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Rinsing Containers

Rinsing of containers which previously held hazardous substances constitutes treatment of hazardous waste inasmuch as the containers themselves constitute hazardous waste, unless the containers are excluded from classification as a waste by the Department of Toxic Substances Control's regulations. 8/27/93.

August 18, 1993

REDACTED

Dear Mr. REDACTED:

I am writing in response to your REDACTED letter concerning the classification of REDACTED as a treatment facility subject to the facility fee imposed in Health and Safety Code Section 25205.2.

As I understand the facts of the matter, REDACTED ships chemicals to customers in bulk containers. The containers are returned, and REDACTED rinses and refills them. The returned containers are "empty", as that term is defined in the federal regulations (Section 261.7 of Title 40 of the Code of Federal Regulations), but not as that term is defined in California's regulations (Section 66261.7(b) and (d) of Title 22 of the California Code of Regulations).

The Department of Toxic Substances Control (the "Department") issued variances to REDACTED and REDACTED plants in 1982 and 1988, respectively. The variances exempted REDACTED from the requirement that the plants be permitted as hazardous waste facilities because of their wastewater neutralization processes.

Section 66270.60(a) of the Department's regulations provides that all outstanding variances previously issued to owners or operators of hazardous waste management units or facilities for treatment activities which are eligible for permit by rule are revoked effective May 1, 1992. Thus, the variances for the REDACTED and REDACTED plants were revoked as of May 1, 1992. I understand that REDACTED has modified its wastewater treatment

process so that the wastewater is completely recycled, and is not required to obtain a permit or any other grant of authority from the Department concerning its treatment of the wastewater at either plant.

The sole question, therefore, is whether REDACTED' rinsing operation constitutes "treatment", and the REDACTED and REDACTED plants must be permitted as hazardous waste treatment facilities and pay the appropriate facility fee. For the reasons stated below, we have concluded that the rinsing operation is subject to the Department's regulation.

Section 25123.5 of the Health and Safety Code defines "treatment" to mean

any method, technique, or process which changes or is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or removes or reduces its harmful properties or characteristics for any purpose. 'Treatment' does not include the removal of residues from manufacturing process equipment for the purposes of cleaning that equipment.

It is the position of the Department and the Board that the rinsing of containers constitutes "treatment" as that term is defined in Section 25123.5, because rinsing changes the physical, chemical or biological character or composition of the hazardous waste and reduces its harmful properties or characteristics. Furthermore, the containers REDACTED uses to deliver chemicals to its customers are not "manufacturing process equipment".

Until 1992, Health and Safety Code Section 25143.2(d)(5) stated that, for purposes of Chapter 6.5 (which sets forth standards and requirements for the management of hazardous waste in the state), recyclable non-RCRA hazardous waste was excluded from classification as a waste if

The material is a container which meets all of the following requirements:

- (A) The container was last used to hold a hazardous material acquired from a supplier of hazardous materials.

- (B) The container is empty pursuant to the standards set forth in Section 261.7 of Title 40 of the Code of Federal Regulations.
- (C) The container is returned to a supplier of hazardous materials for the purpose of being refilled.
- (D) The container is not treated prior to being returned to the supplier of hazardous materials, except as provided in regulations adopted by the department.
- (E) The container is not treated by the supplier of hazardous materials except by rinsing.
- (F) The container is refilled by the supplier with hazardous material which is compatible with the hazardous material which the container previously held unless the container has been adequately rinsed.
- (G) The container is handled in accordance with any regulations adopted by the department to implement this paragraph.

Under this version of Section 25143.2(b)(5), if the containers handled by REDACTED met all the requirements of (A) through (G) above, they would not be classified as waste, and the rinsing process would not be subject to regulation.

I note that the language in Section 25143.2(b)(5) exempting containers which are not treated "except by rinsing" supports the Department and Board's position that rinsing is a form of treatment.

The language from Section 25143.2 cited above was repealed effective January 1, 1992 (see Chapters 1126 and 1173, Statutes of 1991). Effective July 1, 1991, the Department adopted Regulation 66261.7 of Title 22 of the California Code of Regulations to specifically address contaminated containers. Subsection (p) of the regulation provides that any container

which previously held a hazardous material, including but not limited to hazardous waste, and which is not empty pursuant to the state definition included in the regulation "shall be managed as a hazardous waste in accordance with this division and Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100). Therefore, unless the containers REDACTED handles are otherwise exempt, they are subject to regulation and must be permitted by the Department.

Subsection (i) of the regulation addresses containers which previously held a hazardous waste and which are sent back to the supplier for the purpose of being refilled. Such containers are exempt from regulation under the Department's regulations and Chapter 6.5 if all the following requirements are met:

- (1) The container or inner liner was last used to hold a hazardous material acquired from a supplier of hazardous materials;
- (2) The container or inner liner is empty pursuant to the standards set forth in Section 261.7 of Title 40 of the Code of Federal Regulations;
- (3) The container or inner liner is returned to a supplier of hazardous materials for the purpose of being refilled, provided that the supplier's reuse of the container or inner liner is in compliance with the requirements of Section 173.28 of Title 49 of the Code of Federal Regulations;
- (4) The container or inner liner is not treated prior to being returned to the supplier of hazardous materials, except as authorized by this section;
- (5) The container is not treated (except as authorized by this section) by the supplier of hazardous materials without obtaining specific authorization from the Department; and
- (6) The container or inner liner is refilled by the supplier with hazardous material which is compatible with the hazardous material which the container or inner liner previously

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held unless the container has been adequately decontaminated.

As you can see, these requirements are similar to those contained in the version of Health and Safety Code Section 25143.2(d)(5) that was in effect prior to 1992. However, references to "rinsing" have been removed. Therefore, unless REDACTED rinsing operation is specifically authorized by Section 66261.7 or by the Department, the containers are a hazardous waste subject to the Department's regulation. I can find no specific authorization for the rinsing process in the regulation, nor any evidence that the Department has authorized the rinsing. Thus, REDACTED is operating in a manner that requires it to obtain a permit or variance, and is subject to the facility fee (see Health and Safety Code Section 25205.1(b) and 25205.2).

If you have any additional information concerning REDACTED' operation that would be relevant, or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

Janet Vining
Senior Tax Counsel

JV:wk

cc: Mr. Stephen Rudd
Mr. Jeff George
Mr. Larry Augusta
Mr. Dennis Mahoney, Dept. of Toxic Substance Control
Mr. Watson Gin, Dept. of Toxic Substances Control

August 27, 1993

REDACTED

Re: REDACTED

Dear Mr. REDACTED

I am writing to supplement my August 18, 1993 letter to you, and to advise you of pending legislation which may impact the application of the hazardous waste facility fee to REDACTED.

AB 1772, which was enacted by the Legislature last year, established several new levels of regulation of hazardous waste facilities. "Conditional authorization" (Health and Safety Code Section 25200.3) applies only to generators who treat hazardous waste which is generated on-site. "Conditional exemption" (Section 25201.5) applies only to generators who treat small volumes of hazardous waste. Section 25201.6 requires the Department of Toxic Substances Control ("Department") to adopt regulations specifying a standardized hazardous waste facilities permit application that may be completed by an off-site non-RCRA treatment or storage facility in lieu of other hazardous waste facilities permit application procedures. This last level of regulation -- the standardized permit -- may apply to REDACTED

SB 27, which is currently under review in the Legislature, would amend Section 25201.6 to specify three categories of standardized permits and sets forth the annual fee applicable to each facility operating pursuant to a standardized permit. SB 27 requires that any facility intending to apply for a standardized permit must submit a notification to the Department by October 1,

1993. A permit application must be filed within six months of the submittal of the notification.

SB 27 would amend Health and Safety Code Section 25205.12 by adding subsection (c) as follows:

The operator of a hazardous waste facility eligible to operate pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the facility fee specified in Sections 25205.2 and 25205.4 for any year or reporting period prior to January 1, 1993, during which the facility operated, if the hazardous waste treatment or storage activity was conducted prior to January 1, 1993, the owner or operator is in compliance with the notification and application requirements of Section 25201.6, ... and one of the following circumstances applies:

- (1) The owner or operator was not authorized by the department before July 1, 1993, to conduct the eligible treatment or storage activity.
- (2) The owner or operator did not pay a hazardous waste facility fee, as specified in Section 25205.2, for that year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

Thus, while REDACTED operation is not exempt from regulation, it probably would be eligible for a standardized permit under SB 27. The fees for applying for a standardized permit and for operating pursuant to such a permit are substantially less than the usual permit application fees and annual facility fees. In addition, Section 25205.12 would provide REDACTED with an exemption from the facility fee for reporting periods prior to January 1, 1993, providing that REDACTED submits its notification to the Department and applies for a standardized permit within the time frames established in SB 27 and in regulations soon to be adopted by the Department.

Mr. REDACTED
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I have enclosed a copy of the most recent version of SB 27.
Please feel free to contact me if you have any questions.

Very truly yours,

Janet Vining
Senior Tax Counsel

JV:wk

Enclosure

cc: Mr. Stephen Rudd
Mr. Jeff George
Mr. Larry Augusta
Mr. Dennis Mahoney, Dept. of Toxic Substances Control

bc: Mr. Juan Fernandez (w/enc.)