

**CITY OF BROKEN ARROW**  
**UTILITY DIVISION**

**IN THE MATTER OF:** )  
**BLUE BELL CREAMERIES, L.P.** )  
 )  
**Respondent,** )  
 )  
**PERMIT NO. BA 007** )  
**PROBLEM: Part VI Operation and Maintenance:** )  
**Recurring non-compliance with:** )  
**Biochemical Oxygen Demand** )  
**Total Suspended Solids** )  
**Oil & Grease** )  
**pH** )

**CONSENT ORDER**

The parties to this case, the City of Broken Arrow (COBA) by and through the Publicly Owned Treatment Works (POTW) and Blue Bell Creameries, L.P. (“Respondent”) agree to this Consent Order to resolve certain allegations of environmental compliance issues related to violation of a wastewater permit (BA#007) previously issued by COBA to Respondent.

**FINDINGS OF FACT**

1. Respondent owns and operates Blue Bell Creameries, L.P., a Delaware Foreign Limited Partnership. Respondent owns and operates a creamery for the purpose of manufacture and distribution of ice cream and dairy related products.
2. Respondent owns real property located at 8201 East Highway 51, within the City limits of Broken Arrow, OK.
3. COBA operates an Industrial Pretreatment Program as required by Oklahoma Pollutant Discharge Elimination System (OPDES) No. 0040053 and COBA Ordinance. Respondent is classified as a Significant Industrial User (SIU) and has been issued a wastewater permit (No. BA007) as part of the Industrial Pretreatment Program.
4. Permit No. BA007 requires that wastewater discharge samples be taken from the effluent leaving the Respondent’s facility four (4) times per month.

5. The effluent is analyzed and screened for pH, temperature, biological oxygen demand (BOD), total suspended solids (TSS) and oil/grease discharge.
6. A review of City of Broken Arrow records indicates that the respondent has violated permit no. BA007 a total of 62 times since March 13, 2013.

<b><u>Blue Bell Permit Violation Chart</u></b>		
<b>Date</b>	<b>Location</b>	<b>Violation</b>
3/13/2013	Blue Bell	pH 4.7
4/16/2013	Blue Bell	Spill no amount specified
6/4/2013	Blue Bell	pH 4.47
5/17/13	Blue Bell	Oil & Grease monthly average 651 mg/L
7/10/2013	Blue Bell	BOD daily maximum 2219.26 lbs.
7/12/2013	Blue Bell	BOD monthly average 1776.91 lbs.
7/12/13	Blue Bell	Oil & Grease monthly average 1640.10 mg/L
8/20/2013	Blue Bell	BOD daily maximum 4988.19 lbs.
8/23/2013	Blue Bell	BOD daily maximum 4936.69 lbs.
8/23/2013	Blue Bell	BOD monthly average 2891.39 lbs.
8/23/2013	Blue Bell	TSS daily maximum 3472.61 lbs.
8/27/2013	Blue Bell	Spill 50 gal ice cream mix
10/8/2013	Blue Bell	BOD daily maximum 2201.86 lbs.
10/10/2013	Blue Bell	BOD daily maximum 2172.27 lbs.
11/8/13	Blue Bell	Oil & Grease monthly average 920.38 mg/L
2/21/2014	Blue Bell	pH 2.32
4/23/2014	Blue Bell	BOD daily maximum 4031.73 lbs.
4/25/2014	Blue Bell	BOD monthly average 1799.34 lbs.
6/17/2014	Blue Bell	TSS daily maximum 5768.89 lbs.
6/18/2014	Blue Bell	TSS daily maximum 3387.47 lbs.
6/20/2014	Blue Bell	TSS monthly average 2543.79
6/20/2014	Blue Bell	BOD daily maximum 3081.83 lbs.
7/15/2014	Blue Bell	BOD daily maximum 2054.28 lbs.
7/15/2014	Blue Bell	TSS daily maximum 5200.30 lbs.
7/15/2014	Blue Bell	pH 3.92

9/16/2014	Blue Bell	BOD daily maximum 3631.01 lbs.
1/20/2015	Blue Bell	BOD daily maximum 2098.69 lbs.
1/20/2015	Blue Bell	TSS daily maximum 4310.82 lbs.
1/21/2015	Blue Bell	BOD daily maximum 2577.67 lbs.
5/28/2015	Blue Bell	pH 4.15
7/21/2015	Blue Bell	pH 2.75
9/16/2015	Blue Bell	BOD daily maximum 2772.15 lbs.
9/17/2015	Blue Bell	BOD daily maximum 5394.11 lbs.
9/17/2015	Blue Bell	TSS daily maximum 6695.71 lbs.
9/18/2015	Blue Bell	BOD daily maximum 2834.72
9/18/2015	Blue Bell	TSS daily maximum 4342.82 lbs.
9/18/2015	Blue Bell	BOD monthly average 3228.96 lbs.
9/23/2015	Lynn Lane Wastewater Plant	Dairy Slug
10/6/2015	Blue Bell	TSS daily maximum 15234.19 lbs.
11/18/2015	Lynn Lane Wastewater Plant	Dairy Slug
11/25/2015	Lynn Lane Wastewater Plant	Dairy Slug
12/8/2015	Lynn Lane Wastewater Plant	Dairy Slug
12/15/2015	Blue Bell	BOD daily maximum 8422.29 lbs.
12/15/2015	Blue Bell	TSS daily maximum 5702.11 lbs.
12/18/2015	Blue Bell	Oil & Grease monthly average 829.55 mg/L
12/16/2015	Lynn Lane Wastewater Plant	Dairy Slug
12/16/2015	Blue Bell	BOD daily maximum 2093.89 lbs.
12/18/2015	Blue Bell	BOD daily maximum 2907.14 lbs.
12/18/2015	Blue Bell	BOD monthly average 3564.28 lbs.
12/24/2015	Blue Bell	Spill 400 gallons ice cream mix
1/4/2016	Blue Bell	Spill 4,000 gallons of raw milk
1/20/2016	Blue Bell	BOD daily maximum 2998.85 lbs.
1/22/2016	Blue Bell	BOD daily maximum 1999.23 lbs.
1/26/2016	Blue Bell	Spill 300 gallons ice cream mix
2/5/2016	Lynn Lane Wastewater Plant	Dairy Slug
2/9/2016	Blue Bell	BOD daily maximum 2487.42 lbs.
2/10/2016	Blue Bell	BOD daily maximum 2011.88 lbs.
4/20/2016	Blue Bell	BOD daily maximum 2009.85 lbs.
4/28/2016	Blue Bell	Spill 1200 gallons of milk
6/21/2016	Blue Bell	BOD daily maximum 4102.52 lbs.

6/22/2016	Blue Bell	BOD daily maximum 2352.01 lbs.
6/24/2016	Blue Bell	BOD monthly average 1748.62 lbs.

7. To date, Blue Bell has accumulated surcharges in the amount of \$341,605.59 for BOD, TSS and Oil & Grease above residential thresholds, since reopening for production in August 2015. Surcharges shall continue to accumulate for the duration of this order.
8. COBA staff met with Respondent on June 21, 2016, at the COBA Operations Building, to discuss Blue Bell wastewater discharge permit requirements; recurring violations; enforcement response; unpaid surcharges; spills that resulted in slug loadings to the wastewater treatment plant; and Blue Bell's plan to renew compliance.
9. Based upon the historical data presented it was agreed, by both COBA and Blue Bell staff, that equalization or pretreatment before discharge into POTW may be necessary in order to meet Broken Arrow discharge permit no. BA007 limits.
10. As a result of the foregoing the parties agreed upon a Consent Order setting forth remedies required by COBA.
11. It is agreed by Respondent that failure to comply with City Ordinances and or rules may result in harm to the environment or health and well-being of the affected public. Failure to comply with the wastewater permit and the City Ordinances allows wastewater in COBA system to be in excess of what is permitted, which could result in severe harm and damage to POTW.
12. Respondent and COBA agree that it is beneficial to resolve this matter promptly by agreement.
13. Respondent and COBA agree to wave the filing of a petition or any other pleading and Respondent waives the right to have a hearing or to contest this Consent Order.

### **CONCLUSIONS OF LAW**

14. COBA has regulatory jurisdiction and authority in this matter and Respondent is subject to the jurisdiction and authority of COBA under Article V § 24-500-517 of the COBA Ordinances.

15. Respondent and COBA are authorized under Article V § 24-514(b) to resolve this matter by agreement pursuant to a “Consent Order.”

16. By exceeding the amounts allowed under the wastewater permit, COBA alleges the Respondent violated the following sections:

§ 24-501(a) No Industrial user shall introduce or cause to be introduced into POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all industrial users of POTW whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirements. Furthermore, no industrial user may contribute the following substances to POTW:

- (2) Any industrial wastewater having a pH of less than 5.0 standard units, or otherwise causing corrosive structural damage to the POTW or equipment, or endangering city personnel.
- (4) Any wastewater containing pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with either POTW, or any wastewater treatment or sludge process, or which will constitute a hazard to humans or animals.
- (6) Free or emulsified oil and grease exceeding on analysis a monthly average of 500 milligrams per liter, either singly or in combination; or oil and grease discharge above 834 pounds of oil and grease per million gallons of discharge.
- (10) Any substance which singly or by interaction with other waste, is capable of:
  - a. Forming solids in concentrations exceeding limits established herein.

- b. Creating a condition deleterious to structures or treatment processes.
  - c. Requiring unusual facilities, attention or expense to handle.
- (16) Any wastewater or wastes which contain materials which exert or cause:
- a. Unusual concentrations of solids or composition, such as total suspended solids of inert nature and/or total dissolved solids.
  - b. Unusual biochemical oxygen demand or an immediate oxygen demand.

### **ORDER**

17. Based upon the above paragraphs, Respondent and COBA agree, and it is hereby ordered that the Respondent will complete the following tasks by the dates specified below:

<b>Task</b>	<b>Due Date</b>
A. Hire a professional engineer licensed, or with license pending, to practice in the State of Oklahoma and experienced in the design and construction of wastewater facilities. Document completion of this task by submitting COBA evidence of the agreement between the Respondent and the engineer.	February 6, 2017
B. Evaluate Respondent's process wastewater discharge by performing a wastewater characterization study. Explore possible causes of recurring permit violations; including: permit limit exceedances, spills, and slug loadings to the Lynn Lane Wastewater Treatment Plant that are identified in "Finding of Fact". Determine the required upgrades to the Blue Bell Facility that will eliminate recurring permit non-compliance. The proposed system modifications	February 6, 2017

will include a continuous pH monitoring device with chart recorder for process control by Blue Bell. Submit to COBA a detailed report of findings in the form of a Preliminary Engineering Report for review and comment. City will comment and return PER within 2 weeks.

- C. Submit an approvable engineering report to COBA. March 6, 2017  
Include wastewater characterization study results and the proposed upgrades to the Blue Bell Facility with expenditures totaling at least \$341,605.59. Surcharges will continue to accumulate for the duration of this Order without COBA requesting payment.
  - D. Begin Construction of facility upgrades. Document January 8, 2018  
completion of this task by submitting to COBA written notification of award of construction contract.
  - E. Complete construction and begin operation of January 7, 2019  
Blue Bell facility upgrades. Document completion of this task by submitting COBA written notification.
  - F. Submit to COBA a compliance report from the September 2, 2019  
first six months of operation following start-up of facility upgrades. Report should include: documented spills at the Blue Bell Facility, permit limit exceedances, and pH monitoring data.
18. The proposed upgrades to the Blue Bell facility will be designed and constructed to provide for compliance with the limits and requirements contained in Permit No. BA007 issued November 4, 2012. The continuous pH monitoring system installed as part of the upgrades is intended for Blue Bell monitoring and process control purposes.
19. Broken Arrow Ordinance Article V § 24-515 (c)(1) authorizes COBA to seek penalties of up to \$1,000.00 per violation per day. Based upon the facts and circumstances of this case, COBA assesses a total penalty of \$10,000.00. In addition to the penalty, Respondent owes \$341,605.59 in surcharges to COBA for wastewater strengths above

residential thresholds. COBA is willing to waive the current amount of surcharges owed, and additional surcharges accumulated, upon construction of a facility upgrade in an amount that is equal or greater to the total amount of surcharges accumulated. The construction and operation of a facility upgrade shall establish compliance with permit no. BA 007 and shall meet the conditions of this consent order. Penalty and surcharges shall be paid as follows: Respondent agrees to pay the amount of five thousand dollars (\$5,000.00) to COBA, due immediately upon signature of this Consent Order. After initial payment, Respondent agrees to pay the remainder of penalty in five (5) equal payments of one thousand dollars (\$1,000.00). Payments will correspond with tasks A-E above. The first payment will be due by February 13, 2017; the second payment will be due by February 27, 2017; the third payment will be due by March 6, 2017; the fourth payment will be due by January 8, 2018; and the final payment will be due by January 7, 2019. Payment shall be by check or money order payable to Broken Arrow Municipal Authority (BAMA), showing the Case Number of this Consent Order, and delivered to:

Finance Department  
City of Broken Arrow  
P.O. Box 610  
Broken Arrow, OK 74013

20. Respondent agrees that expenditures reasonably associated with design and construction of the facility upgrades shall be at least \$341,605.59. Expenditure of any amount less than \$341,605.59 shall make the remaining amount immediately due to COBA.
21. If upgrades made by Blue Bell Creameries, L.P. fail to result in compliance with previously issued permit no. BA 007 by September 2, 2019, \$341,605.59 and all subsequently accumulated surcharges will immediately become due to COBA.
22. If Respondent fails to complete any of the task(s) set forth in this Consent Order, by the specified due date(s), the stipulated penalty for each incomplete task shall be the maximum sum per day of one thousand dollars (\$1,000.00) per violation.
23. The stipulated penalties for failing to complete the specified task(s) by the corresponding due date(s) shall begin to accrue on the day performance is due as indicated in this Consent Order.
24. If COBA notifies Respondent that Respondent is not in compliance with this Consent Order and that a penalty is being assessed, Respondent may request a hearing to contest



the finding of non-compliance. The notification from COBA will specify how to request a hearing.

25. If Respondent fails to pay any penalty or surcharge as assessed herein, COBA may bring a separate action for collection of the penalty or surcharge in Tulsa County District Court. An action by COBA for the collection of a penalty or surcharge does not affect Respondent's duty to complete the tasks required by this Consent Order.

### **GENERAL PROVISIONS**

26. As used in this Consent Order, an "approvable" submission to COBA is to be considered a final submission. That is, all preliminary discussions between COBA 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.
27. 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 COBA 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.
28. Respondent and COBA may amend this Consent Order by mutual consent. Such amendments must be formal, and in writing and the effective date of the amendments will

be the date on which they are filed by COBA. Any amendment to this Consent Order may require the payment of an administrative penalty of \$1000 per amendment.

29. Upon their approval by COBA, 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 COBA is a violation of this Consent Order.
30. No informal written or verbal communication regarding reports, plans, specifications, schedules, and other writings affect Respondent's obligation to formally submit progress reports/obtain written approval by COBA, when required by this Consent Order.
31. Respondent agrees to allow agents of COBA 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 COBA reasonable notice of the sampling or testing date and time and allow COBA to observe and/or split-sample.
32. Unless otherwise specified, any report, notice or other communication required under this Consent Order must be in writing and must be sent to:

**For COBA:**

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

**For Respondent:**

Marty Kilgore, General Manager  
Blue Bell Creameries, L.P.  
8201 East Highway 51  
Broken Arrow, OK 74014

33. This Consent Order is enforceable as a final order of COBA. COBA 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.

34. Nothing in this Consent Order limits COBA's right to take enforcement action for violations discovered or occurring after the effective date of this Consent Order.
35. Nothing in this Consent Order shall excuse Respondent from its obligation to comply with all applicable federal, state and local statutes, rules and ordinances. Respondent and COBA 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.
36. The provisions of this Consent Order apply to and bind Respondent and COBA 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.
37. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability to COBA for all allegations of noncompliance in this Consent Order. If Respondent satisfies the requirements of this Consent Order, COBA will not pursue any other remedy, sanction or relief that might otherwise be available to address the allegations 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 COBA.
38. This Consent Order is for the purpose of settlement. Neither the fact that Respondent and COBA 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 COBA of this Consent Order and, if applicable, a future determination by COBA 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
39. Respondent and COBA agree that the venue of any action in district court for the purposes of interpreting, implementing and enforcing this Consent Order will be Tulsa County, Oklahoma.

40. The requirements of this Consent Order will be considered satisfied and this Consent Order terminated when Respondent receives written notice from COBA that Respondent has demonstrated that all the terms of the Consent Order have been completed to the satisfaction of COBA, and that any assessed penalty has been paid.
41. The individuals signing this Consent Order certify that they are authorized to sign it and legally bind the parties they represent.
42. This Consent Order becomes effective on the date of the later of the two signatures below.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF BROKEN ARROW:**

**BLUE BELL CREAMERIES, L.P.:**

\_\_\_\_\_  
**Chairman**  
**Broken Arrow Municipal Authority**

\_\_\_\_\_  
**Marty Kilgore**