

at 13067 US Highway 54, and is served by an approximately 300-gallon septic tank. Effluent from the septic tank discharges to a tributary to Macks Creek.

- B. Macks Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- C. Domestic and commercial wastes are water contaminants as the term is defined in Section 644.016(23), RSMo.
- D. On January 19, 2010, Department staff conducted a site investigation at the City Hall in response to an environmental concern reporting that effluent from the building's septic tank was discharging to Macks Creek. During the investigation, Department staff observed that the City Hall had a septic tank without lateral lines and it was discharging to Macks Creek or a tributary thereof.
- E. On March 18, 2010, the Department sent a Letter of Warning (LOW) to the City for violations observed during the January 19, 2010, investigation. The LOW included Schedule of Compliance (SOC) number 2010010 which consisted of two (2) options for bringing the facility into compliance. The LOW requested a response to the SOC within thirty (30) days of receipt of the letter.
- F. On April 15, 2010, the Department received SOC number 2010010 executed by Mayor Joel Stoner (Mayor Stoner) on April 14, 2010. The City selected to construct a new onsite wastewater treatment system under the approval of Camden County Wastewater within 365 days of the execution of the SOC.
- G. On February 15, 2011, the Department sent electronic correspondence to Mayor Stoner stating that the matter would be referred to enforcement if a construction application was not submitted to Camden County Wastewater by March 15, 2011.
- H. On May 17, 2011, Department staff performed a compliance inspection at the City Hall and observed that the City Hall was still being served by the facility. The facility was not discharging during the inspection.
- I. On December 4, 2011, the Department received electronic correspondence from Mayor Stoner proposing that the City shut off the water at the City Hall and hire a wastewater hauler to pump and haul all of the wastewater from the septic tank.
- J. Section 644.076.1, RSMo, makes it unlawful to violate the Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.
- K. Section 644.145 within House Bill 89 (2011) was signed and became immediately effective under the bill's emergency clause on July 11, 2011.

III. CONCLUSIONS OF LAW

Violations of the Law and its implementing regulations alleged herein and found to have been committed by the City at the City Hall are as follows:

1. Since January 19, 2010, operated, used or maintained a water contaminant source – domestic wastewater – which discharges to a tributary to Macks Creek, waters of the state, 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).
2. Since January 19, 2010, caused pollution of a tributary to Macks Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant in a location where it was reasonably certain to cause pollution of waters of the state in violation of Sections 644.051.1(1), 644.076.1, RSMo, and 10 CSR 20-7.031(3).

IV. AGREEMENT

- A. The Department and the City desire to amicably resolve all claims that might be brought against the City for the violations alleged above in Section III, Conclusions of Law, without the City admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the City under this AOC. If the City sells or otherwise transfers the facility, then the City shall cause as a condition of such sale or transfer, that the buyer will to assume the obligations of the City under this AOC in writing. In such event, the City shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. The City, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of two thousand five hundred dollars and zero cents (\$2,500.00). The civil penalty shall be paid in two installments of one thousand two hundred fifty dollars and zero cents (\$1,250.00) in the form of certified checks or cashier's checks made payable to "*Camden County School Treasurer, as custodian of the Morgan County School Fund.*" A check in the amount of one thousand two hundred fifty dollars and zero cents (\$1,250) is due and payable upon execution of this AOC by the City. The check and signed copy of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

The remaining one thousand two hundred fifty dollars and zero cents (\$1,250.00) is due thirty (30) days following the effective date of this AOC, and shall be delivered to the same address listed above.

- D. Pursuant to Section 644.145 RSMo, the Department hereby finds, and the City agrees, that the City will be able to meet the obligations of this AOC in a manner that remains within the City's financial capabilities and remains affordable for the City's customers.
- E. Within thirty (30) days of the effective date of this AOC, the City agrees to terminate water service to the City Hall and have a wastewater hauler pump and haul all wastewater from the septic tank to a permitted wastewater treatment facility with the capacity to treat the wastewater.
- F. Within forty-five (45) days of the effective date of this AOC, the City agrees to submit to the Department a report documenting termination of water service to the City Hall and removal of the wastewater by a wastewater hauler. The City agrees to submit to the Department a copy of the receipt(s) for pump and haul services rendered by the septic hauler, as well as a record of the name of the wastewater hauler, date the wastewater was pumped, number of gallons pumped, and permitted facility accepting the wastewater.
- G. The City agrees to not use the septic tank as it currently exists. If the City decides to resume water and/or wastewater services at the City Hall, the City agrees to install a Department or Department of Health and Senior Services-approved wastewater treatment system to serve the City Hall.
- H. Should the City fail to meet the terms of this AOC, including the terms set out in Paragraphs E through G, the City shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Camden County Treasurer, as custodian of the Camden County School Fund." Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- I. No portion of the stipulated penalties paid pursuant to this AOC may be used to reduce the City's federal or state tax obligation.
- J. Nothing in this AOC forgives the City from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means any noncompliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those within are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- K. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.
- L. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to the City for his records.
- M. The City shall comply with the Law, Chapter 644, RSMo, and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

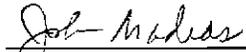
By signing AOC No. 2011-WPCB-1152, the City waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC No. 2011-WPCB-1152 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

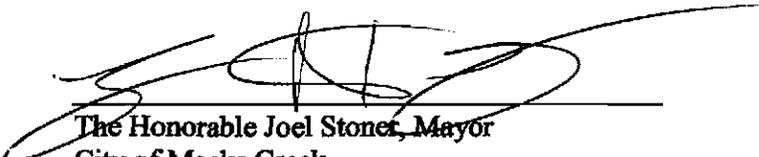
Ms. Corinne Rosania
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 5th day of January, 2011



John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 5 day of December, 2011



The Honorable Joel Stoner, Mayor
City of Macks Creek

Copies of the foregoing served by certified mail to:

Mayor Joel Stoner
City of Macks Creek
P.O. Box 157
Macks Creek, MO 65786

CERTIFIED MAIL # 7009 2250 0000 0893 6094

- c. Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, KS 66101

Ms. Cindy Davies
Southwest Regional Office
2040 W. Woodland
Springfield, MO 65807

Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
P.O. Box 984
216 Tanner Street
Sikeston, MO 63801

Mr. William A. Easley, Jr., Commissioner
Missouri Clean Water Commission
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Cassville, MO 65625

Mr. Ben A. "Todd" Parnell, III, Vice-Chair
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