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#### Exemptions-GA-Burden

While a government agency is exempt from land disposal and generator fees with respect to removal of hazardous waste which was generated by others (Health and Safety Code section 25174.7(a)), it has the burden of showing that the agency or the city for which it is acting was not responsible for generating the waste. 6/1/93.



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**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
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June 1, 1993

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**BURTON W. OLIVER**  
**Executive Director**

(Redacted)

(Redacted)

Re: (Redacted)

Dear Mr. (Redacted)

On April 27, 1993, you and (redacted) met with staff of the State Board of Equalization to discuss the application of the hazardous waste fees to hazardous waste materials excavated as part of the (redacted). At that meeting, you stated your belief that the excavated hazardous materials are exempt from both the land disposal fee and the generator fee pursuant to Health and Safety Code Section 25174.7 (a) (1).

Section 25174.7 (a) (1) states that the land disposal fee and generator fee do not apply to hazardous wastes which result when a state or local agency, or its contractor, removes or remedies a release of hazardous waste caused by another person. The contaminated soils at issue are made up entirely of subsoils beneath the existing (redacted). The city has contracted with (redacted) to handle the contaminated soils. Therefore, the hazardous wastes are being removed by a local agency's contractor, and the sole question that must be answered to determine if the exemption applies is whether the release of hazardous waste was caused by another person.

After our discussion, we reviewed the information you submitted concerning the project, including your April 16, 1993 and April 22, 1993 letters and the attachments thereto, including portions of studies conducted by Woodward-Clyde (November 28, 1975), Bechtel Environmental, Inc. and Geo/Resource Consultants, Inc. (August 11, 1989), and Dames and Moore (November 7, 1990).

The Woodward-Clyde study states that much of the material to be excavated has probably been in place since the reconstruction that occurred after the earthquake of 1906, and the construction of the old and

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new sea walls along with (redacted) when shoreline areas were filled to provide additional land for development. The Bechtel study lists the historical land uses of the site and potential sources of hazardous waste. The Dames and Moore study suggests that contamination could have been introduced into the fill by historical and current land uses, such as coal yards, metal works, and smelting and refinery facilities, lumber yards, paint shops, railroad yards, coal gasification facilities, and other operations that use underground storage tanks. In your April 16 letter, you assert that the City was not responsible for any of the relevant prior uses mention by Dames and Moore.

It appears from the documents and other information you submitted that the greatest part of the contamination of the subsoils beneath the (redacted) was caused by entities other than the City. However, none of the studies you submitted was intended specifically to identify the source of the contamination, but rather to identify the location and type of contamination present.

While we believe that little of the contaminated subsoils that (redacted) will be removing resulted from the City's activities, we cannot, on the basis of the information currently available to us and without further investigation, certify that the City is not responsible for any of the hazardous waste.

We will be glad to review any additional documentation you may wish to provide concerning the source of the contaminated soils.

Very truly yours,

Janet Vining  
Senior Tax Counsel

JV:wk

Cc: Mr. (Redacted)  
Mr. Stephen R. Rudd  
Mr. David McKillip  
Mr. Larry Augusta  
Mr. Charles Nunn, Dept. of Toxic Substances Control  
Mr. Dennis Mahoney, Dept. of Toxic Substances Control