Underground Storage Tank/Pennsylvania Department of Environmental Protection: Convenience Store Chain Files Environmental Hearing Board Appeal Challenging Rejection of Closure Plan



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7-Eleven, Inc. on behalf of its wholly owned subsidiary, Speedway, LLC ("7-Eleven") filed a May 22 Notice of Appeal ("Appeal") before the Pennsylvania Environmental Hearing Board challenging the Pennsylvania Department of Environmental Protection ("DEP") rejection of a sampling plan for a proposed closure in place of a petroleum underground storage tank ("UST").

The 7-Eleven facility is described as a retail fuel service station and convenience store located in Allentown, Pennsylvania.

The Appeal states that 7-Elevan's environmental consultants submitted to DEP a proposed sampling plan for the closure in place of a 15,000-gallon UST that previously contained petroleum products. The UST was to be closed in place located within the same tank vault as active tanks containing petroleum products. The closure in place was being pursued for such UST due to its proximity to the active tank field and active component.

The federal and states' UST regulations mandate requirements for the temporary and permanent closure of USTs. In the case of permanent closure, the UST owner or operator must perform a site assessment to test for the presence of releases from the UST system before completing a change in service or permanent closure. The sampling is to be performed where a contamination is most likely to be present, taking into consideration the closure method, nature of the storage substance, backfill type, and depth of ground water. The closure can either involve the removal of the tank or closure in place.

7-Eleven's appeal states that its submitted sample plan was prepared in accordance with the relevant regulations along with its consultants and the company itself' s internal health and safety protocols and industry standards and DEP approval was requested for the following:

- Soil samples to be advanced through the perimeter of the UST rather than sampling beneath the tank, which is not feasible;
- To the north of the UST, adjacent to an active 12,000-gallon UST an additional perimeter boring was proposed on that side;

- Due to the proximity of active UST systems and components, borings to collect samples would be advanced within 7 feet of the UST rather than the 5 feet typically recommended by a DEP technical document.

Language is cited from Pennsylvania UST regulations which states that the sampling may be accomplished in accordance with the DEP technical document or:

> …in a manner at least is protective of public health and safety in the environment which meets all statutory and regulatory requirements.

DEP rejected the post sampling plan referring to its guidance for the sampling protocol for closure in place and requiring sampling locations to be no more than 5 feet from the tank/piping systems.

7-Eleven's appeal argues in part:

- DEP guidance is not dispositive (referencing language indicating it is not intended to address every closure situation);
- The sampling plan factors in site-specific conditions and presented an alternative approach that would protect the environment and human health, as well as result in compliance with applicable laws and regulations;
- While DEP guidance requires soil samples to be collected within 5 feet of the tank or piping being banded in place, it also indicates that the soil surrounding the tanker piping should not be pea gravel (within the same tank field, taking samples within 5 feet of the tank can be closed in place would mean the soil would likely be pea gravel, in conflict with the DEP guidance);
- DEP guidance also indicates that the soils into the UST are restricted, boring should be advanced as close to the tank as possible, preferably within the native soil or within backfill if the backfill consists of soil or soil-like material with distances not greater than 5 feet from the perimeter of the tank. (noting that many times the "ends" and perceived UST extents and the subsurface are not fully defined by the tank pad and application of a 7-foot set back distance would cover the scenario as a safety measure);
- For the UST in question, it is not advised that a soil built boring should be drilled through the tank to be abandoned, after being cleaned and vapor removed in order to collect a sample directly below the tank because the weight of the drill rig over an empty UST would likely be too unstable to safely obtain these samples;
- Industry standards and best practices support the 7-foot setback distance (referencing American Petroleum Institute Recommended Practice 1646);
- 7-Elevan's consultants' internal health and safety protocol provides for the maintenance of 7-foot setback distance for completion of perimeter soil built boring;
- Proposed sampling plan is actually more protective of the environment and human health than the sampling DEP is requiring.

A copy of the Appeal is attached.