

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

IN THE MATTER OF:

AFIN: 60-04946

LIS No. 20-183

U.S. PIZZA CO., INC.
2710 KAVANOUGH BLVD.
LITTLE ROCK, ARKANSAS 72205

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (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 (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, the Removal of Asbestos Material Act, Ark. Code Ann. § 20-27-1001 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, and APC&EC Regulation 21.

The issues herein having been settled by agreement of U.S. Pizza Co., Inc. (Respondent) and the Director of the Division of Environmental Quality¹ (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. On or before May 22, 2019, Respondent demolished or caused to be demolished four (4) individual structures formerly located at 8403 AR-107, Sherwood, Pulaski County, Arkansas 72120 (the Site).

¹Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Arkansas Department of Energy and Environment.

2. Ark. Code Ann. § 20-27-1007(2) and (4) provides:

It shall be unlawful for any person:

...

(2) To participate in any response action, demolition, or renovation contrary to the regulations or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act § 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act § 8-6-201 *et seq.*, and the regulations promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

...

(4) To violate any provision of this subchapter or any regulation or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1)(A) as referenced by Ark. Code Ann. §20-27-1002(a) authorizes DEQ 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.

4. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 20-27-1002(a), "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

5. The structure(s) in question constitutes a "facility" as defined in APC&EC Regulation 21, Chapter 4.

6. Respondent meets the definition of an "owner or operator of a demolition or renovation activity" as defined in APC&EC Regulation 21, Chapter 4.

7. On May 22, 2019, DEQ received a complaint regarding the demolition of four (4) individual structures located at the Site which Respondent identified as Suites A, B, C, and D, all using the same corresponding address of 8403 AR-107, Sherwood, Arkansas.

8. On May 22, 2019, DEQ personnel conducted an investigation into the complaint. Upon arrival at the Site, DEQ personnel observed that the four (4) structures were completely

demolished. A worker on site stated that they had been working at the Site since the summer of 2018.

9. The investigation revealed that Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected facilities prior to demolition. Such failure violates APC&EC Reg.21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

10. The investigation also revealed that Respondent failed to submit a written NOI and appropriate NOI fee to DEQ at least ten (10) working days prior to commencing the demolition activity. As noted in paragraph 9 of the Findings of Fact, no asbestos inspection was conducted prior to the demolition activity; therefore, the appropriate fee amount could not be determined at this time. Such failure violates APC&EC Reg.21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

11. On May 28, 2019, Respondent submitted a NOI for the four (4) demolished structures at the Site that included a schematic identifying the structures as U.S. Pizza Co., Repair Shop, Hair Shop, and Vacant. The NOI was assigned NOI# 12875.

12. In a letter dated June 19, 2019, DEQ informed Respondent of the compliance issues identified during the May 22, 2019 investigation conducted at the Site. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

13. On July 2, 2019, DEQ received a response to the June 19, 2019 letter from Respondent's attorney. The response letter stated that Respondent had received a demolition permit from the City of Sherwood prior to any demolition taking place. Respondent believed that the demolition was in compliance with all rules and regulations. Respondent was unaware of any rules or regulations regarding asbestos inspection or notice to DEQ prior to receiving the June

19, 2019 letter.

14. On July 18, 2019, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the May 22, 2019 investigation.

15. In correspondence dated June 9, 2020, Respondent requested DEQ consider a Supplemental Environmental Project (SEP) proposal in lieu of civil penalties arising from the instances of noncompliance listed in the above paragraphs of the FINDING OF FACTS.

ORDER AND AGREEMENT

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

1. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty in the sum of **TEN THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$10,840.00)**. Should Respondent elect to perform a SEP approved by DEQ, **SEVEN THOUSAND FIVE HUNDRED EIGHTY-EIGHT DOLLARS (\$7,588.00)** of this amount shall be made payable to the Division of Environmental Quality and mailed to:

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

Unless otherwise notified in writing by DEQ, Respondent shall pay the reduced settlement amount within thirty (30) days after the effective date of this CAO. **THREE THOUSAND TWO HUNDRED FIFTY-TWO DOLLARS (\$3,252.00)** of the total civil penalty shall be used to fund a SEP to be approved by the DEQ Director. Respondent shall submit for approval a SEP

within thirty (30) days after the effective date of this CAO. Respondent shall provide documentation of completion of the SEP within six (6) months of the effective date of the CAO. Respondent shall be obliged to pay the difference to DEQ as a civil penalty with a repayment rate for \$1 for each \$1 SEP, up to the maximum original SEP commitment of **THREE THOUSAND TWO HUNDRED FIFTY-TWO DOLLARS (\$3,252.00)** if:

- a. Respondent fails to complete the SEP within the completed time frames;
- b. It is discovered or determined that Respondent was required by a federal, state, or local obligation, rule, law, regulation, or statute to perform the SEP; or
- c. Expenditure by the Respondent in completing the SEP is less than the amount required by the SEP.

3. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately 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 this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ 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 DEQ'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 that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ 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 DEQ 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. DEQ 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 DEQ 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. DEQ retains the right and discretion to rescind this CAO based on

comments received within the thirty (30) 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.

10. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that 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/she is an Officer of Respondent being duly authorized to execute and bind Respondent to the terms contained herein.

SO ORDERED THIS 29 DAY OF October, 2020.


BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

U.S. PIZZA CO., INC.

BY: Judy W. Breece (Signature)

Judy W. Breece (Typed or printed name)

TITLE: Owner

DATE: 10/7/2020