

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Kensett  
P.O. Box 305  
Kensett, AR 72082

LIS No. 22-001  
Permit No. AR0022322  
AFIN 73-00049

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Kensett (Respondent) and the Division of Environmental Quality<sup>1</sup> (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a municipal wastewater treatment facility (“facility”) located off Highway 36 on NE 4th Street, Kensett, White County, Arkansas.
2. Respondent discharges treated wastewater to Black Creek, thence to the Little Red River, thence to the White River in Segment 4E of the White River Basin.

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<sup>1</sup> Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

5. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

6. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.

8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. DEQ issued NPDES Permit Number AR0022322 (“Permit”) to Respondent on October 31, 2010, with an effective date of December 1, 2010, and an expiration date of November 30, 2015. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on June 16, 2016, with an effective date of July 1, 2016, and an expiration date of June 30, 2021.

10. On December 7, 2020, DEQ received a Permit renewal application from Respondent, with additional information received on December 15, 2020. The Permit renewal application was deemed administratively complete on December 15, 2020, and pursuant to APC&EC Rule 6.201, Respondent's Permit is administratively continued until DEQ issues the renewal Permit.

11. On June 14, 2021, DEQ received notification from Respondent that a levee breach had occurred from a sludge-wasting pond that resulted in approximately 9.125 million gallons of sludge discharging into waters of the state. Respondent said the cause of the levee breach was nutria.

12. On June 15, 2021, DEQ conducted a reconnaissance inspection of the facility. The inspection revealed the following violations:

- a. A discharge from the flow equalization and sludge disposal pond was occurring from a breach in the levee system, and the activated sludge plant was actively discharging to the pond. This discharge from the pond into waters of the state is a violation of Ark. Code Ann. §§ 8-4-217(a)(1) and 8-4-217(B)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On June 16, 2021, Respondent's consulting engineer submitted a Corrective Action Plan (CAP) for the repair and rehab of the levee.

14. On June 17, 2021, DEQ notified Respondent of the inspection results.

15. On June 22, 2021, DEQ approved the CAP for the levee repair and rehab and requested additional information be submitted to DEQ by July 26, 2021.

16. On June 29, 2021, Respondent submitted photos to DEQ that show the repairs made to the levee breach thus far, along with further evidence of nutria burrowing.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of the Order, Respondent shall submit to DEQ a certification from a Professional Engineer (P.E.) licensed in the state of Arkansas that the repairs listed in the CAP submitted to DEQ on June 16, 2021, have been completed and that the levee is functioning according to the original design.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit a report to DEQ that states what corrective actions and preventative measures shall be taken to ensure the integrity of the levee system. The report shall include a schedule for monthly inspections and a timeline for the repair of any defects identified during the inspections.
3. Within one (1) year of the effective date of this Order, Respondent shall submit a report that includes a certification that all levee inspections have been completed for the past twelve (12) months, a list of any defects found during the inspections with a certification of corrective actions taken to correct those defects, and a certification that the issues with burrowing animals have been controlled. Photographic evidence of all defects found and the repairs of all defects shall be included.
4. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards levee integrity and controlling the burrowing animals.
5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Six Hundred Dollars (\$5600.00), of which Four Thousand Dollars (\$4000.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. If Respondent fully complies

with this Order, the suspended civil penalty of Four Thousand Dollars (\$4000.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Five Thousand Six Hundred Dollars (\$5600.00) shall be payable immediately to DEQ. Payment of the unsuspended civil penalty in the amount of One Thousand Six Hundred Dollars (\$1600.00) is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

6. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

7. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of

this Order, Respondent shall so notify DEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

8. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

10. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice

requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative, or in the event a petition to set aside this Order is granted by the Commission.

11. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

12. This Order has been reviewed and approved by the City Council of Respondent in a duly convened meeting with a quorum present. See copy of [meeting minutes or resolution] attached as Exhibit A.

13. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit A.

14. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS 3rd DAY OF January, 2021.

2022

*Julie Linck*  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Kensett

BY: *Allen Edge* *Julie Whitney*  
(Signature)

Allen Edge Julie Whitney  
(Typed or printed name)

TITLE: MAYOR RIT

DATE: 12-28-2021



RESOLUTION 2021-004

**A RESOLUTION PROVIDING FOR ALLOWING FOR THE CITY COUNCIL OF THE CITY OF KENSETT TO APPROVE THE CONSENT OF ADMINISTRATIVE ORDER (CAO). THIS RESOLUTION WILL ALSO GIVE AUTHORIZING TO THE MAYOR AND RECORDER-TREASURER TO SIGN THE CAO ON BEHALF OF THE CITY OF KENSETT.**

**WHEREAS** the City Council for the City of Kensett has reviewed the Consent Administration Order

**WHEREAS** the City Council for the City of Kensett has read the and discussed the "Finding of Facts" that enumerates the violations of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. 8-4-201 at a site located on Highway 36 in Kensett, Arkansas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KENSETT:**

Section 1. This Consent of Administrative Order (COA) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann 8-4-201, the Federal Water Pollution Control Act, 33 U.S.C. 1311, and rules issued thereunder by Arkansas Pollution Control and Ecology Commission.

Section 2. On June 14, 2021, DEQ received notification from Respondent that a levee breach had occurred and that the cause of the breach was nutria.

Section 3. On June 15, 2021, DEQ conducted a reconnaissance inspection of the facility. The inspection revealed that a discharge from the flow equalization and sludge disposal pond was occurring from a breach in the levee system, and the activated sludge plant was actively discharging to the pond. This discharge was in violation of Ark. Code Ann. 8-4-217.

Section 4. On June 16, 2021, Respondent's consulting engineer submitted a Corrective Action Plan (CAP) for repair and rehab of the levee.

Section 5. On June 17, 2021, DEQ notified Respondent of the inspection results.

Section 6. On June 22, 2021, DEQ approved the CAP for the levee repair and rehab and requested additional information be submitted to DEQ by July 26, 2021.

Section 7. On June 29, 2021, Respondent submitted photos to DEQ to show repairs that are being made thus far and to show evidence of the nutria burrowing.

Section 8. On or before the effective date of the CAO, Respondent shall submit to DEQ a certification from a Professional Engineer licensed in the state of Arkansas that the repairs listed in the CAP submitted on June 16, 2021 have been complete and that the levee is functioning according to the original design.

Section 9. Within thirty calendar days of the effective date of the CAO, Respondent shall submit a report to DEQ that states what corrective actions and preventative measures shall be taken.

Section 10. Within one year of the effective date of this Order, Respondent shall submit a report to DEQ that includes a certification that all levee inspections have been completed for the past twelve months, a list of any defects found during the inspections with a certification of corrective actions taken place to correct those defects and a certification that the issues with burrowing animals have been controlled. Photographic evidence of all defects found and the repairs of all defects shall be included.

Section 11. on or before the fifteenth day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress detailing the progress that has been made toward levee integrity and the controlling of burrowing animals. †

Section 12. Respondent agrees to pay a civil penalty of Five Thousand Six Hundred Dollars (\$5600.00) of which Four Thousand Dollars (\$4000.00) shall be conditionally suspended by DEQ based on Respondent's efforts to obtain compliance. If Respondent fully complies with this Order, the suspension of the Four Thousand Dollars (\$4000.00) shall be dismissed. If any terms are violated, the full balance of Five Thousand Six Hundred Dollars (\$560000)

Section 13. Failure to meet requirements or deadlines of this Order constitutes a violation. If a violation occurs, Respondent consents and agrees to pay on demand to DEQ the following penalties:

- a). First day through the Fourteenth day: \$100.00 dollars per day
- b). Fifteenth day through the thirtieth day: \$500.00 per day
- c). Each day after the thirtieth day: \$1000.00 per day

Section 14. DEQ may grant extension of any provision of this Order if respondent requests for an extension in writing and the delay has or will be caused by circumstances outside of the Respondent's control.


Section 15. All requirements by the Order and Agreements are subject to approval by DEQ.


Section 16. This Order is subject to public review in accordance to Ark. Code Ann. 8-4-103.

Section 17. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. This Order does not exonerate Respondent from any past, present, or future conduct not expressly addressed herein.

Section 18. This order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.

Section 19. City Council authorizes the Mayor and the Recorder-Treasurer to sign this Order of the Respondent.

  
Julie Whitney, Recorder-Treasurer

  
Allen Edge, Mayor

Date 12-28-2021