



SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

City of Broken Arrow

JUL 22 2016
MARY FALLIN
Governor
City Manager's Office

July 15, 2016

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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

Re: Consent Order 16-180
City of Broken Arrow – Lynn Lane Wastewater Treatment Facility Collection System
Citizen Complaint Nos. 145639, 145721, 145751, & 145874
Facility No. S-20409
OPDES Permit No. OK0040053
Problem(s): Unpermitted Discharge(s) Resulting in a Fish Kill

Dear Mayor Thurmond:

The enclosed Consent Order assesses a penalty for an unpermitted discharge occurring in the wastewater collection system owned and operated by the City of Broken Arrow (City). The enclosed Consent Order requires the City to pay a penalty of fifteen thousand eight hundred twenty dollars and ninety-four cents (\$15,820.94) for the unpermitted discharge that resulted in a fish kill.

Please sign and mail the original to me at: Department of Environmental Quality (DEQ), 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,

Shellie Chard-McClary, 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,

**COMPLAINT NOS. 145639, 145721, 145751,
& 145874**

FACILITY NO. S-20409

PERMIT NO. OK0040053

**PROBLEM(S): Unpermitted Discharge(s)
Resulting in a Fish Kill**

CASE NO. 16-180

CONSENT ORDER

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

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 OPDES Permit No. OK0040053 ("Permit") that DEQ issued to Respondent, and which became effective March 1, 2012.

2. On April 23, 2016, DEQ received a citizen complaint alleging that Respondent had an unpermitted discharge occur from the wastewater collection system that resulted in a fish kill in Broken Arrow Creek. On April 26, 2016, Adrian Sherman, Environmental Specialist for DEQ, met with personnel from the Oklahoma Department of Wildlife Conservation ("ODWC"), to investigate the complaint. Mr. Sherman and ODWC personnel observed numerous dead fish in Broken Arrow Creek. Mr. Sherman and ODWC personnel confirmed that an unpermitted discharge occurred upstream of the fish kill near the intersection of South 193rd East Avenue and

East 101st Street South. Mr. Sherman contacted Respondent regarding the unpermitted discharge. Respondent indicated they were aware of the situation and had mobilized personnel in response. On April 26, 2016, Chad Keller, Environmental Specialist for DEQ, performed a follow-up inspection at the site of the unpermitted discharge and found that Respondent's on-site personnel were equipped with three (3) pumps to convey untreated wastewater around the collapsed section of the wastewater collection system line that had resulted in the fish kill in Broken Arrow Creek.

3. On May 2, 2016, May 3, 2016, and May 13, 2016, DEQ received additional citizen complaints for ongoing unpermitted discharges from the above-described location.

4. On May 4, 2016, these complaints were referred to the Water Quality Division of DEQ for further investigation and enforcement. A review of DEQ records shows the Respondent properly submitted self-reporting bypass forms during April 2016 and May 2016 for the location identified in the complaints. During this timeframe, Respondent reported approximately three million two hundred thirty-eight thousand four hundred (3,238,400) gallons of raw wastewater bypassed from the collapsed wastewater collection system line identified in the complaint.

5. On May 11, 2016, Travis Archer, P.E., District Engineer for DEQ, contacted Anthony Daniel, Utilities Director for Respondent. Mr. Daniel stated that the section of wastewater collection line that collapsed had been replaced and the surrounding area had been remediated. Mr. Archer requested that Respondent provide the cost associated with the line replacement and remediation efforts. On May 24, 2016, Mr. Daniel submitted the requested information. The total estimated cost was one hundred sixty-six thousand two hundred ninety-eight (\$166,298.00) dollars.

6. On May 24, 2016, Mr. Archer contacted Mr. Daniel and requested substantial completion documents and the final date for completing the wastewater collection system line replacement. On June 6, 2016, Mr. Daniel submitted the requested information. The documentation shows that the wastewater collection system line replacement project was considered substantially complete on May 11, 2016. As of the date of this Order, the Respondent has not reported any additional unpermitted discharges from the location cited in the complaints.

7. On July 5, 2016, Mr. Archer contacted Kenneth Schwab, P.E., Assistant City Manager for Respondent, to discuss waiving the customary Notice of Violation ("NOV") and offering a Consent Order to address the above-described violations. Mr. Archer also informed

Mr. Schwab that because the Respondent had completed all necessary corrective actions and had provided documentation of those actions, the Consent Order would be restricted to a monetary administrative penalty only. Mr. Schwab stated that the Respondent was agreeable to DEQ not issuing an NOV.

8. On July 15, 2016, Mr. Archer contacted Mr. Schwab to discuss this Consent Order. Mr. Schwab acknowledged the penalty in this Consent Order for the fish kill caused by the unpermitted discharge of raw wastewater from the Respondent's wastewater collection system.

9. Failure to comply with State statutes and/or rules 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, which could result in oxygen depletion and subsequent injury, or death of aquatic organisms.

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

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

CONCLUSIONS OF LAW

12. 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 the rules promulgated thereunder at OAC 252:606.

13. 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.

14. 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."

15. 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

16. 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 fifteen thousand eight hundred twenty dollars and ninety-four cents (\$15,820.94).

17. Respondent agrees to pay ODWC five thousand eight hundred twenty dollars and ninety-four cents (\$5,820.94) of the assessed penalty by September 1, 2016. ODWC's payment shall be by check or money order payable to the Oklahoma Department of Wildlife Conservation (or ODWC), showing the Case Number of this Consent Order and delivered to:

Oklahoma Department of Wildlife Conservation
Attn: Fisheries Division
P.O. Box 53465
Oklahoma City, Oklahoma 73152

18. Respondent agrees to pay DEQ the remainder of the assessed penalty, or ten thousand dollars (\$10,000.00), by October 1, 2016. DEQ's payment 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, Oklahoma 73101-2036

19. 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

20. 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.

21. 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.

22. 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 which 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.

23. 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.

24. 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.

25. 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.

26. 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, records review 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.

27. 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

For Respondent:

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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 of 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 to which Respondent is otherwise entitled.

34. 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.

35. 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.

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

37. 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
MAYOR

DATE

SCOTT A. THOMPSON
EXECUTIVE DIRECTOR

DATE