



SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

MARY FALLIN
Governor

January 12, 2018

CITY OF BROKEN ARROW

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

JAN 17 2018

Craig Thurmond, Mayor
c/o Michael Spurgeon, City Manager
City of Broken Arrow
P.O. Box 610
Broken Arrow, Oklahoma 74013-0610

CITY MANAGER'S OFFICE

Re: Consent Order 18-004
City of Broken Arrow – Lynn Lane Wastewater Treatment Facility Collection System
Complaint No. 151646
Facility No. S-20409
OPDES Permit No. OK0040053
Problem(s): Unpermitted Discharge(s)

Dear Mayor Thurmond:

The enclosed Consent Order 18-004 requires the City of Broken Arrow to take corrective actions to address violations listed in the above-referenced Consent Order. This Consent Order also requires the City to pay an administrative penalty.

Please sign and mail the original to me at: Department of Environmental Quality, Water Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677. **A file-stamped copy of the signed original will be returned to you.** If this Consent Order is not signed and returned to DEQ within thirty (30) days of receipt, we will pursue other enforcement actions to ensure compliance.

If you have any questions concerning this Consent Order, please contact Travis Archer, P.E., District Engineer, Municipal Wastewater Enforcement Section, Water Quality Division, DEQ, at (405) 702-8109 or write to Mr. Archer at the letterhead address.

Sincerely,

FOR

Shelia R. Chard, Director
Water Quality Division
Oklahoma Department of Environmental Quality

Enclosure: As stated



**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION**

**IN THE MATTER OF:
CITY OF BROKEN ARROW,

RESPONDENT,**

CASE NO. 18-004

COMPLAINT NO. 151646

FACILITY NO. S-20409

PERMIT NO. OK0040053

PROBLEM(S): Unpermitted Discharge(s)

CONSENT ORDER

The parties to this case, the Oklahoma Department of Environmental Quality ("DEQ") and City of Broken Arrow ("Respondent") agree to this Consent Order in order to resolve certain environmental compliance issues.

This Consent Order supersedes and closes Notice of Violation No. S-20409-17-4.

FINDINGS OF FACT

1. Respondent owns and operates a publicly owned treatment works ("POTW"), which serves the residents of the City of Broken Arrow in Tulsa County, Oklahoma. The POTW consists of collection lines, appurtenances, and the Lynn Lane wastewater treatment facility ("WWTF") located in the NE ¼, SE ¼, SE ¼, Section 11, Township 17 North, Range 14 East of the Indian Meridian, Tulsa County, Oklahoma. The WWTF discharges treated effluent to the Arkansas River pursuant to Oklahoma Pollution Discharge Elimination System (OPDES) Permit No. OK0040053 ("Permit") that DEQ issued to Respondent, and which became effective March 1, 2012.

2. On October 16, 2017, DEQ received a citizen complaint alleging that unpermitted discharges were occurring from a manhole in the wastewater collection system. On October 19, 2017, Chad Keller, Environmental Specialist for DEQ, investigated the site of the complaint described as 500 feet south of the Creek Turnpike and South 193rd East Avenue intersection. Unpermitted discharges were not occurring at the time of the inspection; however, Mr. Keller has reported observing unpermitted discharges from this location during past complaint inspections and believed that this unpermitted discharge was a result of a wet-weather event.

3. On November 15, 2017, the complaint was referred to the Water Quality Division (“WQD”) for further review and enforcement. A review of DEQ records indicates that the Respondent properly reported and remediated the unpermitted discharge that occurred from this location. In addition, a review of the Respondent’s Self-Reporting Bypass forms shows that the Respondent reported the following unpermitted discharges from the complaint location during the past two (2) years:

Date	Duration (hours)	Location	Volume (gallons)	Cause
3/8/2016	24.30	S. 193RD ST. & CREEK TURNPIKE	30,000	Rain
3/9/2016	21.00	S. 193RD ST. & CREEK TURNPIKE	10,000	Rain
4/18/2016	8.50	S. 193RD ST. & CREEK TURNPIKE	2,000	Rain
4/19/2016	0.00	S. 193RD ST. & CREEK TURNPIKE	30,000	Rain
10/4/2017	18.00	S. 193RD ST. & CREEK TURNPIKE	2,000	Rain

4. On June 23, 2017, Travis Archer, P.E., District Engineer for DEQ, spoke with Anthony Daniel, Utilities Director for Respondent. Mr. Archer and Mr. Daniel discussed the complaint location and confirmed that the area of the wastewater collection system identified in the complaint has been subject to unpermitted discharges during wet-weather events. Mr. Daniel stated that the Respondent has plans to replace and upgrade the existing 36-inch wastewater collection line in order to eliminate the unpermitted discharges and provide for future capacity.

5. On December 21, 2017, DEQ issued Respondent Notice of Violation No. S-20409-17-4, for the above-described allegations. Respondent received the NOV on December 26, 2017. The NOV required Respondent to correct the allegations described above and submit a written response to DEQ within fifteen (15) days of receipt of the NOV. On January 9, 2018, DEQ received an electronic response to the NOV. The response stated that the design portion of the proposed project was approximately sixty (60) percent complete and that right-of-way and easement issues are currently being addressed by Respondent’s personnel. The response also included a schedule for the proposed project. The schedule provided in the response was used to develop the schedule in this Consent Order.

6. On January 12, 2018, Mr. Archer spoke to Kenny Schwab, Assistant City Manager for Respondent, by telephone. Mr. Schwab was notified that DEQ would be offering Respondent this Consent Order to establish a schedule to eliminate the above-described allegations. Mr. Schwab was notified of the penalty included in this Consent Order.

7. Failure to comply with the State statutes and/or rules cited above may result in harm to the environment or health and well-being of the affected public. By discharging without a permit Respondent cannot verify that Oklahoma's Water Quality Standards are being met. Failure to comply with the below-described rules allows untreated wastewater to enter the waters of the State, or elsewhere.

8. Respondent and DEQ agree that it is beneficial to resolve this matter promptly and by agreement.

9. Respondent and DEQ waive the filing of a petition or other pleading, and Respondent waives the right to a hearing.

CONCLUSIONS OF LAW

10. DEQ has regulatory jurisdiction and authority in this matter, and Respondent is subject to the jurisdiction and authority of DEQ under 27A O.S. § 1-3-101(B), 27A O.S. §§ 2-6-201 through 2-6-206, and 27A O.S. §§ 2-6-401 through 2-6-403.

11. Respondent and DEQ are authorized by 75 O.S. § 309(E) and 27A O.S. § 2-3-506(B) to resolve this matter by agreement.

12. By allowing unpermitted discharges of untreated sewage to occur, DEQ alleges that Respondent violated 27A O.S. § 2-6-105(A), which states, "[i]t shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance."

13. By allowing unpermitted discharges of untreated sewage to occur, DEQ alleges that Respondent violated 27A O.S. § 2-6-205(A), which states, "it shall be unlawful for any facility, activity or entity regulated by the Department of Environmental Quality pursuant to the Oklahoma Pollutant Discharge Elimination System Act to discharge any pollutant into waters of the state or elsewhere without first obtaining a permit from the Executive Director."

ORDER

14. Based on the above paragraphs, Respondent and DEQ agree, and it is ordered by the Executive Director as follows:

Task	Due Date
A. Submit approvable plans and specifications for the project necessary to eliminate unpermitted discharges from the complaint location.	November 1, 2018

Task	Due Date
B. Start construction in accordance with the approved plans and specifications from Task A.	May 1, 2019
C. Complete construction in accordance with the approved plans and specifications from Task A.	September 1, 2020

15. The Oklahoma Pollutant Discharge Elimination System Act, 27A O.S. §§ 2-6-201 through 2-6-206, authorizes DEQ to seek penalties of up to ten thousand dollars (\$10,000.00) per day of violation, for each day during which a violation of the Act, Permit, associated rules or order continues. Based on the facts and circumstances of this case, DEQ assesses a total penalty of thirty thousand dollars (\$30,000.00).

- a. Respondent agrees that, within thirty (30) days of the effective date of this Consent Order, Respondent will pay eighteen thousand seven hundred fifty dollars (\$18,750.00) of the assessed penalty to DEQ.
- b. DEQ agrees to defer payment of the remaining amount of the assessed penalty pending compliance with the tasks listed in Paragraph 14 of this Consent Order.
 - i. If Respondent fails to complete a task by the scheduled due date, the portion of the deferred penalty allocated to that task in subparagraph (iii) becomes immediately due and payable.
 - ii. If Respondent completes a task by its due date, DEQ agrees to waive the portion of the deferred penalty allocated to that task in subparagraph (iii).
 - iii. Task A - \$3,750.00
Task B - \$3,750.00
Task C - \$3,750.00

All penalty payments shall be by check or money order payable to the Oklahoma Department of Environmental Quality (or ODEQ), showing the Case Number of this Consent Order, and delivered to:

Accounts Receivable
Financial & Human Resources Management
Department of Environmental Quality
P.O. Box 2036
Oklahoma City, OK 73101-2036

16. Respondent agrees that if Respondent fails to complete any of the task(s) by the specified due dates set forth in Paragraph 14 in this Consent Order, DEQ may assess stipulated penalties as follows:

<u>TASK</u>	<u>PENALTY PER DAY</u>
A.	\$175.00
B.	\$350.00
C.	\$525.00

Stipulated penalties begin to accrue on the day performance is due, with the total amount of stipulated penalties not to exceed two hundred fifty thousand dollars (\$250,000.00). If DEQ notifies Respondent that Respondent is not in compliance with this Consent Order and that stipulated penalties are being assessed, Respondent may request a hearing to contest the finding of noncompliance.

17. If Respondent fails to pay any penalty, DEQ may bring a separate action for collection of the penalty in District Court. An action by DEQ for the collection of a penalty does not affect Respondent's duty to complete the tasks required by this Consent Order.

GENERAL PROVISIONS

18. DEQ has received delegation from the United States Environmental Protection Agency to implement and enforce the Federal NPDES program. A portion of the implementation and enforcement program is to issue timely enforcement actions and impose appropriate penalties. The federal program calls for a significant increase in monetary penalties should this Consent Order be violated or future violations occur.

19. As used in this Consent Order, an "approvable" submission to DEQ is to be considered a final submission. That is, all preliminary discussions between DEQ and Respondent regarding the requirements of a submission must be concluded prior to the date the submission is due so that the submission will be approvable as submitted. If the submission is not submitted in an approvable form by its due date, the submission will be considered late and Respondent will be subject to the stipulated penalties described in this Consent Order.

20. Respondent agrees to perform the requirements of this Consent Order within the time frames specified unless performance is prevented or delayed by events which are a "force majeure." For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the reasonable control of Respondent or Respondent's contractors, subcontractors or laboratories that delays or prevents the performance of any obligation under this Consent Order. Examples are vandalism; fire; flood; labor disputes or strikes; weather conditions which prevent or seriously impair construction activities; civil disorder or unrest; and "acts of God." Force majeure events do *not* include increased costs of performance of the tasks agreed to in this

Consent Order, or changed economic circumstances. Respondent must notify DEQ in writing within fifteen (15) days after Respondent knows or should have known of a force majeure event that is expected to cause a delay in achieving compliance with any requirement of this Consent Order. Failure to submit notification within fifteen (15) days waives the right to claim a force majeure.

21. Respondent and DEQ may amend this Consent Order by mutual consent. Such amendments must be in writing and the effective date of the amendments will be the date on which they are filed by DEQ. Any amendment to this Consent Order may require the payment of an administrative penalty.

22. Upon their approval by DEQ, any final reports, plans, specifications, schedules and attachments required under this Consent Order are incorporated into it and enforceable under it. Failure to respond within a reasonable time to any errors, deficiencies or other regulatory requirements identified by DEQ is a violation of this Consent Order.

23. No informal advice, guidance, suggestions or comments by employees of DEQ regarding reports, plans, specifications, schedules, and other writings affect Respondent's obligation to obtain written approval by DEQ, when required by this Consent Order.

24. Respondent agrees to allow agents of DEQ entry onto Respondent's property, at reasonable times and without advance notice, for the purposes of inspecting, sampling, testing, reviewing records and other authorized activities to assess compliance with Oklahoma statutes and rules and this Consent Order. If Respondent is required to sample or test, Respondent agrees to give DEQ reasonable notice of the sampling or testing date and time and allow DEQ to observe and/or split-sample.

25. Unless otherwise specified, any report, notice or other communication required under this Consent Order must be in writing and must be sent to:

For DEQ:

Travis Archer, P.E., District Engineer
Municipal Wastewater Enforcement Section
Water Quality Division
Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

For Respondent:

Michael Spurgeon, City Manager
City of Broken Arrow
P.O. Box 610
Broken Arrow, Oklahoma 74013-0610

26. This Consent Order is enforceable as a final order of the Executive Director of DEQ. DEQ retains jurisdiction of this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this Consent Order and for the purpose of resolving disputes.

27. Nothing in this Consent Order limits DEQ's right to take enforcement action for violations discovered or occurring after the effective date of this Consent Order.

28. Nothing in this Consent Order excuses Respondent from its obligation to comply with all applicable federal, state and local statutes, rules and ordinances. Respondent and DEQ agree that the provisions of this Consent Order are considered severable, and if a court of competent jurisdiction finds any provisions to be unenforceable because they are inconsistent with state or federal law, the remaining provisions will remain in full effect.

29. The provisions of this Consent Order apply to and bind Respondent and DEQ and their officers, officials, directors, employees, agents, successors and assigns. No change in the ownership or corporate status of Respondent will affect Respondent's responsibilities under this Consent Order.

30. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability to DEQ for all items of noncompliance in this Consent Order. If Respondent satisfies the requirements of this Consent Order, DEQ will not pursue any other remedy, sanction or relief that might otherwise be available to address the issues of noncompliance in this Consent Order. Nothing in this Consent Order shall be deemed to satisfy Respondent's liability, if any, for actions or remedies not within the scope of authority of DEQ.

31. This Consent Order is for the purpose of settlement. Neither the fact that Respondent and DEQ have agreed to this Consent Order, nor the Findings of Fact and Conclusions of Law in it, shall be used for any purpose in any proceeding except the enforcement by Respondent and DEQ of this Consent Order and, if applicable, a future determination by DEQ of eligibility for licensing or permitting. As to others who are not parties to this Consent Order, nothing contained in this Consent Order is an admission by Respondent of the Findings of Fact or Conclusions of Law, and this Consent Order is not an admission by Respondent of liability for conditions at or near the facility and is not a waiver of any right, cause of action or defense Respondent otherwise has.

32. Respondent and DEQ agree that the venue of any action in district court for the purposes of interpreting, implementing and enforcing this Consent Order will be Oklahoma County, Oklahoma.

33. The requirements of this Consent Order will be considered satisfied and this Consent Order terminated when Respondent receives written notice from DEQ that Respondent has demonstrated that all the terms of the Consent Order have been completed to the satisfaction of DEQ, and that any assessed penalty has been paid.

34. The individuals signing this Consent Order certify that they are authorized to sign it and to legally bind the parties they represent.

35. This Consent Order becomes effective on the date of the later of the two signatures below.

FOR CITY OF BROKEN ARROW:

**FOR OKLAHOMA DEPARTMENT
OF ENVIRONMENTAL QUALITY:**



CRAIG THURMOND **DATE**
MAYOR

SCOTT A. THOMPSON **DATE**
EXECUTIVE DIRECTOR