Transfer of Arkansas Petroleum Storage Tank Trust Fund Eligibility/West Memphis Facility: Arkansas Department of Energy and Environment - Division of Environmental Quality and Capital Fuels Arkansas, LLC Enter into Consent Administrative Order

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The Arkansas Department of Energy and Environment – Division of Environmental Quality ("DEQ") and Capital Fuels, Arkansas, LLC ("Capital Fuels") entered into a November 17th Consent Administrative Order ("CAO") authorizing the transfer of Arkansas Petroleum Storage Tank Trust Fund ("Trust Fund") eligibility for a facility located in West Memphis, Arkansas. See LIS No. 21-117.

The facility has been known as the J-Mart #3.

The Arkansas Trust Fund provides reimbursement to eligible tank owners and operators to cover the costs of corrective action (up to $1.5 million with a $7,500 deductible) and for certain third-party damages (up to $1 million with a $7,500 deductible) if there is a petroleum release.

Corrective action is defined as those actions which may be necessary to protect human health and the environment as the result of an accidental release, sudden or non-sudden.

Trust fund eligibility for corrective action reimbursement is dependent upon the owner or operator having:

- Registered the tanks and paid the applicable fees
- Provided 24-hour notice of the lease as required by federal regulations
- Cooperated fully with DEQ to correct the release
- Spent at least $7,500 in reasonable, allowable, and necessary corrective action costs

The trust fund has arguably played a beneficial role over the years in maintaining the marketability of properties with tanks. A potential buyer of such properties may view prior tank releases as a less significant issue if trust fund coverage is available. For example, a potential sale may involve a Facility with known releases or ongoing investigation/corrective action.

The buyer's interest in proceding may be dependent upon the availability of trust fund coverage and DEQ's willingness to transfer it to the purchaser. Such a procedure is available to accomplish such a transfer. However, certain requirements must be met in order for DEQ to approve such transfer.

The Arkansas trust fund statute provides that an owner or operator of a petroleum storage tank ("Tank") determined to be eligible for payment for corrective action for a release from a qualified storage tank may transfer such eligibility to a subsequent owner or operator if certain requirements are met. DEQ must determine that the owner or operator has the financial and legal capacity to complete the corrective action. Further, the subsequent owner or operator must agree in writing to assume responsibility for the corrective action of the petroleum release.

The CAO provides that Transfuels, LLC is entitled for trust fund reimbursement for the tank release occurrence at the Facility. The transfer is predicated on Capital Fuels agreeing and warranting to DEQ that it will assume all liability for remediating the tank release at the Facility. Such agreement includes assumption of all third-party liability for the tank release.

The petroleum release referenced in the CAO is stated to have been reported on August 6, 2013, and denominated #18-0123 in the DEQ database.

The CAO provides in part:

- Only the Facility and the occurrence referenced are addressed
- Capital Fuels is not relieved of any requirement dictated by law
- The trust fund eligibility of future releases is not addressed
- The powers of DEQ to pursue enforcement actions regarding past, present or future violations of applicable law are not restricted

A copy of the CAO can be downloaded here.