

Legislation Text

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Receive report from EAA staff on the Recognized Capacity Program for Underground Storage Tanks as outlined in Section 713.612 of the Edwards Aquifer Authority Rules and consider EAA staff recommendation related to the reservation of recognized capacity associated with the Stripes #1515 facility owned by Stripes LLC.

STAFF RECOMMENDED MOTION:

Move the board direct the General Manager to not reserve and to reduce to zero (or issue a reservation of) the recognized capacity associated with the USTs registered to the Stripes #1515 facility owned by Stripes LLC.

SUMMARY

The purpose of this agenda item is for the board to receive a report from EAA staff regarding EAA rules regulating underground storage tanks (USTs) located on the Edwards Aquifer Recharge Zone (EARZ) and the effects of these rules on the installation and removal of USTs subject to these regulations. A key component of managing USTs on the EARZ is the Recognized Capacity Program for Underground Storage Tanks as outlined in Section 713.612 of the EAA rules.

The board will also consider an EAA staff recommendation to not reserve and to reduce to zero, the recognized capacity issued to the Stripes #1515 facility owned by Stripes LLC, based on the specific provisions in EAA rules administering recognized capacity.

Background

The EAA began regulating USTs when revised rules went into effect on October 18, 2002. These rules prohibited the installation of new aboveground storage tanks (ASTs) and USTs on the EARZ within the EAA's jurisdiction. These rules also required the owners or operators of existing USTs to ultimately achieve tertiary containment of the underground systems and outlined a major modification process to facilitate the upgrades. The UST rules were amended on July 18, 2008, to require the owner/operator of UST systems to register their tanks with the EAA.

On November 23, 2012, the rules regarding USTs were modified again to lift the general prohibition against the installation of new AST and UST systems, and to establish a "recognized capacity program" that would allow the installation of a new UST on the EARZ through a transfer of recognized capacity (RC). The intent of RC is to "cap" the total cumulative storage in underground tanks within the EAA jurisdiction to the level that existed, based on registrations filed with the EAA, when initial rules were promulgated in 2002. Under this program, a new UST could be installed only after an existing UST was removed and its RC was reserved. It was also the intent of the program to make a reservation of RC fully transferrable between owners/operators (hereafter referred to as

“entities”).

Recognized Capacity Program for Underground Storage Tanks

Section 713.612 of the EAA rules document the Recognized Capacity Program for USTs. The program requires EAA staff to assign RC for underground storage to each registered facility based on the combined volume of all regulated USTs at a facility that legally existed on October 18, 2002. During this process, EAA staff identified a total of 1,037,030 gallons of cumulative RC.

Also, according to Section 713.612, RC associated with a UST may be reserved *for no more than ten years* if the UST is permanently removed from service, or a major modification results in a net loss in capacity (e.g., an existing tank is replaced with a smaller tank in which the capacity lost may be reserved). Under this process, when an existing UST is to be replaced or downsized and is removed (creating a reservation of RC), a new UST may be installed utilizing the capacity reserved.

Section 713.612(f) states that, *“Unless good cause is shown, recognized capacity associated with a UST may not be reserved and will be reduced if timely notification in accordance with §713.611(d) is not provided prior to the UST being permanently removed from service.”* Section 713.611(d) requires that, *“An Owner or Operator shall provide written notice to the Authority in accordance with §713.610 for any removal from service or permanent abandonment in place.”* And Section 713.610 states that, *“An Owner or Operator shall provide written notice to the Authority at least thirty days prior to any intended commencement of construction associated with an AST or UST; and at least two business days prior to the actual commencement of construction associated with an AST or UST.”* These rules indicate that if a UST was permanently removed from service without properly notifying the EAA, and the EAA determines that notification was not made, EAA staff would require ‘good cause’ to be shown in order to allow reservation of RC and not nullify the RC associated with the improperly removed UST.

In summary, the Recognized Capacity Program for Underground Storage Tanks outlines the processes EAA staff follows to manage USTs and to authorize the installation of a new UST on the EARZ. The program has “capped” the total amount of cumulative storage allowed in underground tanks, and created a process to reserve and transfer RC. The program does not allow the creation of new RC (the total is “capped”), but does recognize several ways the RC can be reduced (as described above) by allowing a reservation of capacity to expire after 10 years of reservation (non-use), or by permanently removing a UST from the EARZ without providing proper notifications.

Strips LLC (Stripes #1515, 9315 Ranch Road 12, Hays County, Texas)

EAA staff recently observed a compliance violation at a UST facility at a former convenience store located in Hays County, Texas, within the EAA's regulatory jurisdiction. The facility filed a Tank Registration form and registered two USTs on July 17, 2015; a 15,000-gallon (unleaded fuel), and a 15,000-gallon (dual compartment 8,000-gallon diesel and 7,000-gallon super unleaded fuel). On July 24, 2015, the facility was issued 30,000 gallons of underground storage as recognized capacity.

EAA records show that on March 1, 2019, the Facility filed an amended Tank Registration form that indicated the UST was permanently removed from service on May 5, 2018. EAA did not receive either the 30-day notification or the two business day notification for this removal activity. Failure to provide these required notifications denied EAA staff the opportunity to plan and observe removal

activities. It also triggered the provisions of Section 713.612(f) that would require EAA staff to consider the nullification of the RC.

In a March 7, 2019 Notice of Violation letter to Strips LLC, EAA staff offered a settlement for the violation resulting from failing to provide required notifications (as outlined in EAA settlement guidelines), and solicited a written statement of 'good cause' by March 20 for the EAA to consider when making a recommendation on the status of the recognized capacity. While Stripes LLC responded to the March 7 letter by agreeing to resolve the violations related to the notifications, they did not address the statement of good cause. Therefore, EAA staff presented a report item to the April 23 Permits/Enforcement Committee describing the Recognized Capacity Program for USTs, but did not make a specific recommendation for the committee to consider. The committee agreed this matter should be considered by the full board at their May 14 meeting.

Since this matter was to be presented to the full board, EAA staff once again solicited Stripes LLC for a statement of good cause to further describe the circumstances regarding the removal, and on May 1, received a letter from Ms. Carol Paton (owner representative) acknowledging the circumstances and committing to resolve the notification violations. The letter is attached to this item.

Therefore, based on the information received from the facility in response to this compliance matter, EAA staff believe that a good cause was not shown, and that the recognized capacity associated with the USTs should not be reserved and should be reduced accordingly.

EAA staff will present this report at the May 14 board meeting and answer any questions the board may have regarding this issue.

STRATEGIC PLAN REFERENCE:

This agenda item supports the EAA's policy direction as set forth in the EAA 2016-20 Strategic Plan: Goal D. Prevent the Pollution of the Aquifer.

FISCAL IMPACT:

None.