

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL COMPLAINTS AND LOCAL SERVICES DIVISION**

**IN THE MATTER OF:  
BUFFALO, TOWN OF**

**CASE NO. 09-004**

**ENFORCEMENT NO. 30065186,**

**FACILITY NO. S-20902**

**CONSENT ORDER**

The parties to this case, the Oklahoma Department of Environmental Quality (“DEQ”) and Town of Buffalo (“Respondent”), agree to this Consent Order in order to resolve certain environmental compliance issues.

**FINDINGS OF FACT**

1. Respondent owns and operates a total retention lagoon facility (“facility”), Facility No. S-20902, which serves the residents of Buffalo, located in Harper County, Oklahoma. The facility is a seven-cell lagoon system. The facility is permitted.

2. On October 23, 2008, DEQ received a complaint that Respondent was discharging untreated wastewater from its collection system onto the ground into a bermed area located between lagoon cells #2 and #7 and #6.

3. On October 31, 2008, Kenneth Ground, Environmental Specialist for DEQ, conducted a complaint based inspection at the facility. During the inspection, Mr. Ground observed the following violations:

- a. Failure to obtain a permit for facility modifications. The lift station has two pumps and was inoperable causing untreated sewage to flow out of the lift station into a

bermed area in between the lagoon cells resulting in the bypass. The lift station has an “overflow pipe” that terminates between lagoon cell # 2 and lagoon cell #7. In order to prevent the bypass from entering waters of the state, the facility operators constructed a dike to hold bypassing wastewater entering the Buffalo Aqueduct. Respondent cut trenches on the east side of lagoon cell #2, the west side of lagoon cell #7 and in between lagoon cells #6 and #7.

- b. Failure to maintain a slope of 1:3.
- c. Failure to remove excessive vegetation. The facility has trees growing on the inner dikes. Excessive vegetation has grown up around the outside dikes.
- d. Failure to maintain an operable lift station. The lift station was no longer operational due to the owner of the facilities lack of maintenance the lift station filled with wastewater causing the bypass.
- e. Respondent failed to take immediate action to stop, contain and clean up the bypass or discharge.

4. On October 31, 2008, Mr. Ground, issued a copy of the Inspection Report, DEQ Form # 619-002, to Joe McVicker, City Manager for Respondent, citing the above-described violations and giving Respondents until November 17, 2008, to correct the violations.

5. Although, not noted on the Inspection Report Mr. Ground also observed that Respondent failed to maintain controls and fail-safe equipment as evidenced by the alarms for the lift station not being in working order.

6. On November 17, 2008, Mr. Ground conducted follow-up inspection at the facility. During the inspection, Mr. Ground observed the following violations:

- a. Failure to obtain a permit for facility modifications. The lift station has two pumps and was inoperable causing untreated sewage to flow out of the lift station into a bermed area in between the lagoon cells resulting in the bypass. The lift station has an “overflow pipe” that terminates between lagoon cell # 2 and lagoon cell #7. In

order to prevent the bypass from entering waters of the state, the facility operators constructed a dike to hold bypassing wastewater entering the Buffalo Aqueduct. Respondent cut trenches on the east side of lagoon cell #2, the west side of lagoon cell #7 and in between lagoon cells #6 and #7.

- b. Failure to maintain a slope of 1:3.
- c. Failure to remove excessive vegetation. The facility has trees growing on the inner dikes. Excessive vegetation has grown up around the outside dikes.
- d. Failure to maintain an operable lift station. The lift station was no longer operational due to the owner of the facilities lack of maintenance the lift station filled with wastewater causing the bypass.
- e. Respondent failed to take immediate action to stop, contain and clean up the bypass or discharge.

7. On November 17, 2008, Mr. Ground, issued a copy of the Inspection Report, DEQ Form # 619-002, to Joe McVicker, City Manager for Respondent, citing the above-described violations and giving Respondents until November 17, 2008, to correct the violations.

8. Although, not noted on the Inspection Report, Mr. Ground also observed that Respondent failed to maintain controls and fail-safe equipment as evidenced by the alarms for the lift station not being in working order.

9. Respondent and the DEQ agree that it is beneficial to resolve this matter promptly and by agreement. As such, both parties verbally agreed to the terms of this Consent Order on January 8, 2009.

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

#### **CONCLUSIONS OF LAW**

11. The DEQ has regulatory jurisdiction and authority in this matter, and Respondent is subject to the jurisdiction and authority of the DEQ under 27A O.S. § 1-3-101(B).

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

13. Failure to obtain a permit from DEQ prior to constructing/modifying a total retention lagoon is a violation of OAC 252:619-1-3, which states, "Pursuant to OAC 252:656, permits are required for the construction or modification of any non-industrial wastewater total retention lagoon system. Compliance with this rule assures that the facility has been designed to handle hydraulic flows and provide treatment to prevent discharges of untreated wastewater to the waters of the state.

14. Failure to maintain a maximum slope of 1:3 on the lagoon dikes is a violation of OAC 252:619-3-2(a)(1), which provides that the permittee shall prevent erosion of the lagoon by "[m]aintaining a 1:3 slope on the inner and outer dikes of the lagoon...." Failure to comply with this rule can prevent the dikes from being mowed, which can allow excess vegetation to grow. Excess vegetation can cause erosion to the lagoon dikes.

15. Failure to remove the trees/cattails or other deep-root vegetation from the total retention lagoon is a violation of OAC 252:619-3-2(a)(3), which states that the permittee shall prevent erosion of the lagoon by "[r]emoving trees and deep-root vegetation from the dikes and bottom of the lagoon in a timely manner to maintain the integrity and stability of the lagoon." Failure to comply with this rule can allow vegetation to grow up high enough to block wind action that is essential for proper treatment of the wastewater. High weeds around the lagoon also provide harborage for disease carrying insects such as mosquitoes.

16. Failure to prevent a bypass or discharge from the facility is a violation of OAC 252:619-1-4(d), which states, "The permittee shall operate and maintain the total retention lagoon system so that no part of the system bypasses or discharges wastes or wastewater. All such bypasses and/or discharges shall be considered a violation of this Chapter and be subject to enforcement as an unpermitted discharge to waters of the State in violation of the Oklahoma Pollutant Discharge Elimination System Act." Failure to comply with this rule can allow untreated wastewater to enter the waters of the state which could result in oxygen depletion and subsequent injury or death of aquatic organisms.

17. Failure to report a bypass or discharge from a total retention lagoon is a violation of OAC 252:619-1-4(d)(1), which states, "The permittee shall ensure that any and all bypasses and/or discharges from a total retention lagoon system are reported to DEQ at (800) 522-0206 within 24-hours of the incident and that a completed and signed DEQ Form 605-011 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident." Failure to comply with this rule prevents the DEQ from pursuing compliance to end unpermitted discharges and could prevent the system from being eligible for funding to repair system problems.

18. Failure to take immediate action to stop, contain and clean up a bypass or discharge is a violation of OAC 252:619-1-4(d)(2), which states, "Whenever a bypass or discharge occurs, the permittee shall ensure that immediate action is taken to stop, contain, clean up and prevent recurrence of the bypass or discharge." Failure to comply with this rule allows untreated wastewater to enter the waters of the state which could result in oxygen depletion and subsequent injury or death of aquatic organisms.

19. Failure to properly maintain pump stations is a violation of OAC 252:619-3-1(d), which states:

The permittee shall ensure that pump stations are properly maintained and operated by doing the following:

- (1) Securing pump stations to prevent unauthorized access.
- (2) Maintaining the pumps in working condition.
- (3) Keeping the screens free of debris to prevent clogging.
- (4) Maintaining the required alarms in working order.
- (5) Maintaining the required back-up generators and/or portable engine driven pumps in working order.
- (6) Maintaining a complete set of operational instructions, emergency procedures and maintenance schedules.

Failure to comply with this rule could result in discharges of untreated wastewater to the waters of the state.

### **ORDER**

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

- a. Respondent agrees to immediately stop all bypasses from the lift station and cap the overflow pipe from the lift station.
- b. Respondent agrees to immediately repair lift station including the controls, fail-safe equipment and all other appurtenances to the lift station.
- c. Respondent agrees to immediately repair all breaches of any dike in the facility, conduct permeability testing, clean area affected by the bypass, and route to flow of wastewater according to the original plans and specifications.
- d. Respondent agrees to submit a maintenance schedule/plan for the wastewater treatment facility by May 1, 2009.
- e. Respondent agrees to remove all excessive vegetation from the facility by June 1, 2009.
- f. Respondent agrees to repair and reshape all dikes back to the original specifications as described in the permit by January 1, 2010.

21. The Oklahoma Environmental Quality Code, 27A O.S. §§ 2-3-502(B) and (K), authorizes the DEQ to seek penalties of up to Ten Thousand Dollars (\$10,000.00) per day for each violation of the Code and the associated rules. Based on the facts and circumstances of this case, DEQ assesses a total penalty of EIGHT THOUSAND DOLLARS (\$8000.00). Respondent agrees to pay the amount of **ONE THOUSAND DOLLARS (\$1,000.00)** to the DEQ by February 1, 2009. 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, OK 73101-2036

22. DEQ agrees to *wave* **ONE THOUSAND TWO HUNDRED DOLLARS (\$1200.00)** of the penalty for each task d, e, f, if the tasks are completed according to the terms of this Consent Order.

Respondent agrees that within thirty (30) days of receiving written notification from DEQ that the above-stated penalty is not going to be waived due to Respondent's noncompliance with this Consent Order, Respondent agrees to pay that amount to the DEQ. 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 the address in the above paragraph.

23. Respondent agrees to pay \$1,000.00 of the penalty in the form of a supplemental environmental project ("SEP"), the total cost of which will be \$2,000.00. Respondent agrees to submit an SEP proposal to DEQ, by April 16, 2009. DEQ agrees to waive \$1,200.00 for submitting the SEP proposal by April 16, 2009. Respondent agrees that, upon approval by the DEQ, Respondent will complete the SEP according to the approved work plan and schedule and will submit documentation of completion within thirty (30) days after completion. Respondent agrees to complete the SEP by May 1, 2010. If the SEP is completed by that deadline, DEQ agrees to waive \$1,200.00 of the remaining penalty.

24. If Respondent fails to comply with any of the tasks listed in paragraph 20 of this Consent Order, Respondent agrees to pay the DEQ an additional penalty for each day of noncompliance according to the following schedule:

<u>Task</u>	<u>Penalty Per Day for Noncompliance</u>
a.	\$50
b.	\$50
c.	\$50
d.	\$50
e.	\$50
f.	\$50

If the DEQ notifies Respondent that Respondent is not in compliance with this Consent Order and that an additional penalty is being assessed, Respondent may request a hearing to contest the finding of noncompliance. The notification from the DEQ will specify how to request a hearing.

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

#### GENERAL PROVISIONS

26. 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 the 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 force majeure.

27. Upon their approval by the 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 the DEQ is a violation of this Consent Order.

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

29. Respondent agrees to allow agents of the 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.

30. As used in this Consent Order, an “approvable” submission to the DEQ is to be considered a final submission. That is, all preliminary discussions between the 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.

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

**For the Department of Environmental Quality:**

Wendy Sheets  
Environmental Complaints and Local Services Division  
Oklahoma Department of Environmental Quality  
P.O. Box 1677  
Oklahoma City, OK 73101-1677

**For Respondent(s):**

Georganna Buss, Mayor  
Town of Buffalo  
POB 439  
Buffalo, OK 73834

32. This Consent Order is enforceable as a final order of the Executive Director of the DEQ. The 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.

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

34. Nothing in this Consent Order excuses Respondent from Respondent’s obligation to comply with all applicable federal, state and local statutes, rules and ordinances. Respondent and the

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.

35. The provisions of this Consent Order apply to and bind Respondent and the DEQ and their officers, 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.

36. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability to the DEQ for all items of noncompliance in this Consent Order. If Respondent satisfies the requirements of this Consent Order, the 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 the DEQ.

37. Respondent and the 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.

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

39. Respondent and the 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 the DEQ.

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

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

**FOR RESPONDENT:**

**OKLAHOMA DEPARTMENT  
OF ENVIRONMENTAL QUALITY:**

\_\_\_\_\_  
Georganna Buss                      Date  
Mayor

\_\_\_\_\_  
Steven A. Thompson                      Date  
Executive Director