Closure/Underground Storage Tanks: Blog Commonground Addresses Excavated Soils Question

Arkansas Environmental, Energy, and Water Law Blog

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A December 4th post on the blog *Common Ground* titled *On-site UST Closure Report confusion* notes the following scenario:

A former asphalt plant is located on my subject property. It included a 10,000 gallon UST which was removed in 2001. Two soil samples collected from the bottom of the tank pit were non-detect for BTEX, TPH-DRO/GRO, and PAHs. One soil sample collected from the stockpile detected "17 mg/kg of TPH-DRO and some PAHs." The EPD gave the site a No Further Action Required status based on the soil sample analytical results. So here is where I get confused, the Closure Report says the excavated soils were returned to the excavation. TPH-DRO, based on the EPD UST Closure Guidelines, should be delineated to below 10 mg/kg. So they put soil with 17 mg/kg TPH-DRO back into the excavation. I was originally going to call this an HREC but now I'm not sure. Any thoughts?

A "historical recognized environmental condition" is defined as:

"a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls (e.g., property use restrictions, AULs, institutional controls, or engineering controls). Before calling the past release an HREC, the EP must determine whether the past release is a REC at the time the Phase I ESA is conducted (e.g., if there has been a change in the regulatory criteria)."

One commenter responds:

You need an understanding of the applicable regs for whichever state this project is in. It could be that the closure guidelines are more stringent than the remediation limits. Or it could be that the upper limit has changed since 2001. Or something else. Maybe the NFA letter, or other correspondence in the file, will provide some clues.

Another commenter opines:

Perhaps inspector at the time thought 17 was close enough to 10 to not be a concern. Mix it up a bit and throw it back in the hole. Could probably make a case for calling it a de minimis condition.