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## Wastewater Enforcement: Arkansas Department of Energy & Environment - Division of Environmental Quality and City of Kensett Enter into Consent Administrative Order

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The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) and City of Kensett, Arkansas, (“Kensett”) entered into a January 3rd Consent Administrative Order (“CAO”) addressing an alleged violation of the Arkansas Water and Air Pollution Control Act. See LIS No. 22-001.

The CAO provides that Kensett operates a municipal wastewater treatment facility (“Facility”) in White County, Arkansas.

The Facility is stated to discharge treated wastewater to Black Creek which eventually flows to the Arkansas River. Such discharge is regulated pursuant to a Clean Water Act NPDES permit.

DEQ is stated to have received a notification from Kensett on June 14, 2021, 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. The cause of the levee breach was stated to be nutria.

DEQ conducted a reconnaissance inspection of the Facility on June 15, 2021. The inspection allegedly indicated the following violation:

- 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)(I) and 8-4-217(B)(I)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

Kensett’s consulting engineer is stated to have submitted a Corrective Action Plan (“CAP”) for the repair and rehab of the levee on June 16, 2021. DEQ approved the CAP on June 22, 2021, for the levee repair and rehab. However, DEQ requested additional information be submitted by July 16, 2021.

In response, Kensett submitted photos to DEQ on June 29, 2021, showing the repairs made to the levee breach thus far, along with further evidence of nutria burrowing.

The CAO requires that Kensett submit to DEQ on or before the effective date of the document certification from an Arkansas Professional Engineer that the repairs listed in the CAP have been completed and that the levee is functioning according to the original design. Further, within 30 calendar days of the effective date of the CAO, Kensett is required to submit a report to DEQ stating what

corrective actions and preventive measures shall be taken to ensure the integrity of the levee system. The report is required to include a schedule for monthly inspections and a timeline for repair of any defects identified during the inspections.

Within one year of the effective date of the CAO, Respondent shall submit a report that includes a certification that all levee inspections have been completed for the past twelve months and include:

- A list of any defects found during the inspections
- Certification of corrective actions taken to correct the defects
- 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

Quarterly reports are required detailing progress made toward levee integrity and controlling the burrowing animals.

A civil penalty of \$5,600 is assessed of which \$4,000 is conditionally suspended if Kensett fully complies with the CAO.

A copy of the CAO can be downloaded [here](#).