

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

IN THE MATTER OF: )  
~~Town~~ of Barnsdall, )  
*City* Respondent, )  
 )  
Facility No. P-1021304, )  
Problem: Disinfection Byproducts )

Case No. 06-070

OKLAHOMA  
DEPT. OF ENVIRONMENTAL QUALITY  
MAR 20 2006  
FILED BY: *Sm*  
HEARING CLERK

**CONSENT ORDER**

The Oklahoma Department of Environmental Quality ("DEQ") and the ~~Town~~ *City* of Barnsdall ("Respondent") (collectively "Parties") agree to this Consent Order in order to resolve certain environmental compliance issues.

This Order hereby closes and supersedes Notices of Violation ("NOVs") No. P-1021304-05-1, No. P-1021304-05-2, No. P-1021304-05-3 and No. P-1021304-05-5.

**FINDINGS OF FACT**

1. The Respondent owns and operates a permitted community public water supply ("PWS") system in Osage County, Oklahoma, that is defined as a Subpart H system in 40 C.F.R. § 141.2 and serves 1,325, fewer than 10,000 people.
2. Samples submitted by the Respondent for analysis of Total Trihalomethanes ("TTHM") show the following average concentrations for TTHM:

2004 First quarter results	0.116 mg/L
2004 Second quarter results	0.109 mg/L
2004 Third quarter results	0.136 mg/L
2004 Fourth quarter results	0.081 mg/L
2005 First quarter results	0.093 mg/L
2005 Second quarter results	0.069 mg/L
2005 Third quarter results	0.197 mg/L
2005 Fourth quarter results	0.100 mg/L

In order to determine compliance, the average of four consecutive quarters must remain at or below 0.080 mg/L. The average of the samples listed above for the four quarters of 2004 was 0.111 mg/L.

The average of the samples listed above for the last three quarters of 2004 and the first quarter of 2005 was 0.105 mg/L. The average of the samples listed above for the last two quarters of 2004 and the first two quarters of 2005 was 0.095 mg/L. The average of the samples listed above for the last quarter of 2004 and the first three quarters of 2005 was 0.110 mg/L. The average of the samples listed above for the four quarters of 2005 was 0.115 mg/L. Those values exceed the MCL of 0.080 mg/L for TTHM.

3. Samples submitted by the Respondent for analysis of Haloacetic Acids ("HAA5") show the following average concentrations for HAA5:

2004 First quarter results	0.114 mg/L
2004 Second quarter results	0.031 mg/L
2004 Third quarter results	0.104 mg/L
2004 Fourth quarter results	0.035 mg/L
2005 First quarter results	0.045 mg/L
2005 Second quarter results	0.084 mg/L
2005 Third quarter results	0.140 mg/L
2005 Fourth quarter results	0.077 mg/L

In order to determine compliance, the average of four consecutive quarters must remain at or below 0.060 mg/L. The average of the samples listed above for the four quarters of 2004 was 0.071 mg/L. The average of the samples listed above for the last two quarters of 2004 and the first two quarters of 2005 was 0.067 mg/L. The average of the samples listed above for the last quarter of 2004 and the first three quarters of 2005 was 0.076 mg/L. The average of the samples listed above for the four quarters of 2005 was 0.087 mg/L. Those values exceed the MCL of 0.060 mg/L for HAA5. The average of the samples listed above for the last three quarters of 2004 and the first quarter of 2005 was 0.054 mg/L. This indicates that the compliance criteria stated above has been met for that monitoring period.

4. Total Organic Carbon ("TOC") Treatment Technique Violation - The average TOC percent removal ratio of the sample sets submitted by the Respondent's PWS for the twelve (12) month period from January 2004 through December 2004 are as follows:

	2004	2004	2004	2004	2004	2004	2004	2004	2004	2004	2004	2004	
Town of Barnsdall	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	
Source Water TOC		5.03	13.4	4.72	4.25	3.88	3.8	5.31	3.71	3.87	3.55	4.28	
Source Water Alkalinity		30	30	31	30	31	31	30	31	30	31	31	
Finished Water TOC		3.1	10.8	2.47	2.61	2.42	2.2	2.26	2.27	2.41	2.32	2.51	
Required % Removal		45	50	45	45	35	35	45	35	35	35	45	
Actual % Removal		38.4	19.4	47.7	38.6	37.6	42.1	57.4	38.8	37.7	34.6	41.4	AVG
Removal Ratio		0.85	0.39	1.06	0.86	1.08	1.20	1.28	1.11	1.08	0.99	0.92	0.98

In order to achieve compliance, the average of twelve (12) consecutive monthly TOC percent removal ratios must remain at or above 1.00. The Respondent's average TOC percent removal ratio for the twelve (12) month period specified above is 0.98. This average TOC percent removal ratio is below the required 1.00 and none of the alternative compliance criteria stated above have been met. Therefore, the Respondent is in violation for not meeting the treatment technique requirements for control of disinfection byproduct precursors.

Additionally, the sample sets submitted by the Respondent's PWS for the twelve (12) month period from April 2004 through March 2005 is 1.06. This average TOC percent removal ratio is above the required 1.00 and indicates that the compliance criteria stated above was met for this monitoring period.

	2004	2004	2004	2004	2004	2004	2004	2004	2004	2005	2005	2005	
Town of Barnsdall	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	
Source Water TOC	4.72	4.25	3.88	3.8	5.31	3.71	3.87	3.55	4.28	5.13	5.51	4.82	
Source Water Alkalinity	31	30	31	31	30	31	30	31	31	31	31	31	
Finished Water TOC	2.47	2.61	2.42	2.2	2.26	2.27	2.41	2.32	2.51	2.83	3.02	2.45	
Required % Removal	45	45	35	35	45	35	35	35	45	45	45	45	
Actual % Removal	47.7	38.6	37.6	42.1	57.4	38.8	37.7	34.6	41.4	44.8	45.2	49.2	AVG
Removal Ratio	1.06	0.86	1.08	1.20	1.28	1.11	1.08	0.99	0.92	1.00	1.00	1.09	1.06

The average TOC percent removal ratio of the sample sets submitted by the Respondent's PWS for the twelve (12) month period of from July 2004 through June 2005 are as follows.

	2004	2004	2004	2004	2004	2004	2005	2005	2005	2005	2005	2005	
Town of Barnsdall	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	
Source Water TOC	3.8	5.31	3.71	3.87	3.55	4.28	5.13	5.51	4.82	4.53	4.42	4	
Source Water Alkalinity	31	30	31	30	31	31	31	31	31	30	30	31	
Finished Water TOC	2.2	2.26	2.27	2.41	2.32	2.51	2.83	3.02	2.45	2.82	3.82	3.33	
Required % Removal	35	45	35	35	35	45	45	45	45	45	45	45	
Actual % Removal	42.1	57.4	38.8	37.7	34.6	41.4	44.8	45.2	49.2	37.7	13.6	16.8	AVG
Removal Ratio	1.20	1.28	1.11	1.08	0.99	0.92	1.00	1.00	1.09	0.84	0.30	0.37	0.93

In order to achieve compliance, the average of twelve (12) consecutive monthly TOC percent removal ratios must remain at or above 1.00. The Respondent's average TOC percent removal ratio for the twelve (12) month period specified above is 0.93. This average TOC percent removal ratio is below the required 1.00 and none of the alternative compliance criteria stated above have been met. Therefore, the Respondent is in violation for not meeting the treatment technique requirements for control of disinfection byproduct precursors.

The average TOC percent removal ratio of the sample sets submitted by the Respondent's PWS for the twelve (12) month period of from October 2004 through September 2005 are as follows:

	2004	2004	2004	2005	2005	2005	2005	2005	2005	2005	2005	2005	
Town of Barnsdall	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	
Source Water TOC	3.87	3.55	4.28	5.13	5.51	4.82	4.53	4.42	4	3.17	4.22	5.47	
Source Water Alkalinity	30	31	31	31	31	31	30	30	31	30	31	31	
Finished Water TOC	2.41	2.32	2.51	2.83	3.02	2.45	2.82	3.82	3.33	2.88	3.81	3.72	
Required % Removal	35	35	45	45	45	45	45	45	45	35	45	45	
Actual % Removal	37.7	34.6	41.4	44.8	45.2	49.2	37.7	13.6	16.8	9.1	9.7	32.0	AVG
Removal Ratio	1.08	0.99	0.92	1.00	1.00	1.09	0.84	0.30	0.37	0.26	0.22	0.71	0.73

In order to achieve compliance, the average of twelve (12) consecutive monthly TOC percent removal ratios must remain at or above 1.00. The Respondent's average TOC percent removal ratio for the twelve (12) month period specified above is 0.73. This average TOC percent removal ratio is below the required 1.00 and none of the alternative compliance criteria stated above have been met. Therefore, the Respondent is in violation for not meeting the treatment technique requirements for control of disinfection byproduct precursors.

Finally, the average TOC percent removal ratio of the sample sets submitted by the Respondent's PWS for the twelve (12) month period from January 2005 through December 2005 are as follows:

	2005	2005	2005	2005	2005	2005	2005	2005	2005	2005	2005	2005	
Town of Barnsdall	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	
Source Water TOC	5.13	5.51	4.82	4.53	4.42	4	3.17	4.22	5.47	4.27	5.49	4.61	
Source Water Alkalinity	31	31	31	30	30	31	30	31	31	31	30	31	
Finished Water TOC	2.83	3.02	2.45	2.82	3.82	3.33	2.88	3.81	3.72	3.7	3.74	3.86	
Required % Removal	45	45	45	45	45	45	35	45	45	45	45	45	
Actual % Removal	44.8	45.2	49.2	37.7	13.6	16.8	9.1	9.7	32.0	13.3	31.9	16.3	AVG
Removal Ratio	1.00	1.00	1.09	0.84	0.30	0.37	0.26	0.22	0.71	0.30	0.71	0.36	0.60

In order to achieve compliance, the average of twelve (12) consecutive monthly TOC percent removal ratios must remain at or above 1.00. The Respondent's average TOC percent removal ratio for the twelve (12) month period specified above is 0.60. This average TOC percent removal ratio is below the required 1.00 and none of the alternative compliance criteria stated above have been met. Therefore, the Respondent is in violation for not meeting the treatment technique requirements for control of disinfection byproduct precursors.

5. On January 11, 2005, the DEQ issued the Respondent a NOV, No. P-1021304-05-1, for the Third Quarter 2004 TTHM and HAA5 violations. The NOV was received by the Respondent on January 14, 2005.

6. NOV No. P-1021304-05-1 required the Respondent to provide public notice to its users by February 10, 2005. On February 8, 2005, the DEQ received a copy of the notice that the Respondent distributed to all users of the Barnsdall PWS on February 4, 2005.

7. On March 21, 2005, the DEQ issued the Respondent a Notice of Violation ("NOV"), No. P-1021304-05-2, for the Fourth Quarter 2004 TTHM MCL, HAA5 MCL and TOC Treatment Technique violations. The NOV was received by the Respondent on March 24, 2005.

8. NOV No. P-1021304-05-2 required the Respondent to provide public notice to its users by April 20, 2005. On April 14, 2005, the DEQ received a copy of the notice that the Respondent distributed to all users of the Barnsdall PWS on April 11, 2005.

9. On September 7, 2005, the DEQ issued the Respondent a Notice of Violation ("NOV"), No. P-1021304-05-3, for the First Quarter 2005 TTHM MCL and TOC monitoring violations. The NOV was received by the Respondent on September 16, 2005.

10. NOV No. P-1021304-05-3 required the Respondent to provide public notice to its users by October 7, 2005. On October 7, 2005, the DEQ received a copy of the notice that the Respondent distributed to all users of the Barnsdall PWS on October 3, 2005.

11. On January 4, 2006, the DEQ issued the Respondent a Notice of Violation ("NOV"), No. P-1021304-05-5, for the Second Quarter 2005 and the Third Quarter 2005 TTHM MCL, HAA5 MCL and TOC Treatment Technique violations. The NOV was received by the Respondent on January 10, 2006.

12. NOV No. P-1021304-05-5 required the Respondent to provide public notice to its users by February 3, 2006. Proof of this public notice has not been received by DEQ.

13. On January 27, 2005, Robert Mullins, PE, DEQ District Engineer, provided operator training on the DBP rule and the Targeted Technical Assistance program and started the development of an Operational Corrective Action Plan.

14. On February 1, 2005, Robert Mullins, PE, DEQ District Engineer, attended the Respondent's City Council Meeting and gave a presentation on the Stage 1 Disinfectants/Disinfection By-Products ("DBP") rule and the Targeted Technical Assistance ("TTA") program being piloted in Oklahoma. Mayor Rick Parker and the City Council were present for the presentation. The States of Arkansas, Louisiana, New Mexico and Oklahoma, along with EPA Region 6 and the Center for Drinking Water Optimization [comprised of the EPA Technical Support (Cincinnati, OH), Process Applications, Inc. (Fort Collins, CO), the University of Cincinnati, and the University of Colorado] have participated in a Multi-State Area-Wide Optimization Pilot Program ("AWOP"). The anticipated treatment challenges from more stringent DBP regulations and simultaneous compliance concerns motivated the optimization team develop the TTA process to focus on approaches to achieve optimal reductions in DBPs, while also achieving optimal levels of turbidity removal. The Respondent has agreed to continue to participate in the ongoing development of the Targeted Technical Assistance/Training protocol, which aims to achieve system DBP compliance in a cost-effective manner by training operators and administration from multiple systems concurrently. Systems participating in the training will be grouped geographically with other systems in their area to minimize transportation time and costs.

15. On December 9, 2005, in response to the above referenced NOV's, DEQ received a request from the Honorable Rick Parker, Mayor, to enter into this Consent Order in order to bring the PWS into compliance with applicable requirements. While facilitating the Respondent's return to compliance, the DEQ will continue to provide technical assistance to the Respondent and its consulting engineer.

16. Failure of the Respondent to comply with the above referenced statute(s) and/ or rule(s) may result in harm to the health and well-being of the affected public. The United States Environmental Protection Agency ("EPA") sets drinking water standards and has determined that

THMs and HAAs are health concerns at certain high levels of exposure. THMs and HAAs are chemical compounds formed when chlorine, which is used to kill disease producing organisms, reacts with certain organic materials dissolved in water. These organic materials usually come from decaying vegetation such as leaves, pine needles, algae or other plants which may end up in the water source. Some animal studies have shown that high concentrations of THMs and HAAs may increase the risks of some cancers. The standards for these compounds are based on lifetime exposure of several decades. Drinking water, which meets the EPA standard, is associated with little to no risk and should be considered safe with respect to THMs and HAAs.

In addition, the EPA has determined that meeting the required TOC removal standard is necessary to protect public health. TOC has no direct health effects. However, TOC provides conditions for the formation of disinfection byproducts. These byproducts include THMs and HAAs, which if present in drinking water above the standard may lead to an increased risk of cancer.

The Respondent is required to regularly monitor the drinking water that it provides for specific contaminants such as TTHM and HAA5, as well as for compliance with different treatment technique requirements such as TOC. The Results of regular monitoring are an indicator of whether or not the Respondent's drinking water meets applicable health standards. Consequently, failure of the Respondent to comply with rule(s) stated above may result in harm to the health and well-being of the affected public.

17. The Parties agree that it is beneficial to resolve these matters promptly and by agreement.

18. The Parties waive the filing of a petition or other pleading, and the Respondent waives the right to a hearing.



## CONCLUSIONS OF LAW

19. The DEQ is the State regulatory agency with jurisdiction over public water supplies pursuant to 27A O.S. § 1-3-101(B). The Respondent is subject to the Water Quality provisions at 27A O.S. §§ 2-6-301 through 2-6-308, and the rules promulgated thereunder at OAC 252:631, "Public Water Supply Operation."

20. The facts as stated within the above "Statement of Facts" constitute violation(s) of the following public water supply rule(s), for which an Order may be entered:

- A) **Oklahoma Administrative Code ("OAC") 252:631-1-3 – Adoption of U.S. EPA regulations by reference.** The provisions in Parts 141 and 143 of Title 40 of the Code of Federal Regulations ("CFR") as published on July 1, 2002, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.
- B) **OAC 252:631-3-1(b) – Public water supply systems must comply with all applicable Primary Drinking Water Standards in 40 C.F.R. Part 141.**
- C) **40 C.F.R. Part 141.64(a) – The maximum contaminant level ("MCLs") for disinfection byproducts are as follows:**

<u>Disinfection Byproduct</u>	<u>MCL (mg/L)</u>
Total Trihalomethane ("TTHM")	0.080
Haloacetic Acids ("HAA5")	0.060

- D) **40 C.F.R. § 141.133(b)(1)(i) – For systems monitoring quarterly, compliance with MCLs in §141.64 must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by §141.132(b)(1).**
- E) **40 C.F.R. § 141.133(b)(1)(iv) - If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.**
- F) **40 C.F.R. § 141.133(b)(1)(iii) – If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL, and must notify the public pursuant to §141.132 or §141.202, whichever is effective for your system, in addition to reporting to the State pursuant to §141.134.**

- G) **40 C.F.R. § 141.133(a)(3)** – If, during the first year of monitoring under § 141.132, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.
- H) **40 C.F.R. § 141.133(b)(1)(ii)** - For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of § 141.132(b)(1) does not exceed the MCLs in § 141.64. If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.
- I) **40 C.F.R. § 141.130(b)(1)** Community Water Systems and Non-Transient Non-Community Water Systems. Unless otherwise noted, systems must comply with the requirements of this subpart as follows. Subpart H systems serving 10,000 or more persons must comply with this subpart beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this subpart beginning January 1, 2004.
- J) **40 C.F.R. § 141.135**  
(a)(1) Subpart H systems using conventional filtration treatment (as defined in §141.2) must operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in paragraph (b) of this section unless the system meets at least one of the alternative compliance criteria listed in paragraph (a)(2) or (a)(3) of this section.  
  
(b)(1) Systems must achieve the percent reduction of TOC specified in paragraph (b)(2) of this section between the source water and the combined filter effluent, unless the State approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (b)(3) of this section.  
  
(b)(2) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with §141.131(d).

Source-Water TOC, mg/L	Percent TOC Removal Required		
	Source Water Alkalinity, mg/L as CaCO <sub>3</sub>		
	0 - 60	> 60 - 120	> 120
> 2.0 - 4.0	35.0%	25.0%	15.0%
> 4.0 - 8.0	45.0%	35.0%	25.0%
> 8.0	50.0%	40.0%	30.0%

(c)(1) Subpart H systems other than those identified in paragraph (a)(2) or (a)(3) of this section must comply with requirements contained in paragraph (b)(2) or (b)(3) of this section. Systems must calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal to:  

$$(1 - (\text{treated water TOC}/\text{source water TOC})) \times 100.$$

(ii) Determine the required monthly TOC percent removal (from either the table in paragraph (b)(2) of this section or from paragraph (b)(3) of this section).

(iii) Divide the value in paragraph (c)(1)(i) of this section by the value in paragraph (c)(1)(ii) of this section.

(iv) Add together the results of paragraph (c)(1)(iii) of this section for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (c)(1)(iv) of this section is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

- K) **40 C.F.R. § 141.135(c)(2)** - Systems may use the provisions in paragraphs (c)(2)(i) through (v) of this section in lieu of the calculations in paragraph (c)(1)(i) through (v) of this section to determine compliance with TOC percent removal requirements.*(alternative criteria)*
- L) **OAC 252:631-3-1(c)** - Public water supply systems must comply with all applicable monitoring and analytical requirements in 40 CFR Part 141.
- M) **40 C.F.R. § 141.132(b)(1)(i)** - Monitoring Requirements for Disinfection byproducts. - Subpart H system serving at least 10,000 persons must monitor at least four water samples per quarter per treatment plant. Subpart H system serving from 500 to 9,999 persons must monitor at least one water sample per quarter per treatment plant. Subpart H system serving fewer than 500 persons must monitor at least one sample per year per treatment plant during month of warmest temperature. System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons must monitor at

least one water sample per quarter per treatment plant. System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons must monitor at least one water sample per year per treatment plant during month of warmest temperature.

- N) **40 C.F.R. § 141.133(a)(1)** - Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM or HAA5, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

21. The Parties may agree to this Consent Order pursuant to 75 O.S. § 309(E) and 27A O.S. § 2-3-506(B).

22. The Executive Director of DEQ may enforce this Consent Order pursuant to 27A O.S. §§ 2-6-308(A) and 2-3-202(A)(10).

### **ORDER**

Based upon the foregoing, the Parties agree, and it is ordered, as follows:

23. In order to address the TOC, HAA5, and/or TTHM violation(s) discussed above, the Respondent agrees to complete the following tasks by the dates specified (the tasks listed below are intended to correct the TOC, HAA5, and/or TTHM violation(s) listed in this Order and any future TOC, HAA5, and/or TTHM violation(s) that occur prior to the completion of the tasks set forth below):

<b>TASK</b>	<b>DATE</b>
A. The Respondent will provide quarterly public notice to the water system customers regarding applicable disinfection by-product violations.	Each Quarter Beginning April 1, 2006
B. The Respondent will submit to the DEQ, and implement, an approvable operational corrective action plan with a schedule designed to achieve compliance with the disinfection by-product requirements.	May 1, 2006

- C. If compliance with disinfection by-product requirements is not achieved by the date listed in this task, the Respondent will provide by this date an approvable engineering report addressing the correction of applicable disinfection by-product violations, including a schedule of dates if construction is required.

May 1, 2008

24. If the 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 as follows:

<b>TASK</b>	<b>PENALTY PER DAY</b>
A.	\$30.00
B.	\$60.00
C.	\$120.00

Notwithstanding the above, 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 with a maximum penalty of thirty thousand dollars (\$30,000.00).

25. The DEQ shall notify the Respondent, in writing, concerning any noncompliance with this Consent Order, which is discovered. The Respondent shall respond to the notification within fifteen (15) days of receipt. Based upon the response received, the DEQ may continue with enforcement of the stipulated penalties or may reduce or waive such stipulated penalties for good cause as allowed by law. Additionally, the Parties may agree to meet concerning the assessment of the stipulated penalties before the DEQ continues with enforcement. If the Respondent fails to respond to the notification, the DEQ may continue with the assessment of the stipulated penalties.

26. Any stipulated penalties for which Respondent shall become liable for under this Consent Order shall be paid by check made payable to the Oklahoma Department of Environmental Quality and noting this Case Number, and delivered to:

Accounts Receivable  
Financial and Human Resources Management  
Department of Environmental Quality  
P.O. Box 2036  
Oklahoma City, Oklahoma 73101-2036

27. In the event that the Respondent fails to pay the penalty set forth in this Consent Order, the DEQ may bring a separate action for collection of the penalty in district court or the administrative forum of the agency. An action for collection of the stipulated penalty will not waive Respondent's duty to complete the tasks required by this Consent Order.

28. The Respondent agrees to submit approvable plans for a supplemental environmental project ("sep") by May 1, 2006. The Respondent agrees to complete the sep by May 1, 2008.

29. The sep required in this Consent Order is in lieu of an administrative penalty allowed by Oklahoma Statutes for the violations cited in this Consent Order. Failure of the Respondent to comply with the sep requirements may result in the Respondent being required to pay an additional administrative penalty in the amount of one thousand dollars (\$1,000.00).

#### **STANDARD PROVISIONS**

30. 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.

31. The DEQ has received primacy from the United States Environmental Protection Agency, to implement and enforce the Federal Safe Drinking Water Act program. A portion of the implementation and enforcement program is to issue timely enforcement actions and impose appropriate penalties. The agreement of the parties for Respondent to complete the sep listed

above is designed to comply with the Safe Drinking Water Act penalty requirement for the specific violations listed in this Order. The Federal program calls for a significant increase in monetary penalties should this Consent Order be violated or future violations occur.

32. As used in this Consent Order, an “approvable” submission to the DEQ shall be considered a final submission. That is, all preliminary discussions between the DEQ and the 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, then the submission will be considered delinquent and the Respondent will be subject to the monetary penalties described in this Consent Order.

33. The Respondent agrees to take reasonable efforts to minimize any delays and will perform the requirements of this Consent Order within the approved schedule unless performance is prevented or delayed by events, which constitute a “Force Majeure.” “Force Majeure,” for purposes of this Consent Order, is defined as any event arising from causes beyond the reasonable control of the Respondent or their contractors, subcontractors or laboratories which delays or prevents the performance of any obligation under this Consent Order, such as, without limitation, acts of God; vandalism; fire; flood; labor disputes or strikes; weather conditions which would prevent or delay construction activities; civil disorder or unrest. “Force Majeure” events do not include increased costs of performance of the tasks agreed to by the Parties, changed economic circumstances, or specific acts or omissions by the Respondent’s engineers, contractors, subcontractors, laboratories, or agents. The Respondent must notify the DEQ in writing within fifteen (15) days after the Respondent knows or should have known of a “Force Majeure” event that will cause a delay or anticipated delay in achieving compliance with any requirement of the Consent Order.

34. This Consent Order may be amended by mutual consent of the Parties. Such amendments shall be in writing and shall have as their effective date, the date on which they are signed by the DEQ. Any amendment to this Consent Order may require the payment of a penalty by the Respondent to the DEQ.

35. Upon submission to DEQ, any final reports, plans, specifications, schedules, and attachments required and approved by the DEQ are incorporated into this Consent Order and constitute an enforceable portion of this Consent Order.

36. No informal advice, guidance, suggestions or comments by DEQ regarding reports, plans, specifications, schedules, and other writing submitted by the Respondent will be construed as relieving or modifying the Respondent of its obligation to obtain written approval by DEQ, if and when required by this Consent Order.

37. Failure of the Respondent to respond within a reasonable time to any errors, deficiencies or other regulatory requirements identified by DEQ, or to implement the plans according to the approved terms, shall constitute a violation of this Consent Order.

38. The provisions of this Consent Order shall apply to and are binding upon the Parties, and upon their duly elected officers, officials, directors and agents, in their official capacities. Additionally, this Consent Order shall be binding upon all successors and/or assignees of the Respondent.

39. The requirements of this Consent Order shall be deemed satisfied and this Consent Order terminated upon receipt by Respondent of written notice from DEQ that Respondent has demonstrated that all the terms of the approved tasks have been completed to the satisfaction of DEQ.



## **NOTICE**

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

**For the Department of Environmental Quality:**

Robert K. Mullins, P.E., District Engineer  
Water Quality Division  
P.O. Box 1677  
Oklahoma City, Oklahoma 73101-1677

**For the Respondent:**

The Honorable Rick Parker, Mayor  
Town of Barnsdall  
P.O. Box 879  
Barnsdall, Oklahoma 74002-0879

## **RETENTION OF JURISDICTION**

41. This Consent Order shall be enforceable as any other Order of the Executive Director of DEQ. The DEQ shall retain 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 adjudicating all matters of dispute among the Parties.

## **SEVERABILITY**

42. Nothing in this Consent Order shall be construed to relieve the Respondent of its obligation to comply with all applicable federal, state and/or local statutes or regulations. It is the intent of the Parties hereto that the provisions of this Consent Order shall be severable, and should any provisions be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

## VENUE

43. The venue of any action commencing in district court for the purposes of interpretation, implementation and enforcement of the terms and conditions of this Consent Order shall be in Oklahoma County, Oklahoma.

Agreed and effective as of the date of later signature below.

*City*  
FOR THE ~~TOWN~~ OF BARNSDALL

  
\_\_\_\_\_  
RICK PARKER  
Mayor

Date: 3-14-06

FOR THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
STEVEN A. THOMPSON  
Executive Director

Date: 3/20/06