

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

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

RESPONDENT,

CASE NO. 18-130

COMPLAINT NOS. 154637, 154651 & 154678

FACILITY NO. S-20409

PERMIT NO. OK0040053

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

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 noncompliance.

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 Pollutant Discharge Elimination System ("OPDES") Permit No. OK0040053 ("Permit") that DEQ issued to Respondent, and which became effective October 1, 2017.
2. On May 27, 2018, DEQ received a citizen complaint alleging that Respondent had an unpermitted discharge from the wastewater collection system that resulted in a fish kill in Adams Creek. On May 27, 2018, Adrian Sherman, Environmental Specialist for DEQ, investigated the complaint. Mr. Sherman observed numerous dead fish in Adams Creek. Mr. Sherman confirmed that an unpermitted discharge occurred upstream of the fish kill from a manhole due to an out-of-service lift station located in the vicinity of the 6700 block of South 225th East Avenue. Mr. Sherman contacted Respondent regarding the unpermitted discharge.

Respondent indicated they were aware of the situation. On May 28, 2018, Mr. Sherman performed a follow-up inspection at the site and confirmed that additional fish had been killed from the unpermitted discharge.

3. On May 29, 2018, DEQ received two (2) additional citizen complaints regarding the appearance and odor of Adams creek in the vicinity of the unpermitted discharge. Mr. Sherman performed a second follow-up inspection and found that the unpermitted discharge had been eliminated.

4. On June 1, 2018, the three complaints were referred to the Water Quality Division of DEQ for further investigation and potential enforcement. A review of DEQ records shows the Respondent properly submitted self-report bypass forms during May 2018 for the location identified in the complaints. During this timeframe, Respondent reported approximately five hundred thousand (500,000) gallons of raw wastewater bypassed due to the out-of-service lift station.

5. On June 13, 2018, Travis Archer, P.E., District Engineer for DEQ, contacted Kenneth Schwab, P.E., Assistant City Manager for Respondent. Mr. Schwab stated that the area surrounding the lift station and manhole had been remediated and the lift station was back in service. Mr. Schwab stated that the unpermitted discharges were caused during routine maintenance of the lift station pumps. According to Mr. Schwab, the Respondent had installed a temporary bypass system to divert wastewater during pump repairs which failed overnight during a rain event, causing the unpermitted discharges.

6. On July 9, 2018, Mr. Archer contacted Mr. Schwab 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, 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.

7. On August 14, 2018, Toby Harden, E.I., District Representative for DEQ, 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.

8. 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.

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

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

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. By allowing unpermitted discharges of untreated sewage to occur and causing a fish kill, 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."

14. By allowing unpermitted discharges of untreated sewage to occur and causing a fish kill, DEQ alleges that Respondent violated **27A O.S. § 2-6-205(A)** which states, "[i]t 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

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) per day of violation, for each day during which a violation of the Act, Permit, associated rules, or

order continues. Based on the alleged facts and circumstances of this case, DEQ assesses a total penalty of ten thousand dollars (\$10,000).

16. Respondent agrees to pay DEQ the assessed penalty of ten thousand dollars (\$10,000) by October 1, 2018. 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

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 National Pollutant Discharge Elimination System ("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 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.

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, 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.

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:

Toby Harden, E.I., District Representative
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

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 allegations 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 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 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 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

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
MAYOR

DATE

SCOTT A. THOMPSON
EXECUTIVE DIRECTOR

DATE