

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 18-00585

LIS No. 16-041

THE FADEL CORPORATION  
d/b/a INGRAM SUPERSTOP  
906 INGRAM BOULEVARD  
WEST MEMPHIS, ARKANSAS 72301

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (hereinafter "CAO") is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (hereinafter "the Act"), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19.

The issues herein having been settled by agreement of The Fadel Corporation d/b/a Ingram Superstop (hereinafter "Respondent") and the Director of the Arkansas Department of Environmental Quality (hereinafter "ADEQ"), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and currently operates a gasoline service station known as the Ingram Superstop located at 906 Ingram Boulevard in West Memphis, Crittenden County, Arkansas. Respondent has three (3) registered underground gasoline storage tanks currently in use.

2. Pursuant to APC&EC Reg.19.1303(L), an “owner” is defined as “any person who has legal or equitable title to the gasoline storage tank at a facility.”

3. APC&EC Reg.19.1310 (C) provides:

...  
It shall be the responsibility of owners and operators of gasoline dispensing facilities and gasoline service stations to properly maintain, repair, replace, modify, and test the vapor recovery components of stationary tanks regulated herein.

4. 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 Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

5. Ark. Code Ann. § 8-4-103(c)(1) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 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.

6. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

7. APC&EC Reg.19.1312(A) provides that “The requirements of this rule shall be effective within nonattainment areas one (1) year after the designation by EPA of an area as a nonattainment area.”

8. Crittenden County was designated as a nonattainment area on July 20, 2012 by the United States Environmental Protection Agency (EPA). Therefore, Chapter 13 of APC&EC

Reg. 19 became effective within Crittenden County on July 20, 2013.

9. The requirements as described in APC&EC Reg.19.1305 apply to Respondent as the owner of the gasoline storage tanks at a facility.

10. APC&EC Reg.19.1305 provides:

No person may cause, allow or permit the transfer of gasoline from any delivery vessel into any stationary storage tank unless such transfer complies with the following requirements:

- (A) The stationary storage tank is equipped with a submerged fill pipe and the vapors displaced from the tank during filling are controlled by a vapor control system as described herein;
- (B) The vapor control system is in good working order and is connected and operating with a vapor tight connection;
- (C) The vapor control system is properly maintained and any damaged or malfunctioning components or elements of design have been repaired, replaced or modified;
- (D) Gauges, meters, or other specified testing devices are maintained in proper working order;
- (E) All loading lines and vapor lines of delivery vessels and vapor collection systems are equipped with fittings which are leak tight and vapor tight;
- (F) All hatches on the delivery vessel are kept closed and securely fastened; and
- (G) The stationary storage tank has been tested, no less than annually, on a schedule acceptable to the Director according to the test methods required herein.

11. APC&EC Reg. 19.1306 provides:

The following records shall be maintained for not less than two (2) years and the same shall be made available for inspection by the Department:

- (A) The scheduled date for maintenance and testing, and the date that a malfunction was detected;
- (B) The date the maintenance and testing was performed or the malfunction corrected; and
- (C) The date the component or element of design of the control system was repaired, replaced, or modified.

12. APC&EC Reg. 19.1308 provides:

- (A) The vapor control system required by Reg. 19.1305 of this rule shall

include one or more of the following:

- (1) A vapor-tight line from the stationary storage tank to the delivery vessel and:
    - (a) For a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor;
    - (b) For a dual point vapor recovery system, a poppeted vapor recovery adaptor;
  - (2) A refrigeration-condensation system or equivalent designed to recover or destroy at least 90 percent by weight of the organic compounds in the displaced vapor.
- (B) If an unpoppeted vapor recovery adaptor is used, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line except when the vapor return line is being connected or disconnected.
- (C) If an unpoppeted vapor recovery adaptor is used, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or upgraded.
- (D) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters shall be used. No more than one tank is to be loaded at a time if the manifold vapor lines have a nominal pipe size of less than 3 inches. If the manifold vapor lines have a nominal pipe size of 3 inches or larger, then two tanks at a time may be loaded.
- (E) Vent lines on stationary storage tanks shall have pressure release valves or restrictors.

13. During the inspection, Respondent failed to have pressure release valves installed on the vent lines for the three (3) stationary storage tanks. Such failures violate APC&EC Reg.19.1305(A), Regulation 19.1308(E) and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

14. During the inspection conducted August 20, 2015, records reviewed by an ADEQ inspector revealed Respondent failed to perform annual testing for three (3) stationary storage tanks. Such failures violate APC&EC Reg.19.1305(G) and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

12. ADEQ informed Respondent of the areas of concern identified in the August 20, 2015, inspection in a letter dated September 22, 2015. This letter was intended to provide

Respondent with an opportunity to review violations and submit information Respondent deems appropriate regarding the compliance issues.

15. In an email dated November 13, 2015, the ADEQ Inspector confirmed that Respondent installed the pressure release valves on the vent lines for the three (3) stationary storage tanks and performed annual testing for the three (3) stationary storage tanks.

16. In an email dated December 3, 2015, the ADEQ Inspector stated that Respondent submitted and successfully passed the annual testing for the three (3) stationary storage tanks. In addition to submitting testing results, Respondent submitted the November 2015 monthly report stating the pressure valve release valves were installed on the vent lines of the three (3) stationary storage tanks.

#### **ORDER AND AGREEMENT**

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and ADEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations addressed in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00)**, or one-half of the penalty, **ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600.00)** if this CAO is signed and returned to Air Enforcement Section, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **May 11, 2016**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

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

3. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of ADEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall 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 have passed. 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.

6. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify ADEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

8. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this CAO be deemed in any way to relieve Respondent of responsibilities contained in the permit.

10. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 13 DAY OF MAY, 2016.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

THE FADEL CORPORATION  
d/b/a INGRAM SUPERSTOP

BY: Fadel Almoraisi (Signature)

FADEL ALMORAISI (Typed or printed name)

TITLE: owner

DATE: 5-9-16