

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

**John and Cathy Kladiva
d/b/a Big Spring RV Camp
501 Chicopee Road
Van Buren, MO 63965**

Order No. 2013-WPCB-1277

**Proceeding under the
Missouri Clean Water Law**

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

**SERVE BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**TO: Mr. John Kladiva
501 Chicopee Road
Van Buren, MO 63965**

**AND: Ms. Cathy Kladiva
501 Chicopee Road
Van Buren, MO 63965**

You are hereby notified that on this date the Missouri Department of Natural Resources (“Department”) has issued this Notice and Order to Abate Violations and Pay Administrative Penalties (“Order”) to Mr. John and Ms. Cathy Kladiva d/b/a Big Spring RV Camp (the Kladivas) under the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically sections 644.056 and 644.079 RSMo.

Failure to comply with this Order is, by itself, a violation of the Missouri Clean Water Law under Section 644.076 RSMo. Continued noncompliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to ten thousand dollars (\$10,000.00) per day for each day or part thereof of noncompliance, a surcharge of 15% of the

penalty described herein, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to Sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. The Kladivas own and operate a recreational vehicle (RV) camp, known as Big Spring RV Camp, located on Chicopee Road in Van Buren, Missouri. Big Spring RV Camp is an active fictitious name registered with the Missouri Secretary of State by Ms. Cathy Kladiva. The camp is located on the southwest bank of the Current River and consists of 46 hookups for RVs, a cabin, an office building, and a shower house/restrooms building. Wastewater from the camp is treated by a subsurface soil absorption system located in the SE ¼ NE ¼ and NE ¼ SE ¼ of Section 25, Township 27 North, Range 1 West.
2. The subsurface soil absorption system serving the Big Spring RV Camp is a water contaminant source as defined by Section 644.016 RSMo.
3. Pursuant to Section 644.051.2 RSMo, it unlawful for any person to operate, use, or maintain a water contaminant or point source in the State of Missouri that is subject to standards, rules or regulations promulgated pursuant to the provisions of Sections 644.006 to 644.141 unless such person holds an operating permit from the Missouri Clean Water Commission, subject to such exceptions as the commission may prescribe by rule or regulations.
4. Pursuant to 10 CSR 20-6.015 (2)(A), all persons who build, erect, alter, replace, operate, use, or maintain water contaminant sources, point source facilities for storage, treatment, land application or disposal of process wastes which are designed, constructed and operated so as not to discharge to waters of the state shall apply for construction and operating permits unless exempted under Section (3) of this rule.

5. Pursuant to 10 CSR 20-6.015 (3)(B)6, non-discharging facilities for domestic wastewater flows of three thousand gallons per day or less are generally exempt from the requirement to have a no-discharge permit unless the Department specifically requires a permit.

6. Pursuant to 10 CSR 20-8.020(11)(B)3, all treatment processes shall be calculated using Table I unless an engineer licensed in the state of Missouri documents the validity of a lower per capita figure based on actual waste strength and/or flow data from the development to be served. Table I establishes a flow of 30 gallons per person and 10-CSR 20-8.020(11)(B)4 establishes a population served of 3 persons per unit for camper trailers with sewer hookup. The Big Spring RV Park is comprised of 46 sites for campers with sewer hookup and a design flow of 4,140 gallons per day.

7. On June 3, 2013, Department staff performed a site inspection of the camp after receiving a citizen complaint that the camp was discharging raw waste into Current River, and using an unapproved wastewater system. Department staff met with Mr. John Kladiva, the co-owner of the property and informed Mr. Kladiva that the Department's calculation for the site's design wastewater flow was greater than 3,000 gallons per day. Staff also informed Mr. Kladiva that the site would require either connection to an area-wide wastewater treatment system or obtain an operating permit for a Department-approved wastewater treatment system.

8. On June 19, 2013, the Department issued a Letter of Warning (LOW) to Mr. Kladiva for operating an unpermitted wastewater treatment facility. The LOW required Mr. Kladiva to submit to the Department, by July 19, 2013, a written response stating whether he planned to: (1) connect to the South Van Buren Sewer District (SVBSD); or (2) hire an engineer to evaluate the existing system, and obtain an operating permit for the system. If Mr. Kladiva

chose option 2, the Department required the engineering report to be submitted to the Department within 90 days from the date he notified the Department of his choice.

9. On August 7, 2013, Mr. Kladiva sent correspondence to the Department by electronic mail and facsimile indicating that he intended to hire an engineer to evaluate the system and obtain an operating permit (option 2). On August 8, 2013, Department staff sent Mr. Kladiva a letter acknowledging the receipt of his communications and establishing the following time line to complete the following: (1) by August 22, submit to the Department, documentation from SVBSD that the camp is not required to connect to the district; (2) by August 22, submit a letter from an engineer indicating that they have been retained to conduct an evaluation of their wastewater system and prepare the necessary engineering reports; and (3) by November 8, 2013, submit the engineering report presenting the results of the wastewater system evaluation.

10. Since at least June 3, 2013, Department staff have on several occasions verbally communicated with the Kladivas and sent written and electronic correspondence explaining the violations Documented by the Department and the steps necessary to correct the violations and achieve compliance with the Missouri Clean Water Law and its implementing regulations. As of the date of this Order, the Kladivas have not taken the steps required by the Department to achieve compliance with the Missouri Clean Water Law and its implementing regulations.

11. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein have occurred since at least June 3, 2013, and are at least a minor potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the Missouri Clean Water Law and its implementing regulations. Using the gravity-based matrix, the base penalty falls within a range

of \$1,501.00 to \$2,500.00. The Department documented a violation of the Missouri Clean Water Law, and the Kladivas failed to correct the noncompliance after being informed of the requirements by the Department on at least three (3) separate occasions, an administrative penalty in the amount of \$10,000.00 is justified.

12. This Order is necessary to compel compliance and/or prevent or eliminate threats to human health or the environment.

STATEMENT OF VIOLATIONS

The Kladivas have violated and are violating the Missouri Clean Water Law and its implementing regulations as follows:

13. Since June 3, 2013, operated, used or maintained a water contaminant source, a subsurface soil absorption system, without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo and 10 CSR 20.6.010 (1)(A) and (5)(A) and 10 CSR 20-6.015 (2)(A).

CORRECTIVE ACTIONS

Pursuant to Section 644.056 RSMo, the Department hereby orders the Kladivas to complete the following:

14. Within thirty (30) days of the effective date of this Order, the Kladivas shall: (1) Cap the outfall of the existing septic tank, and operate it as a temporary holding tank ("Facility Tank") to collect and prevent the discharge of wastewater generated by the camp; (2) As frequently as necessary to prevent any wastewater discharges, pump and haul the wastewater from the Facility Tank to a permitted wastewater treatment facility with the capacity to accept the wastewater; (3) Maintain pumping and hauling receipts for the Facility Tank, and submit the receipts from the previous month to the Department by the tenth (10th) day of the following

month, for every month that pumping occurs. The receipts shall include the date the wastewater was pumped, the number of gallons pumped, the name of the wastewater hauler, and the name of the permitted facility accepting the wastewater; and (4) Operate the Facility Tank adhering to the requirements of Missouri Regulation 19 CSR 20-3.060(6)(F) regarding holding tanks. The Kladivas may not operate the Facility Tank as a holding tank for more than one year after its modification.

15. Within thirty (30) days of the effective date of this Order the Kladivas shall submit to the Department for review and approval, (i) an engineering report prepared and sealed by an engineer licensed to practice in the State of Missouri in accordance with Missouri Clean Water Regulation 10 CSR 20-8 recommending upgrades or replacement of the existing wastewater system or (ii) written correspondence stating that a sewer extension will be constructed to convey the wastewater generated by the RV Park to the SVBSD for treatment.

Connection to the SVBSD

16. If the Kladivas choose to connect to the SVBSD, they shall complete construction of a sewer extension by May 15, 2014. The sewer extension shall be designed and sealed by a professional engineer registered in the State of Missouri in accordance with 10 CSR 20 Chapter 8 and shall be constructed in accordance with the registered professional engineer's design and plans. If the sewer extension and collection system will be greater than or equal to 1000 feet in length and will include more than two lift stations, the Kladivas shall submit to the Department a complete application for a construction permit including the plans and specifications seal by a professional engineer and the applicable fee for the sewer extension. Prior to beginning construction of the sewer extension the Kladivas shall obtain all necessary easements, approval from the SVBSD accepting the connection, and if applicable, a construction permit from the

Department. If a construction permit is not required for the sewer extension the Kladivas shall submit to the Department a copy of the plans and specifications sealed by a professional engineer, licensed to practice in the State of Missouri, thirty (30) days prior to beginning construction of the sewer extension.

Upgrade or Replace Existing Wastewater System

17. If the Kladivas choose to upgrade or replace the current wastewater facility the Kladivas shall submit to the Department a complete antidegradation submittal pursuant to the Missouri Antidegradation Rule and Implementation Procedure and a letter from the SVBSD waiving its preferential status under 10 CSR 20-6.010.(3). The antidegradation submittal and letter shall be submitted to the Department within thirty (30) days receipt of written approval from the Department for the engineering report required in paragraph 15 above.

18. Within fifteen (15) days of receipt of Department comments on the engineering report required in paragraph 15 or the antidegradation submittal required in paragraph 17, the Kladivas shall respond in writing to the Department addressing all Department comments on the engineering report and/or the antidegradation submittal to the Department's satisfaction.

19. Within thirty (30) days of the date the Department approves the engineering report and antidegradation submittal, the Kladivas shall submit to the Department for review and approval, a revised final engineering report to upgrade, replace, or eliminate the facility. The final engineering report shall also include: (i) a complete application for a construction permit, with the applicable fee, that includes a design summary with plans and specifications, and is signed and sealed by a professional engineer licensed to practice in the State of Missouri; (ii) a complete Antidegradation Review Public Notice application with the Water Quality Review Sheet/Antidegradation Review Preliminary Determination; (iii) if applicable, a letter from the

higher continuing authority waiving preferential status or a contract for connection to an area-wide wastewater collection and treatment system; and (iv) if applicable, a closure plan for the existing subsurface soil absorption system facility in adherence with Department approved methods.

20. Within fifteen (15) days of receipt of Department comments on the construction permit application, plans and specifications, the Kladivas shall respond in writing to the Department addressing all Department comments on construction permit application, plans and specifications to the Department's satisfaction.

21. Within one hundred eighty (180) days of the date the Department issues a construction permit for the upgrades or replacement of the wastewater facility, the Kladivas shall complete construction pursuant to the Department-approved plans and specifications and achieve compliance with the applicable operating permit.

22. Within fifteen (15) days of completing construction, the Kladivas shall submit to the Department a Statement of Work Completed Form that is signed, sealed, and dated by a professional engineer registered in the State of Missouri and a complete application for a Missouri State Operating Permit with applicable fee. The form shall certify that the project was completed in accordance with Department-approved plans and specifications.

Closure of the Existing Wastewater System

23. If the existing wastewater system is to be abandoned the Kladivas shall submit a closure plan to Department approval on or before May 15, 2014. If the existing wastewater system will be incorporated in the new Department approved wastewater system a closure plan will not be required.

24. Within fifteen (15) days of receipt of Department comments on the closure plan, the Kladivas shall respond in writing to the Department addressing all Department comments on construction permit application, plans and specifications to the Department's satisfaction

25. Within ninety (90) days of connecting to the SVBSD or completing the Department approved upgrades the Kavadis shall: (i) complete the closure of the existing wastewater system pursuant to a Department approved plan; (ii) stabilize the disturbed area with perennial vegetation with 70 percent fully established plant density over 100 percent of the disturbed area; and (iii) submit to the Department, a letter certifying that the facility was closed pursuant to the closure plan approved by the Department.

PENALTY

Pursuant to Section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders the Kladivas to pay administrative penalties for the above-referenced violations as follows:

26. The Kladivas shall pay to the Department, an administrative penalty in the amount of ten thousand dollars and no cents (\$10,000.00), all of which shall be suspended for a period of two years on the condition that the Kladivas do not violate the Missouri Clean Water Law or the terms of this Order.

27. If the Kladivas fail to comply with the MCWL or the terms of this Order the Kladivas shall submit payment of the suspended administrative penalty to the Department within ten (10) days receipt of written demand from Department and made payable to: *Carter County Collector as Custodian of the Carter County School Fund.*

28. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102, for forwarding to the Carter County Collector.

SUBMISSIONS

29. All other documentation submitted to the Department for compliance with this Order shall be submitted within the timeframes specified to:

Sam McCord
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

30. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Klavivas make a written request to the Department within 10 business days of this Order, and otherwise provide appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

31. Compliance with this Order resolves only the specific violations described herein, and this Order shall not be construed as a waiver or modification of any other requirements of the Missouri Clean Water Law and regulations, or of any other source of law. Nor does this Order resolve any future violations of this Order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

32. This Order shall apply to and be binding upon the Klavivas and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Klavivas. Any changes

in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the Kladivas of their obligation to comply with this Order.

33. For any plan or submittal from the facility that is required by this Order and subject to Department approval under this Order, the Department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such Department decision shall be conveyed in writing to the Kladivas. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the Kladivas shall submit a revised version of the plan or submittal within 10 business days after receiving notice of the Department's required revisions, or within such other timeframe as the Department may specify. If the Department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and the Kladivas shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

34. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the administrative hearing commission ("AHC") pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within thirty (30) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
Truman State Office Building, Room 640
301 W. High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 27th day of February, 2014 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

c: Mr. Jackson Bostic, Southeast Regional Office
Mr. Jack McManus, Missouri Attorney General's Office