

**BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF MISSOURI**

**IN THE MATTER OF:**

Brookview Duplexes – Grand Hill Addition  
Wastewater Treatment Facility

No. 2014-WPCB-1306

**SERVE:**

David M. Panek  
&  
Lucena E. Panek

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) No. 2014-WPCB-1306, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because the Brookview Duplexes – Grand Hill Addition Wastewater Treatment Facility (WWTF) is in violation of the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Mr. David and Ms. Lucena Panek of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**II. FINDINGS OF FACT**

A. Mr. David and Ms. Lucena Panek (the Paneks) own five duplex residences and a WWTF located near Highway 71 and East 155<sup>th</sup> Street in Belton, Missouri. Wastewater from the Panek’s duplexes and other duplexes in the immediate area is treated by an extended aeration plant located in the NW ¼, NW ¼, Section 1, Township 46 North, Range 33 West, Cass County. Effluent from the WWTF

discharges to an unclassified tributary of the Little Blue River, pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-0052744. The MSOP will expire by its own terms on August 6, 2014.

- B. Little Blue Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.
- C. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. The MSOP issued to the Paneks by the Department on August 7, 2009 included final effluent limitations for Fecal Coliform and a Schedule of Compliance (SOC) for the Paneks to complete improvements to the WWTF that would enable the effluent to comply with the final limitations by August 7, 2012.
- E. MSOP No. MO-0052744 requires the Paneks to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water contaminants listed in Part “A” every month. MSOP No. MO-0052744 further requires the effluent to comply with the effluent limitations contained in Part “A” and requires the results of the analysis to be submitted to the Department on monthly Discharge Monitoring Reports (DMRs) by the 28<sup>th</sup> day of the following month.
- F. Monthly DMRs submitted to the Department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Biochemical Oxygen Demand during the months of August, October, November 2012; January, February, May, June, July and August 2013.
- G. Monthly DMRs submitted to the Department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for Fecal Coliform during the months of August, September, October 2012; April, May, June, July, August and September 2013.
- H. Monthly DMRs submitted to the Department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for Total Suspended Solids during the months of September and November 2012; February, April, June, August and September 2013.
- I. The Paneks have failed to submit DMRs from September, November and December 2010; March, October, November and December 2013; January, February, March, April and May 2014.
- J. Between July 2012 and April 2014, the Department has issued the Paneks twenty (20) Letters of Warning and four Notices of Violations (NOVs) for violations of the MCWL.

- K. On April 27, 2012, Department staff inspected the WWTF in response to an environmental concern of a wastewater bypass occurring at the WWTF. Department staff observed the facility overflowing and discharging, with the discharge flow soaking into the ground. Staff noted that the WWTF was in a state of disrepair. Staff further observed that the water in the receiving stream contained black and gray deposits in addition to noting a strong sewage odor around the facility.
- L. On May 2, 2012, Department staff conducted a compliance inspection at the WWTF with Mr. Panek present. Staff observed that the water in the aeration basin was a uniform gray-brown color with no foam, and the settling basin/clarifier basin water was milky-gray with floating leaves. Staff further observed that the clarifier baffles were very rusty and contained algae and black sludge. Department staff then observed black sludge deposits in the stream bed of the receiving stream. Staff did not observe signs identifying the outfall or on the exterior fence of the WWTF.
- M. Based on the violations found during the April 27 and May 2, 2012 inspection, the Department issued NOV No. KCR2012053014563926 to Mr. Panek on June 25, 2012. In the NOV associated with inspection report, the Department requested that the Paneks submit a written statement to the Kansas City Regional Office by July 19, 2012, explaining what actions have been taken to correct the unsatisfactory features and prevent a reoccurrence in the future. The NOV further requested that the Paneks clearly mark the outfall and place warning signs on all four walls of the WWTF, and to submit a construction permit application and engineering report for disinfection upgrades.
- N. On August 14, 2012, the Department received written correspondence from Mr. Panek stating that he is working with Blue Valley Labs to comply with federal and state requirements. Mr. Panek further stated that he was evaluating his options to achieve compliance.
- O. On September 25, 2013, the Department and Mr. Panek met to discuss Mr. Panek's options to bring the WWTF into compliance with the MCWL. Department staff advised Mr. Panek to contact the city of Belton for its availability of providing sewer lines to serve the duplexes.
- P. MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency to recover actual damages, including costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before violation, sustained by it because of any violation.

- Q. The Department dispatched employees to investigate the April 27, 2012, wastewater bypass and May 2, 2012, inspection. In doing so, the Department incurred costs and expenses, including but not limited to, water sampling and analysis, photographs, and travel expenses. These costs incurred by the Department total \$2,753.05.
- R. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto, and establishes civil penalties of up to \$10,000.00 per day per violation.

### III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by the Paneks at the facility are as follows:

1. Failed to comply with the effluent limitations contained in Part "A" of MSOP No. MO-0052744, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
2. Failed to submit an engineering evaluation and upgrade the WWTF as required by Part "B", Standard Conditions, and Part "D", SOC of MSOP No. MO-0052744, in violation of Sections 644.076.1, RSMo and 10 CSR 20-6.010(7)(A);
3. Failed to properly operate and maintain the WWTF to comply with the MCWL and applicable permit conditions, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
4. Failed to provide oral and/or written notification to the Department for the April 27, 2012, bypass within 24 hours, in violation of Section 10 CSR 20-7.015 (9) (E) 2;
5. Failed to submit DMRs as required in Part "A" of MSOP No. MO-0052744, in violation of Sections 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1;
6. Discharged water contaminants into waters of the state that reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2).

### IV. AGREEMENT

- A. The Department and the Paneks desire to amicably resolve all claims that may be brought against the Paneks for violations alleged above in Section III, Citations and Conclusions of Law, without the Paneks admitting to 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 Paneks under this AOC.

- C. The Paneks, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees and are ordered, without admitting liability or fault, to pay a civil penalty in the amount of \$12,000.00. \$7,000.00 of such civil penalty shall be suspended for a period of two years on the condition that the Paneks do not violate the terms of this AOC. The remaining \$5,000.00 shall be in the form of a certified check or cashier's check made payable to "Cass County Treasurer, as custodian of the Cass County School Fund." A check in the amount of \$1,000.00 is due and payable upon execution of this AOC by the Paneks. A check in the amount of \$4,000.00 is due and payable on or before six months after the execution of this AOC by the Paneks. The checks and signed copies of the AOC shall be delivered to:

Accounting Program  
Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

- D. The Paneks agree and are ordered to pay the state's investigative costs in the amount of \$2,753.05 in the form of a certified check or cashier's check made payable to the "*State of Missouri*." The check in the amount of \$2,753.05 is due and payable upon execution of this AOC by the Paneks. The check shall be delivered to

Accounting Program  
Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

- E. In the period of time from the effective date of this AOC until the new or upgraded WWTF is completed, or the wastewater is connected to an area-wide sewer authority system, the Paneks agree and are ordered to operate the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0052744. The effluent discharged from the WWTF shall comply with the interim limits contained in MSOP No. MO-0052744 issued on August 7, 2009. All units or components of the existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.
- F. In the event the discharge of wastewater from the WWTF does not comply with its permitted effluent limitations, the Paneks agree and are ordered to prevent a discharge of wastewater by pumping and hauling the wastewater from the WWTF

to a permitted WWTF with the capacity to treat the wastewater. The Paneks shall continue pumping and hauling wastewater as necessary, to prevent any discharge of effluent that is not in compliance with its permitted limitations until such a time that the wastewater flow from the WWTF is conveyed to a centralized wastewater treatment and collection system. The Paneks agree and are ordered to maintain pumping and hauling receipts and submit copies of the receipts to the Department each month. The records shall be submitted to the Department by the 10th day of the following month and include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the name of the permitted WWTF accepting the wastewater.

- G. Within 60 days of the effective date of this AOC, the Paneks agree and are ordered to submit to the Department for review and approval an engineering report, prepared by a professional engineer licensed to practice in the state of Missouri evaluating the current conditions of the WWTF. The engineering report shall recommend alternatives to upgrade, replace, or eliminate the WWTF that will result in compliance with all applicable effluent limitations contained in the MSOP. If applicable, the Paneks agree and are ordered to submit a complete antidegradation submittal pursuant to the Missouri Antidegradation Rule and Implementation Procedure; and using these evaluations to recommend one of the alternatives that will result in compliance with the MCWL and its implementing regulations. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.
- H. Within 15 days of receipt of Department comments on the engineering report or antidegradation submittal, the Paneks agree and are ordered to respond in writing to the Department addressing all Department comments on the engineering report or antidegradation submittal to the Department's satisfaction.
- I. If the Department approved alternative is to upgrade or replace the WWTF, the Paneks agree and are ordered to submit to the Department for review and approval, a complete application for a construction permit, plans, and specifications sealed by a professional engineer licensed to practice in the state of Missouri and the applicable permit fee for the improvements recommended in the Department approved engineering report. The plans and specifications shall be developed in accordance with 10 CSR 20-8. The Paneks agree and are ordered to submit the application for a construction permit and applicable supporting documents to the Department within 45 days of the date the Department approves the engineering report.
- J. If the Department approved alternative is connection to an area-wide wastewater treatment and collection system, the Paneks agree and are ordered to complete construction of a sewer. 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 or will include more than two lift stations, the Paneks agree and are ordered to submit to the Department, a complete application for a construction permit within 30 days of approval of the engineering report, including the plans and specifications sealed by a professional engineer and the applicable fee for the sewer extension. Prior to beginning construction of the sewer extension, the Paneks agree and are ordered to obtain all necessary easements, approval from the City of Belton accepting the connection, and if applicable, a construction permit from the Department. If a construction permit is not required for the sewer extension, the Paneks agree and are ordered to submit to the Department, a copy of the plans and specifications sealed by a professional engineer, licensed to practice in the state of Missouri, 30 days prior to beginning construction of the sewer extension.

- K. If the use of the existing WWTF is to be discontinued, the Paneks agree and are ordered to submit a closure plan developed in accordance with Standard Conditions Part III, Section H, of MSOP No. MO-0052744 to the Department for approval on or before July 1, 2015. If the existing WWTF will be incorporated in the new Department approved WWTF, a closure plan will not be required.
- L. Within 15 days of receipt of Department comments on the closure plan, the Paneks agree and are ordered to respond in writing to the Department addressing all Department comments on the closure plan, to the Department's satisfaction.
- M. Within 120 days of the date the Department issues a construction permit for upgrades to the WWTF or sewer extension to connect to an area-wide sewer authority system, the Paneks agree and are ordered to complete construction pursuant to the plans and specifications and achieve compliance with all applicable permitted effluent limitations, or divert the flow from the apartments to the area-wide sewer system. If the Department approved alternative of connecting to an area-wide wastewater treatment and collection system does not require a construction permit, the Paneks agree and are ordered to complete the sewer extension within 120 days the Department approves the engineering report required in Paragraph G of the AOC.
- N. Within 15 days of completing construction, the Paneks agree and are ordered to submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the state of Missouri certifying that the project was completed in accordance with Department approved plans and specifications and if applicable, a complete application for the modified operating permit, including applicable fee.
- O. If applicable, within 120 days of diverting the wastewater flow from the WWTF to a Department approved WWTF or an area-wide sewer system, but not before receiving written approval from the Department for the WWTF closure plan, the

Paneks agree and are ordered to: i) complete closure of the WWTF pursuant to the closure plan as approved by the Department; (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 an application to terminate MSOP No. MO-0052744 to the Department once the vegetation has been established as stated above.

- P. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Paneks agree and are ordered to notify the Department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Paneks agree and are ordered to submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Panek's right to request an extension and may be grounds for the Department to deny the Paneks an extension.
- Q. Should the Paneks fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs E through O, the Paneks agree and are ordered to be subject to pay stipulated penalties in the following amount:

| <u>Days of Violation</u> | <u>Amount of Penalty</u> |
|--------------------------|--------------------------|
| 1 to 30 days             | \$50.00 per day          |
| 31 to 90 days            | \$100.00 per day         |
| 91 days and above        | \$250.00 per day         |

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Cass County Treasurer, as custodian of the Cass County School Fund." Any such stipulated penalty shall be paid within 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 65102-0477

- R. Nothing in this AOC forgives the Paneks 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 for any non-compliance 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 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.

S. 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.

T. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Paneks for its records.

U. The Paneks agree and are ordered to comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, the Paneks consent to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VI. CORRESPONDENCE AND DOCUMENTATION

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

Mr. John Corley  
Department of Natural Resources  
Water Protection Program  
Compliance and Enforcement Section  
P.O. Box 176  
Jefferson City, MO 65102-0176

Agreed to and Ordered this 2nd day of December, 2014

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

Agreed to and Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2014

  
\_\_\_\_\_  
David Panek, Owner  
Brookview Duplexes

