

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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

LIS No. 18- **083**
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 the regulations 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 Arkansas Department of Environmental Quality (ADEQ or “Department”), 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 wastewater treatment plant (“facility”) located 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.
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. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (“the 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ 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 regulation 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. ADEQ 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. ADEQ 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 March 20, 2017, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit and the Renewal Permit.

11. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit and the Renewal Permit from February 1, 2014 through January 31, 2017:

- a. Twenty-three (23) violations for Ammonia Nitrogen;
- b. Twenty-one (21) violations for Total Suspended Solids;
- c. Three (3) violations for Carbonaceous Biochemical Oxygen Demand; and
- d. Two (2) violations for pH.

12. Each of the forty-nine (49) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of forty-nine (49) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. As a result of the review, on March 21, 2017, the Department sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent limitations. The CAP was to have a milestone schedule and a final date of compliance and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

14. On April 12, 2017, Respondent submitted a CAP to the Department. The CAP had a final compliance date of November 1, 2017.

15. On April 17, 2017, the Department sent Respondent a letter approving the CAP submitted on April 12, 2017.

16. On July 2, 2018, the Department conducted a follow up review of the DMRs submitted by the facility.

17. The review revealed the following violations of the permitted effluent limitations detailed in Part I, Section A of the Permit from February 1, 2017 through May 31, 2018:

- a. Twenty (20) violations for Ammonia Nitrogen;
- b. Eighteen (18) violations for Total Suspended Solids;
- c. Five (5) violations for Carbonaceous Biochemical Oxygen Demand;
- d. Four (4) violation for Fecal Coliform; and
- e. One (1) violation for Dissolved Oxygen

18. Each of the forty-eight (48) effluent discharge limit violations listed in Paragraph 17 above constitutes a separate permit violation for a total of forty-eight (48) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) days of the effective date of this Order, Respondent shall submit to ADEQ, for review and approval, an updated CAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The updated CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than December 31, 2019, and the updated CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraphs 11 and 17 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2019 contained in this Order and the approved updated CAP. The milestone schedule and final compliance date of December 31, 2019 shall be fully enforceable as terms of this Order.

2. Respondent shall submit quarterly progress reports detailing the work completed, as outlined in the approved updated CAP, to achieve compliance with the effluent limits of the

Permit. The first progress report shall be due thirty (30) days from the effective date of this Order and shall be submitted quarterly thereafter until this Order is closed.

3. Within thirty (30) calendar days of the final date of compliance, Respondent shall submit a certification of compliance from a P.E licensed in the state of Arkansas stating that the corrective actions listed in the approved updated CAP have been completed and that Respondent is in compliance with the effluent limits of the Permit in effect on that date.

4. All submittals shall be sent to:

Arkansas Department of Environmental Quality
Office of Water Quality, Enforcement Division
5301 Northshore Drive
North Little Rock, AR 72118

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Two Hundred Dollars (\$4,200.00), or one-half of the full civil penalty of Two Thousand One Hundred Dollars (\$2,100.00) if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Even if the conditions for receiving a reduced penalty of Two Thousand One Hundred Dollars (\$2,100.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Four Thousand Two Hundred Dollars (\$4,200.00). Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality and mailed to the attention of:

ADEQ, 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, ADEQ 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 said Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to ADEQ 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 which may be available to ADEQ 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 ADEQ, 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. ADEQ 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 ADEQ 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 ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ 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 Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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 Regulation No. 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.

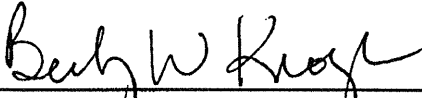
11. Nothing in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve 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 set forth in this Order. See Exhibit A.

SO ORDERED THIS 14 DAY OF September, 2018.



BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Kensett

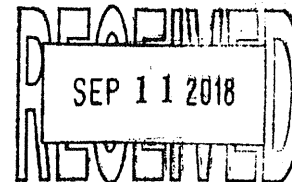
BY: Allen Edge Julie Meade
(Signature)

Allen Edge Julie Meade
(Typed or printed name)

TITLE: MAYOR / R/T

DATE: 9-4-2018

B0001455C



City of Kensett
Special Council Meeting
September 4, 2018

Those present: Allen Edge, Mayor, Julie Meade, R/T, Council Members Don Paul Williams, Ella Watson, Clarence Chatmon, And Don Fuller. Steve Brown, Water and Sewer Superintendent and Tara Thomas, reporter for The Daily Citizen.

Meeting called to order at 7:03pm.

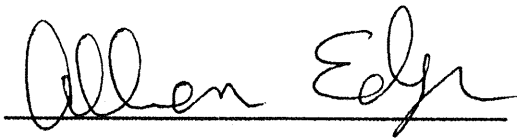
Discussion by Steve Brown, Water and Sewer Superintendent regarding the Corrective Action Plan for ADEQ. There was a CAP (corrective action plan) given which was followed but were still out of compliance which led to the CAO (corrective action order). There was a fine of \$4,200 but will cut in half to \$2,100 if paperwork is submitted on time. There were 49 violations and it was felt that \$2,100 was generous considering the amount of the fines. Everything is in place and working like it supposed to. It was recommended raising the Ph levels. Normally a bag of lime would be used with a few days in between that was not needed. The permit limits for Ph is 6.0 to 9.0. The Ph was running to around 7.5 to help with the ammonia and that it where most of the violations came into play. The cost of treatment is estimated to around \$35.00 per day with the cost of lime going up tremendously. Steve Brown expresses that everything has been done to operate the plant with engineers, operators, the ones that built the plant that have helped several times. Don Fuller questioned the water sources that are coming from West Point and Georgetown that could be causing problems. The chain of events such as the sludge build up aerators that were not right, has created the time-consuming task of getting to code. Don Fuller asked to see a sample of the water and asked that it be checked throughout the day. Tara Thomas asked Steve Brown what the fines consisted of. R/T read aloud the Corrective Action Order to answer the questions of Tara Thomas.

Motion made by Clarence Chatmon to sign and authorize the payment of fine to ADEQ. Second made by Ella Watson. Four for all approved, motion passed.

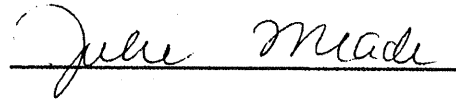
Millage rate was discussed for the Millage Ordinance that is due to the White County Clerk by September 14, 2018. The City of Kensett Millage combined is 2.0 which allows for the General at 1.6, Street .0, and Fire at .4. This is keeping in with the same on or around as other cities. Motion made by Don Fuller to accept the 2.0 Millage. Second made by Clarence Chatmon. Four for all approved, motion passed.

Motion made by Don Fuller to adjourn the meeting. Second made by Ella Watson. Four for all approved. Motion to adjourn the meeting passed.

Meeting adjourned at 7:45pm

A handwritten signature in cursive script that reads "Allen Edge". The signature is written over a horizontal line.

Mayor Allen Edge

A handwritten signature in cursive script that reads "Julie Meade". The signature is written over a horizontal line.

R/T