Petroleum Aboveground Storage Tanks/Responsibility for Regulatory Compliance: Administrative Challenge Filed to Pennsylvania Department of Environmental Protection Administrative Order



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A question that occasionally arises with petroleum underground storage tanks ("USTs") and aboveground storage tanks ("ASTs") is the various parties that may be responsible for complying with the relevant federal and state regulatory requirements.

In the case of USTs the relevant terms "owner" and "operator" are found in the federal UST regulations and delegated state programs. See 40 C.F.R. 280 et. seq. and, in the case of Arkansas, Arkansas Pollution Control and Ecology Commission Rule No. 12.

Questions can arise as to whether a lessor, lessee, petroleum supplier, or other entity have a sufficient ownership interest and/or control to fit within the scope of the terms "owner" and "operator," respectively.

In the case of ASTs the few states that specifically regulate this equipment may utilize different terminology in describing the parties that are responsible for compliance.

In the case of either USTs or ASTs it is obviously critical to determine and/or understand whether a particular interest in or activity associated with them falls within the scope of the relevant federal or state regulatory programs.

A recent example is found in the September 27th Notice of Appeal ("NOA") filed by Trevose Petroleum, LLC, ("TP") before the Commonwealth of Pennsylvania Environmental Hearing Board. The Trevose NOA challenges an Administrative Order ("AO") issued by the Pennsylvania Department of Environmental Protection ("DEP") in regard to certain ASTs. See Exhibit A of the NOA.

DEP in the AO states that: § 6021.103

. . . Trevose currently owns the real property on which the Facility is located and owns or has an ownership interest in the storage tank systems, as that term is defined in 35 P.S. § 6021.103 at the Facility. Trevose is an owner as that term is defined in 35 P.S. 6021.103, and a landowner, as that term is used in 35 P.S. §§ 6021.1302 and 6021.1310.

TP argues in its NOA that the ASTs are located on adjacent property owned by SMWM Inc. The company further states that it does not have possession or control over the subject property. It states that the owner of the property failed to deliver it.

As to its relationship with the property, TP states that it acquired title from another entity which had taken it by deed in lieu of foreclosure when the customer failed to pay for gasoline.

TP further argues that:

- It was not the owner of the property during the inspections listed in certain paragraphs of the AO.
- It has sought to compel the owner of the ASTs during the alleged violations to comply.
- It has not arranged for any product to be delivered or pumped from the station at the property since before the AO was issued.

The previously cited Pennsylvania statute is described in the DEP AO as including a landowner. As a result, DEP is presumably arguing that TP's simple holding of title to the property is enough to impose liability. Whether TP actually has title to the property will therefore presumably be a key issue.

Note that the federal and state UST regulatory programs clearly provide that simply being a landowner is not enough to constitute an owner. Instead, the question is does the entity own the actual UST (or "operate" it). Clearly, it is important, whether dealing with ASTs or USTs to understand these issues in advance.

A copy of the NOA and attached AO can be downloaded here.