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 earch 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.oo) 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 it's 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

Julie Whitney, Recorder-Treasurer

Allen Edge

Allen Edge, Mayor

Date 12-28-2021