

CH# 4042 2015

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

**Steephan Joseph, Individually
and
J-Square, Inc.
580 Industrial Blvd.
Conway, AR 72032**

**LIS No. 24-07a
Facility ID No. 23001643
AFIN 23-00808**

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of Ark. Code Ann. § 8-7-801 *et seq.*, and the rules promulgated thereunder, in particular, Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 12 (Storage Tanks). All Code of Federal Regulations references contained herein are incorporated by reference in APC&EC Rule No. 12.104.

The issues herein having been settled by the agreement of Steephan Joseph, Individually and J-Square, Inc. (Respondents) and the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. DEQ regulates underground storage tanks pursuant to Ark. Code Ann. § 8-7-801, *et seq.* and APC&EC Rule No. 12.
2. DEQ, as administered by its Chief Administrator, is the state agency charged with ensuring compliance with Ark. Code Ann. § 8-7-801 *et seq.* and APC&EC Rule No. 12.
3. Ark. Code Ann. § 8-7-801(4) defines "Operator" as "any person in control of or having responsibility for the daily operation of an underground storage tank."

4. Ark. Code Ann. § 8-7-801(5)(A)(i) defines “Owner” as, “in the case of an underground storage tank in use on November 8, 1984, or brought into use after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.”

5. Ark. Code Ann. § 8-7-801(8) defines “Regulated Substance” as “any substance defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 *et. seq.*; and petroleum.”

6. Ark. Code Ann. § 8-7-801(12) defines “Storage tank” as “an aboveground storage tank or underground storage tank as defined in this subchapter.”

7. Pursuant to 40 CFR § 280.244, Class A and B operators of underground storage tank systems determined by the implementing agency to be out of compliance must complete a training program or comparable examination in accordance with the requirements in 40 CFR § 280.242.

8. Respondent (Facility) own a retail fuel facility located at 580 Industrial Blvd. in Conway, Faulkner County, Arkansas. The Facility consists of three (3) underground storage tanks: Tank Nos. 1 and 2 were installed on June 20, 1995, and contain gasoline. Tank No. 3 was installed on June 4, 2014, and contains diesel.

9. On January 18, 2022, DEQ conducted an inspection of the Facility’s underground storage tanks. As a result of the inspection, Respondent was determined to be out of compliance due to the following violations identified during the inspection:

a. Respondents failed to monitor Tank No. 3 for releases every thirty (30) days.

Failure to conduct such monitoring violates 40 CFR § 280.41(a)(1).

- b. Respondents failed to conduct monthly monitoring for Tank No. 3 piping. Failure to conduct such monitoring violates 40 CFR § 280.41(b)(1)(i)(B).
- c. Respondents failed to perform a complete test of proper operation by failing to conduct annual testing of the auto leak detectors for Tanks Nos. 1, 2, and 3. Failure to complete a test of proper operation violates 40 CFR § 280.40(a)(3).
- d. Respondents failed to conduct 3-year spill bucket testing for Tank Nos 1, 2, and 3. Failure to conduct such testing violates 40 CFR § 280.35(a)(1)(ii).
- e. Respondents failed to conduct 3-year overfill device testing for Tank Nos. 1, 2, and 3. Failure to conduct such testing violates 40 CFR § 280.35(a)(2).
- f. Respondents failed to provide records of Class C operator training. Failure to provide such records violates 40 CFR § 280.245.
- g. Respondents failed to conduct monthly walkthrough inspections during ten (10) of the previous twelve (12) months. Failure to conduct monthly walkthrough inspections violates 40 CFR § 280.36(a).

10. During the January 18, 2022, inspection, DEQ provided Respondents with a report documenting the violations. The report requested Respondents provide DEQ with evidence of compliance no later than February 18, 2022.

11. On February 3, 2022, DEQ sent an email to Respondents reminding Respondents of the February 18, 2022, compliance deadline.

12. On February 18, 2022, DEQ sent an additional email to Respondents reminding Respondents of the February 18, 2022, compliance deadline.

13. On February 18, 2022, DEQ received an email from Arkansas Petroleum Solutions, LLC. The email included 3-year spill bucket and containment sump testing results and annual line tightness and line leak detector testing results.

14. On February 22, 2022, DEQ sent an email informing Respondents that the test results provided by Arkansas Petroleum Solutions, LLC for spill buckets, line leak, and line tightness were determined to be invalid for the following reasons:

- a. The spill bucket testing on January 17, 2022, was conducted by a contractor whose license had expired;
- b. The line leak detector test was not dated; and
- c. The line tightness testing on May 25, 2021, was conducted by a contractor whose license had expired.

15. On March 1, 2022, DEQ conducted a follow up inspection of the Facility. DEQ determined that Respondents failed to correct the violations cited during the January 18, 2022, inspection. DEQ also determined that Respondents failed to conduct 3-year overfill device testing, which also violates 40 CFR § 280.35(a)(2).

16. On March 1, 2022, DEQ attached red tags to the fill caps of the Facility's three (3) tanks in accordance with APC&EC Rule 12.110(F)(1)(b), which prohibits fuel delivery.

17. On March 3, 2022, Respondents's testing contractor submitted line tightness test results for Tank No. 3 and for the Facility's auto leak detectors, spill buckets, containment sumps, overfill devices, and 3-Year Cathodic Survey.

18. On March 3, 2022, the red tags were removed from the Facility's tanks.

19. On August 9, 2022, DEQ sent a letter to Respondents acknowledging that the violations cited in the January 18, 2022, inspection report were corrected and no further action was necessary.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. In compromise and full settlement for instances of noncompliance specified in the Findings of Fact, Respondents agree to pay the sum of One Thousand Seven Hundred and Fifty Dollars (\$1,750.00), or one-half of the full civil penalty of Eight Hundred Seventy Five Dollars (\$875.00) if this CAO is signed and returned to the Office of Land Resources, Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this CAO. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment of the penalty shall be made payable to DEQ and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondents fail to pay the civil penalties within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection as well as all other lawful fees and penalties.

2. All requirements of this CAO are subject to approval by DEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to respond adequately in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO.

3. If Respondents fail to meet any requirement of this CAO within the deadline established by the CAO, DEQ may assess stipulated penalties for the delay in the following amounts:

a. First day through the fourteenth day: \$100.00 per day

- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1,000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to DEQ by reason of Respondents's failure to comply with this CAO.

4. Respondent shall notify DEQ in writing within five (5) calendar days of knowledge of any delay or potential delay in complying with any provision of this CAO, specifying in detail the anticipated length of delay, the precise cause of delay, and the measures being taken to correct and minimize the delay.

5. DEQ may grant an extension of any provision of this CAO, provided that Respondents request 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 Respondents. 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 Respondents and the length of the delay attributable to such circumstances shall rest with Respondents. Failure to notify the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

6. Nothing contained in this CAO shall be construed as a waiver by DEQ of its authority over alleged violations not specifically addressed herein. This CAO does not purport in any way to relieve Respondents of their responsibilities for obtaining any necessary permits or licenses, nor does it relieve Respondents of any other obligations imposed by any local, state, or federal laws. This CAO does not exonerate any past, present, or future conduct not expressly addressed herein.

7. This CAO is subject to public review and comment in accordance with APC&EC Rule No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this CAO based upon the comments received within the thirty-day public comment period.

8. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this CAO shall occur on or about the 10th or 25th day of the month following the date this CAO is executed. As provided by APC&EC Rule No. 8, this matter is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the APC&EC.

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

10. By virtue of the signature appearing below, Respondent Steephan Joseph certifies that he is authorized to execute this CAO and to be legally bound by the terms and conditions of this CAO.

SO ORDERED THIS 18th DAY OF April, 2024.



CALEB OSBORNE
CHIEF ADMINISTRATOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

STEEPHAN JOSEPH

BY:

Signature Stephan Joseph

Print Name STEEPHAN JOSEPH

Title OWNER

Date 4-2-24

APPROVED AS TO FORM AND CONTENT:

J-SQUARE, INC.

BY:

Signature _____

Print Name _____

Title _____

Date _____