

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION

IN THE MATTER OF:
NORMAN UTILITIES AUTHORITY,

RESPONDENT,

CASE NO. 13-077

FACILITY NO. S-20616

OPDES PERMIT NO. OK0029190

PROBLEM(S): Permit Violation(s); OPDES
Permit Compliance Schedule;
TSS and Ammonia Exceeded
Permit Limits; Fecal Coliform
Monitoring Violation(s); DMR
Violation(s); Submitted Incomplete
DMR(s)

OKLAHOMA
DEPT. OF ENVIRONMENTAL QUALITY

AUG 28 2014

FILED BY:

PRay
HEARING CLERK

CONSENT ORDER

The parties to this case, the Oklahoma Department of Environmental Quality ("DEQ") and the Norman Utilities Authority ("Respondent") hereafter collectively referred to as ("Parties") agree to this Consent Order in order to resolve certain environmental compliance issues.

This Consent Order supersedes and closes Notices of Violation ("NOV") Nos. S-20616-11-1, S-20616-12-1, and S-20616-13-1, issued by DEQ to Respondent on October 11, 2011, August 16, 2012, and October 23, 2013, respectively. The Consent Order also closes and supersedes Part I of the Compliance Schedule contained in the Oklahoma Pollutant Discharge Elimination System ("OPDES") Permit No. OK0029190 ("Permit").

FINDINGS OF FACT

1. Respondent owns and operates a publicly-owned treatment works ("POTW") which serves residents of the City of Norman in Cleveland County, Oklahoma. The POTW consists of a wastewater collection system and mechanical wastewater treatment facility ("WWTF") located in the S ½, SE ¼, SE ¼, Section 7, Township 8 North, Range 2 West of the Indian Meridian, Cleveland County, Oklahoma. The WWTF discharges treated effluent to the Canadian River pursuant to the OPDES Permit No. OK0029190 ("Permit") that was issued by DEQ to Respondent, and which became effective July 1, 2010.

2. The Discharge Monitoring Reports (“DMRs”), submitted by Respondent, identify the following Permit limit violations of total suspended solids (“TSS”), ammonia and non-sampling of fecal coliform as required by the Permit:

Month	Parameter (Units)	Reported Results	Permit Limits
Mar. 2010*	Ammonia, mo. avg. conc. (mg/L)	4.2	4.1
Mar. 2012*	TSS, mo. avg. load. (lbs/day)	4310.8	3002.4
Mar. 2012*	TSS, mo. avg. conc. (mg/L)	38	30
Mar. 2012*	TSS, wk. avg. conc. (mg/L)	84	45
Apr. 2012*	TSS, mo. avg. load. (lbs/day)	3069.1	3002.4
Apr. 2012*	TSS, mo. avg. conc. (mg/L)	38	30
Apr. 2012*	TSS, wk. avg. conc. (mg/L)	48	45
May 2012*	TSS, mo. avg. load. (lbs/day)	3342.3	3002.4
May 2012*	TSS, mo. avg. conc. (mg/L)	44	30
May 2012*	TSS, wk. avg. conc. (mg/L)	93	45
Jun. 2012*	Ammonia, mo. avg. conc. (mg/L)	4.2	4.1
Jun. 2012*	Ammonia, da. max. conc. (mg/L)	16.3	9.9
Jul. 2013**	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	200
Jul. 2013**	Fecal coli. da. Max (CFU/100 ml)	Not sampled	400
Aug. 2013**	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	200
Aug. 2013**	Fecal coli. da. Max (CFU/100 ml)	Not sampled	400
Sep. 2013**	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	200
Sep. 2013**	Fecal coli. da. Max (CFU/100 ml)	Not sampled	400
Oct. 2013	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	1,000
Oct. 2013	Fecal coli. da. Max (CFU/100 ml)	Not sampled	2,000
Nov. 2013	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	1,000
Nov. 2013	Fecal coli. da. Max (CFU/100 ml)	Not sampled	2,000
Dec. 2013	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	1,000
Dec. 2013	Fecal coli. da. Max (CFU/100 ml)	Not sampled	2,000
Jan. 2014	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	1,000
Jan. 2014	Fecal coli. da. Max (CFU/100 ml)	Not sampled	2,000
Feb. 2014	Fecal coli. mo. avg (CFU/100 ml)	Not sampled	1,000
Feb. 2014	Fecal coli. da. Max (CFU/100 ml)	Not sampled	2,000

*Violations cited in NOV No. S-20616-12-1 / **Violations cited in NOV No. S-20616-13-1

3. Beginning July 1, 2013, the Permit required Respondent to collect two fecal coliform samples per week May through September, and one fecal coliform sample per week October through April, and report a summary of those sample results on DMRs. The DMRs submitted by Respondent indicate that Permit-required fecal coliform sampling has never been performed or reported.

4. In addition, the Permit contains a compliance schedule requiring Respondent to achieve compliance with fecal coliform and total residual chlorine limits by installing a disinfection system and, if necessary, a dechlorination system, by May 1, 2013. The current schedule for the plant improvements and attainment of final Permit limits is as follows:

- | | |
|---|--|
| a. Submit approvable engineering report | 9 months from the effective date of permit
(April 1, 2011) |
| b. Submit approvable plans and specs | 18 months from the effective date of permit
(January 1, 2012) |
| c. Start of construction | 24 months from the effective date of permit
(July 1, 2012) |
| d. Completion of construction | 34 months from the effective date of permit
(May 1, 2013) |
| e. Meet final limits | 36 months from the effective date of permit
(July 1, 2013) |

5. On July 14, 2010, Respondent requested that the Oklahoma Water Resources Board ("OWRB") place the Phase II WWTF expansion on the Fiscal Year 2011 ("FY11") priority list for grant and/or loan funding from the Clean Water State Revolving Fund ("CWSRF") because construction was expected to begin in Fiscal Year 2012 ("FY12"), resulting in the project being included on the FY12 CWSRF priority list.

6. As a result, Respondent requested to modify the compliance schedule in the permit to coincide with the CWSRF schedule.

7. On February 7, 2011, Respondent submitted a progress report to DEQ and advised DEQ that the engineering report could not be submitted to DEQ by April 1, 2011.

8. On October 11, 2011, DEQ issued NOV No. S-20616-11-1 to Respondent for failing to submit an approvable engineering report as required by the Compliance Schedule in the Permit. Respondent received the NOV on October 20, 2011.

9. On November 4, 2011, Respondent submitted another progress report to DEQ and advised DEQ that plans and specifications ("P&S") could not be submitted by January 1, 2012.

10. On November 16, 2011, DEQ received Respondent's response to the NOV referenced above, regarding the Permit Compliance Schedule violations cited in the NOV. The letter stated that Respondent was not able to submit an approvable engineering report by the deadline because of time it had spent in preparation of a Request for Proposals, obtaining engineering proposals, negotiating the engineering contract scope and corresponding fee,

obtaining City approval of the contract, initiating and completing the work for a major expansion including several internal reviews and presentation to the City Council and the public. The letter also clarified that Respondent had been submitting progress reports as required by the Permit Compliance Schedule. The letter included revised dates for submitting an approvable engineering report, submitting approvable P&S, and for beginning construction on November 18, 2011, July 1, 2012, and November 1, 2012, respectively. The dates for completing construction and attaining compliance remain unchanged from those in the Permit Compliance Schedule.

11. On November 18, 2011, DEQ received an engineering report from Respondent.

12. On January 19, 2012, Respondent submitted a progress report requesting that all compliance dates in the previously submitted schedule be extended by at least six months.

13. On August 16, 2012, DEQ issued NOV No. S-20616-12-1 to Respondent for TSS and ammonia Permit limit exceedances. Respondent received the NOV on August 21, 2012.

14. On August 30, 2012, DEQ received a response to the NOV No. S-20616-12-1 from Respondent for the TSS and ammonia Permit limit exceedances. The response stated that the Permit limit exceedances could be attributed to biosolids handling issues due to backlogs of solids in the treatment process, hydraulic overload due to rain, changes to microbial activities due to lower temperatures, and blower malfunction(s) in June 2012. The response also stated that Respondent was working with Garver Engineers to develop a long-term solution to its biosolids handling issues.

15. On September 21, 2012, Respondent requested that OWRB place the Phase II WWTF on the Fiscal Year 2013 ("FY13") intended use plan for grant/or loan funding from the CWSRF, resulting in Respondent being placed on the FY13 CWSRF priority list.

16. Also on September 21, 2012, DEQ declined Respondent's request to amend the City's 208 Water Quality Management Plan.

17. On January 15, 2013, DEQ approved a request for variances from DEQ's construction standards related to various treatment units and processes, submitted by Respondent on May 21, 2012. DEQ requested that Respondent submit an additional variance request for primary clarifier weir overflow rates, a revised proposed schedule to supersede the OPDES compliance schedule, and a revised engineering report. DEQ and Respondent agreed to enter into this Consent Order to supersede the OPDES Compliance Schedule based on the revised proposed schedule from Respondent.

18. On February 5, 2013, DEQ approved the response to NOV S-20616-12-1 and stated that DEQ and Respondent will use a Consent Order to address the Permit limit exceedances.

19. On March 20, 2013, DEQ approved a variance request submitted by Respondent on February 20, 2013, related to the clarifier weir loading rate.

20. On February 21, 2013, in response to the January 15, 2013, request for a schedule to supersede the OPDES Compliance Schedule, Respondent submitted a revised proposed schedule for compliance with the requirement to construct a new disinfection unit and to attain compliance with the final limits for Fecal Coliform.

21. On April 19, 2013, Respondent received proposed Consent Order 13-077 dated April 15, 2013, from DEQ. This proposal requested Respondent to sign and return the Consent Order within thirty (30) days of receipt.

22. On May 17, 2013, Respondent submitted a revised proposed schedule, which is used as the basis for the task schedule in this Consent Order, to achieve compliance with the OPDES permit requirement to construct a disinfection unit and to address the WWTF deficiencies that contributed to the permit limit exceedances cited in NOV No. S-20616-12-1.

23. On June 27, 2013, DEQ approved the engineering report submitted by Respondent on April 1, 2013.

24. On August 1, 2013, Respondent submitted an application for a construction permit along with P&S for improvements approved in the engineering report. DEQ approved the P&S and issued construction permit No. ST000014130639 to Respondent on December 2, 2013.

25. On October 23, 2013, DEQ issued NOV No. S-20616-13-1 to Respondent for failing to collect fecal coliform samples during the July 2013, August 2013, and September 2013 monitoring periods and report a summary of those sample results on DMRs. Respondent received the NOV on October 31, 2012.

26. On December 27, 2013, DEQ received a request to revise Consent Order 13-077. The requested revisions included exact dates to the construction related tasks in the task schedule since DEQ issued a construction permit to Respondent. Respondent also requested to modify Task D to include a statement that reads "... and begin fecal coliform sampling in accordance with OPDES Permit."

27. From January 6, 2014, to May, 2014, the parties discussed the requirement that Respondent sample for fecal coliform. Ultimately, DEQ agreed to revise the language for Task C to require fecal coliform sampling as required by the Permit only upon completion of construction.

28. Failure to comply with the state statutes and/or rules cited in this Consent Order may result in harm to the environment or health and well-being of the affected public. Discharge Compliance Schedules in OPDES Permits are designed to give Respondent enough time to make necessary improvements. Discharge Permits are designed to protect the water quality of the state, as well as public health and the environment. By not complying with the Compliance Schedule and/or by exceeding permit limits, Respondent cannot guarantee compliance with Oklahoma's Water Quality Standards. Those parameters and limitations established in the Respondent's OPDES permit were established to ensure that the public and environment are protected from exposure to certain pollutants.

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

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

CONCLUSIONS OF LAW

31. 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.

32. 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.

33. By exceeding Permit limits, failing to sample, and comply with the OPDES Permit compliance schedule, Respondent violated **OPDES Permit No. OK0029190, Part III(C)(4)(b), OAC 252:606-3-6 and OAC 252:606-1-3(b)(3)(W)**, which incorporates by reference **Title 40 of the Code of Federal Regulations ("C.F.R.") § 122.41**, specifically **40 C.F.R. § 122.41(a)**, which states that Respondent must comply with all conditions of the OPDES issued permit and any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or

modification; or denial of a permit renewal application, Respondent has not complied with its Permit.

34. By failing to comply with **Part I(A) of OPDES Permit No. OK0029190**, which specifies numerical limits, monitoring frequencies, and sample types for the monitored parameters of fecal coliform, TSS and Ammonia, in the effluent from the City's WWTP, Respondent has not complied with its Permit.

35. By failing to comply with **Part I of OPDES Permit No. OK0029190**, which contains a schedule for constructing a new disinfection facility, Respondent has not complied with its Permit.

36. By failing to comply with **Part III(B)(5) of OPDES Permit No. OK0029190**, which states, "All monitoring information required in Part I, Section A of this permit shall be included on DMRs (EPA form 3320-1)," Respondent has not complied with its Permit.

ORDER

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

	Task	Date
A.	Respondent agrees to submit an approvable engineering report for disinfection system and upgrades to the WWTF needed to correct the conditions that resulted in the violations cited in this Consent Order and bring the WWTF into compliance with the requirements of the OPDES Permit. The report shall be accompanied by a letter signed by appropriate city official(s) endorsing the report and authorizing its submission to DEQ as a requirement of this Consent Order. If outside funding will be required to implement the report's recommendations, the report shall also comply with the guidelines approved by the Funding Agency Coordinating Team (FACT), which can be obtained on the Internet at: "www.owrb.state.ok.us/financing/fact_forms.php#guides"	Completed
B.	Respondent agrees to submit approvable plans and specifications ("P&S"), an application for a construction permit, and the associated fees for the construction proposed in the approved engineering report from Task A.	Completed
C.	Respondent agrees that fecal coliform testing is required by the OPDES Permit. However, DEQ will not require fecal coliform testing until construction is completed. Upon completion, Respondent agrees to perform fecal coliform sampling as required by the OPDES Permit.	Upon completion of construction

	Task	Date
D.	Respondent agrees to issue a swimming advisory for the segment of the Canadian River into which Respondent's WWTF discharges until construction of the disinfection facilities at the WWTF is complete and the effluent is being disinfected in compliance with the permit limits.	Within 30 days of the effective date of this Consent Order.
E.	Respondent agrees to begin construction of the disinfection system and WWTF upgrades in accordance with the approved P&S and construction permit issued by DEQ from Task B above.	Completed
F.	Respondent agrees to complete construction of the disinfection system in accordance with the approved P&S and construction permit issued by DEQ from Task B above.	January 1, 2016
G.	Respondent agrees to attain compliance with fecal coliform OPDES Permit limits.	July 1, 2016
H.	Respondent agrees to complete construction of the WWTF upgrades in accordance with the approved P&S and construction permit issued by DEQ from Task B above.	January 1, 2017
I.	Respondent agrees to attain compliance with OPDES Permit limits for TSS and Ammonia.	July 1, 2017
NOTE: All construction must comply with OAC 252:626		

38. The Respondent will prepare and submit reports to the DEQ within fourteen (14) days of the above dates advising the DEQ of the Respondent's compliance status.

39. 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 permit continues. Based on the facts and circumstances of this case, DEQ assesses a total penalty of forty thousand dollars (\$40,000).

- a. The parties agree that, in lieu of paying a cash penalty, Respondent shall submit to DEQ by November 30, 2014, a Supplemental Environmental Project ("SEP") work plan, including a schedule for implementation and completion. Respondent agrees that expenditures reasonably associated with the SEP will be at least \$80,000.00. Respondent agrees that, upon approval by DEQ, Respondent will complete the SEP according to the approved work plan and schedule and will submit documentation of completion of the SEP within 14 days after completion. If Respondent fails to submit the work plan or complete the SEP within the dates specified, the \$40,000 will become immediately due and payable to the DEQ.

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

40. Respondent agrees that if Respondent fails to complete any of the tasks by the specified due dates set forth in Paragraph 37 in this Consent Order, DEQ may assess stipulated penalties as follows:

TASK	PENALTY PER DAY (Unless Noted)
A.	N/A
B.	N/A
C.	\$750.00* (per incomplete DMR)
D.	\$140.00
E.	N/A
F.	\$525.00
G.	\$700.00
H.	\$525.00
I.	\$700.00

*DEQ reserves the right to exercise enforcement discretion over the application of stipulated penalties related to the sampling task pending Respondent's compliance with the tasks related to construction of the disinfection facilities.

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). 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.

41. 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

42. 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 Order be violated or future violations occur.

43. 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.

44. 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.

45. 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 of Respondent to respond within a reasonable time to any errors, deficiencies or other regulatory requirements identified by DEQ is a violation of this Consent Order.

46. 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.

47. 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.

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

For DEQ:

Hebret Bokhru, 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:

Kenneth Komiske, Utilities Director
Norman Utilities Authority
201 West Gray, Bldg. C
P.O. Box 370
Norman, Oklahoma 73069-0370

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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. Such notice shall not be unreasonably withheld.

56. Any desired additional requirements not contained in this Consent Order or any amendment thereto shall not be imposed as a condition of termination of this Consent Order pursuant to Paragraph 51 herein.

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

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

FOR NORMAN UTILITIES AUTHORITY:

**FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY:**


CINDY ROSENTHAL
MAYOR / CHAIRMAN

DATE

 8-28-14
SCOTT A. THOMPSON
EXECUTIVE DIRECTOR

DATE