO-0127132, in Standard Conditions, Section B "Management Requirements," Subsection 1 "Change in Discharge," requires all authorized discharges to be consistent with the terms and conditions of the permit. The discharge of any pollutant not authorized by the permit or any pollutant identified in the permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit. Any facility expansion, production increases, or process modifications which will result in new, different, or increased discharges of pollutants shall be reported by submission of a new NPDES permit application at least sixty (60) days before such changes, or, if they will not violate the effluent limitations specified in the permit, by notice to MDNR at least thirty (30) days before such changes.

89. During the EPA inspection referenced in Paragraph 20, it was observed that there were discharges of stormwater near several outfalls that were not included in the permit. These included discharges near Outfall 002, 003, 005, 009, and the rock quarry. These discharges were not directed to a permitted outfall and were not submitted to MDNR as part of a permit application.

90. Respondent's failure to amend its permit to reflect new outfalls at the facility is a violation of its Permit MO-0127132, and as such, is a violation of Section 301(a), 33 U.S.C. § 1311(a) and a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

#### **Order For Compliance**

91. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 92 through 97.

92. Within thirty (30) days of the Effective Date, as defined in Paragraph 105 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order, and to come into compliance with all

of the applicable requirements of its Permit. A report describing the steps taken to achieve compliance with the Permit shall be submitted in accordance with Paragraphs 99 and 100, below by the thirtieth (30<sup>th</sup>) day following the Effective Date of the Order.

93. Within 45 days of the Effective Date, as defined in Paragraph 105, herein, Respondent shall revise the SWPPP in accordance with this Order and its Permit MO-0127132. A copy of the revised SWPPP shall be submitted in accordance with Paragraphs 99 and 100, below.

94. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the Effective Date of this Order, as defined in Paragraph 105 herein, the Respondent shall, within those thirty (30) days, submit to EPA and MDNR for review and approval, a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

- a. If EPA and MDNR approve of the work plan, the work plan shall be implemented according to the schedule for implementation in the approved plan.
- b. If EPA and MDNR disapprove of the work plan with comments, the Respondent shall address the comments and resubmit the work plan for review within thirty (30) days of receipt of EPA and MDNR's disapproval.
- c. Upon resubmission, EPA and MDNR, in their sole discretion, may either approve the work plan, or if EPA and MDNR determine that the work plan does not adequately address the comments provided by EPA and MDNR, EPA and MDNR may unilaterally modify the work plan and will provide Respondent with a copy of the work plan as modified. The Respondent shall implement the modified work plan according to the schedule contained therein.

95. From the Effective Date, as defined in Paragraph 105 herein, Respondent shall conduct monthly monitoring (based on the calendar month, i.e. twelve samples per year) of all outfalls and effluent limitations regulated by Permit MO-0127132. If there is no discharge during the month, the Respondent shall report no discharge for each outfall where no discharge occurred. Respondent shall submit the sampling in accordance with Paragraphs 97, 99, and 100.

96. From the Effective Date, as defined in Paragraph 105 herein, in addition to the site inspection requirements in Section 6(e) of Permit MO-0127132, the Respondent shall conduct a site inspection within 48 hours of any precipitation event of 0.5 inches or greater. The inspection shall be conducted no later than 48 hours after the cessation of a rainfall event that causes stormwater runoff onsite. In addition to observing and evaluating BMP effectiveness and

deficiencies as required by Permit MO-0127132, the Respondent shall observe each outfall to determine whether a discharge has occurred. The Respondent shall record the information gathered during the inspection for each outfall on the inspection report.

97. From the Effective Date, as defined in Paragraph 105 herein, until terminated by EPA, the Respondent shall submit quarterly to EPA, with a copy to MDNR, all monitoring and sampling information required by Paragraphs 95 and 96 of this Order in addition to the monitoring and sampling required by Permit MO-0127132. Sampling done in accordance with the Permit shall be sent in its original format to MDNR, with a copy to EPA. In addition, submittal of the monthly sampling required by Paragraph 95 of this Order shall include a copy of all site inspection reports conducted during the previous three months. Sampling and monitoring data and site inspection reports required by Paragraph 96 shall be sent for the previous three calendar months by January 15, April 15, July 15, and October 15 and submitted in accordance with Paragraphs 99 and 100.

### **Certification**

98. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

### **Submissions**

99. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Ms. Cynthia Sans  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

100. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

101. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

102. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

#### **Access and Requests for Information**

103. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

104. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

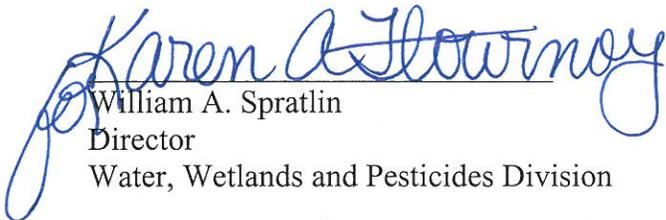
#### **Effective Date**

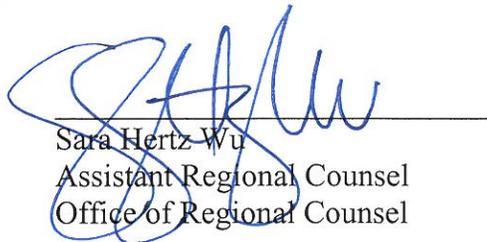
105. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

#### **Termination**

106. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 1st day of October, 2010.

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

  
\_\_\_\_\_  
Sara Hertz Wu  
Assistant Regional Counsel  
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

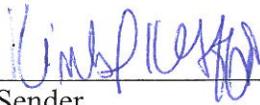
S-S-S Lumber Company, Inc.  
c/o Gerald W. Smith  
10415 Highway 79  
P.O. Box 399  
Louisiana, Missouri 63353

Mr. Kevin Mohammadi  
Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

Irene Crawford  
Director  
Northeast Regional Office  
Missouri Department of Natural Resources  
1709 Prospect Drive  
Macon, Missouri 63552-2602

**OCT 01 2010**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sender

