

Legislation Text

File #: AI 13-2052, Version: 1

Consider recommendation from EAA staff to refer to General Counsel an enforcement matter against 7-Eleven, Inc. and Sonnahr Enterprises, Inc., for violations of EAA rules, and authorize General Counsel to file a civil suit, if necessary.

STAFF RECOMMENDED MOTION:

Move the board refer to counsel an enforcement matter against 7-Eleven, Inc. and Sonnahr Enterprises, Inc., for failure to meet certain underground storage tank rules in Subchapter G (relating to Aboveground and Underground Storage Tanks) of Chapter 713 (relating to Water Quality) of the EAA Rules, and to authorize counsel to take all steps necessary to resolve such matter, including the filing of a civil suit.

SUMMARY

The purpose of this agenda item is for the board to consider an EAA staff recommendation to authorize the General Manager to refer to General Counsel the alleged violations of EAA rules and authorize General Counsel to file a civil suit, if necessary, against the 7-Eleven, Inc. and Sonnahr Enterprise, Inc. (convenience store and gasoline station) located at 1815 State Highway 46-west in New Braunfels ("the facility") for on-going violations of underground storage tank (UST) rules. Based on forms submitted to the EAA, 7-Eleven, Inc. is identified as the owner of the three facility USTs, and Sonnahr Enterprises, Inc. is the designated operator of the facility.

According to the storage tank registration form submitted for the facility, the USTs were installed at the facility in March 1989 and that the tanks are not tertiary contained (3 X 10,000 gallon USTs that contained diesel, super, and regular unleaded gasoline). Section 713.607 (c) of the EAA's rules indicates that "Irrespective of any other provision in these rules, thirty years from the date of the installation of a UST system, all UST systems located on the recharge zone shall:

- (1) incorporate a method of tertiary containment through the major modification process; or
- (2) remove the UST from service."

In addition to previous general conversations and electronic communications between EAA staff and UST owners, EAA staff sent an email to the 7-Eleven facility on July 23, 2018, that specifically reminded them that March 2019 will mark 30 years since the tanks were installed and that by then USTs will need to be upgraded to tertiary containment or be removed. On October 25, 2018, EAA staff sent another reminder letter of the upcoming upgrade deadline.

In November 2018, Mr. Raymond McNiece, representing 7-Eleven, Inc., met with EAA program staff and mentioned he may have difficulty completing required upgrades by the March 2019 deadline. He expressed concern about removing the USTs from service while waiting for upgrade plans to be

approved and implemented. As a Committee Report to the Permits/Enforcement Committee at the January 22 meeting, EAA staff reviewed EAA rules regarding UST upgrades, staff assistance efforts to date, and allowed Mr. McNiece to address his specific concerns and plans. During these discussions, the committee reiterated the requirements of EAA rules in that to avoid possible enforcement, the USTs must be approved or removed from service by the compliance deadline. A site visit performed on March 25 confirmed the tanks were still in service, and as late as an email inquiry with Mr. McNiece on April 6, the facility was still in operation and confirmed the USTs remained in service.

On April 8, EAA staff received an email from Mr. McNiece indicating that the USTs had been emptied at the 7-Eleven facility, and on April 9, EAA staff met with Mr. McNiece at the facility and confirmed that the USTs were drained and could not be registered as temporarily out of service. At that time, staff reiterated the need to keep the tanks out of service until they were replaced. Based on these actions, and since the on-going violation of EAA rules had ceased, the EAA Board of Directors voted at the April 9 meeting, to table this EAA staff recommendation, pending final resolution of the compliance matter.

On or about April 18, EAA staff was made aware that the 7-Eleven facility had re-filled the USTs and the system was placed back into service. This was confirmed by an EAA staff visit on April 18 that confirmed the UST systems were in operation and dispensing fuel. A follow-up telephone conversation with Mr. McNiece confirmed that the convenience store had in fact refilled the USTs. During the conversation, Mr. McNiece said he hoped for final TCEQ approvals to begin construction within the next four weeks. As of May 9, the USTs were confirmed to be in operation without an approved form of tertiary containment in violation of EAA rules.

M/WBE PARTICIPATION:

This section is not relevant to this item.

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:

Potential costs associated with civil lawsuits against violators of these provisions.