

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: April 16, 2008

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

Subject : Regulation 3000, *Generator of Hazardous Waste*
Chief Counsel's Rulemaking Calendar
Board Meeting—June 24, 2008

Since its adoption in July of 1999, Regulation 3000 has contained an error in a cross-reference. The regulation refers to a nonexistent subdivision (f)(2) instead of the actual subdivision (b)(1)(G). To correct this error, we request your approval to place proposed revisions to Hazardous Substances Tax Regulation 3000 on the Chief Counsel's Rulemaking Calendar on June 24, 2008, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because it corrects a cross-reference without any regulatory effect.

Attached is the strikeout and underlined version of the regulation.

If you have any questions regarding this request, please let me know or contact Mr. Peter Gaffney at 322-4284.

Recommendation by:

Approved:

Kristine Cazadd, Chief Counsel
Director

Ramon J. Hirsig, Executive

Approved:

BOARD APPROVED
At the _____ Board Meeting

David J. Gau, Deputy Director
Property and Special Taxes Department

Diane Olson, Chief
Board Proceedings Division

Attachments

BOARD OF EQUALIZATION

HAZARDOUS SUBSTANCES TAX REGULATIONS

Regulation 3000. GENERATOR OF HAZARDOUS WASTE.

Reference: Health and Safety Code Sections 25174.7, 25205.1(e), 25205.5, 25205.22, 25250.24, and Revenue and Taxation Code, Sections 43152.7 and 43152.15.

(a) SCOPE.

The provisions contained herein shall apply to the collection of the generator fee imposed pursuant to Health and Safety Code 25205.5. Regulations concerning the manifesting of hazardous waste, enforcement of hazardous waste management requirements and standards, and other regulatory activities conducted by the Department of Toxic Substances Control (DTSC) are contained in Title 22 of the California Code of Regulations. Nothing in this section shall grant any benefit or exemption to a generator, subject a generator to any duty or liability, or infer that any person is or is not a generator, except for the purpose of determining whether a person is subject to, or exempted from, the generator fee.

(b) DEFINITIONS.

(1) "Generator" means any person, by site, whose act or process produces hazardous waste or causes hazardous waste to become subject to regulatory control by a government agency authorized to regulate hazardous waste. If more than one person is liable for the same generator fee for the same load of hazardous waste, that liability shall be joint and several. A generator includes, but is not limited to:

(A) a person identified on a hazardous waste manifest as the generator and whose Environmental Protection Agency (EPA) identification number is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person;

(B) except as provided in subdivision ~~(b)(2)~~ **(b)(1)(G)** below, a person who cleans up a release of hazardous waste caused by another, including a property owner who cleans up contamination caused by a tenant or lessee and an owner or lessee who cleans up property contaminated by a previous owner or lessee;

(C) a person who contracts with an environmental cleanup company to clean up property;

(D) a person who places hazardous waste into repositories at the same site where the waste was

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generated, including but not limited to, a site or portion of a site that has been designated as a corrective action management unit (CAMU) by the Department of Toxic Substances Control; however, a person will not be considered the generator of hazardous waste if the person removes hazardous waste (for example, contaminated soil or groundwater) from a site, treats it at the same site until it is non-hazardous, and returns it to the same location from which it was removed at the site;

(E) a person who excavates contaminated soil that is hazardous waste during cleanup activities, regardless of whether the soil became contaminated over a period of time or when the property was under the control of another person;

(F) any person who is expressly identified as a generator pursuant to the Health and Safety Code or Title 22 of the California Code of Regulations.

(G) Notwithstanding subdivisions (b)(1)(A) through (b)(1)(F) above, "generator" does not include an entity such as an environmental clean-up company or an emergency response contractor, when that entity, pursuant to contract, cleans up a release of hazardous waste for another person, unless the entity is identified on a hazardous waste manifest as the generator as described in subdivision (b)(1)(A) above.

(2) "Site or onsite" means the location at which hazardous waste is generated. Contiguous properties, divided by public or private right-of-way, may be considered one site, provided entry to and exit from the properties are gained by traveling across, as opposed to going along, the right-of-way.

(c) REPORTING PERIOD DURING WHICH HAZARDOUS WASTE IS GENERATED.

If the hazardous waste remains permanently at the site where it was generated, the generation of the waste shall be reported on the generator fee return for the calendar year during which the waste was produced or first brought subject to regulation. If the hazardous waste is removed from the site where it was generated, the generation of the waste shall be reported on the generator fee return for the calendar year during which the waste was removed from the site.

(d) COMMINGLED WASTE.

Where hazardous waste is commingled with non-hazardous waste and manifested on a hazardous waste manifest, the entire mixture constitutes hazardous waste.

(e) EXEMPTIONS FROM THE GENERATOR FEE.

The following persons and waste are exempt from the generator fee:

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(1) FACILITIES. A hazardous waste facility that pays the facility fee pursuant to Health and Safety Code Section 25205.2 for the site for which the facility fee is paid. However, fees paid pursuant to Health and Safety Code Section 25205.14 for permit-by-rule, conditional authorization or conditional exemption are not facility fees, and therefore sites paying such fees are also liable for the generator fee.

(2) GOVERNMENT CLEANUPS. Hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person, or natural disaster. A government agency that produces hazardous waste as a result of its normal operations, including but not limited to accidental releases that occur in the course of normal operations, or as part of a cleanup of a release of hazardous waste it caused, is subject to the fee. However, the government agency is not subject to the fee if the release of hazardous waste is caused by the public during public use of services provided by the government agency as part of its governmental activities, such as the providing of sewer service or roads used by the public.

(3) HOUSEHOLD HAZARDOUS WASTE. Hazardous waste generated or disposed of by a public agency, or by any person under an agreement with a public agency, operating a household hazardous waste facility in the state pursuant to Division 1, Chapter 6.5, Article 10.8 of the Health and Safety Code (commencing with Section 25218), including hazardous waste received from conditionally exempt small quantity commercial generators, authorized pursuant to Health and Safety Code Section 25218.3.

(4) LOCAL VECTOR CONTROL. Hazardous waste generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Health and Safety Code Section 116180, or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of Division 20, Chapter 6.5 of the Health and Safety Code and regulations adopted pursuant to that code.

(5) LOAD CHECKING PROGRAM. Hazardous waste disposed of, or submitted for disposal or treatment, by any person, which is discovered and separated from solid waste as part of a load checking program.

(6) RECYCLED USED MOTOR OIL. Used oil which is removed from a motor vehicle and which is subsequently recycled by a recycler permitted pursuant to Article 13 (commencing with Section 25250) of Chapter 6.5, Division 20 of the Health and Safety Code. "Motor vehicle" includes locomotives, vessels and self-propelled, off-road equipment, whether or not the equipment moves or is permitted to move on public highways.

(7) HAZARDOUS WASTE RECYCLED AND USED ONSITE. Hazardous waste which is recycled, used onsite, and not transferred offsite.

(8) AQUEOUS WASTE. Aqueous waste treated in a treatment unit operating, or which subsequently operates,

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pursuant to a permit by rule, conditional authorization or conditional exemption. However, hazardous waste generated by the treatment process is subject to the generator fee.

(9) UNDERGROUND STORAGE TANK. Hazardous waste generated during the removal of an underground storage tank if the generator of the waste acquired land for the sole purpose of owner-occupied single-family residential use, without actual or constructive notice or knowledge that there was a tank containing hazardous waste on or under the property.

(10) WASTE IMPORTED FROM OUTSIDE CALIFORNIA. On and after January 1, 1996, no generator fee is due concerning any hazardous waste imported into this state from other states, territories, or possessions of the United States for purposes of treatment, recycling or disposal, and no generator fee is due concerning non-RCRA hazardous waste imported into this state from any source for purposes of treatment, recycling or disposal.

(11) BANKS AND FINANCIAL INSTITUTIONS. A bank or financial institution that pays an "in lieu" tax, pursuant to Article XIII, Section 27 of the California Constitution (codified as Revenue and Taxation Code Section 23182) is not subject to the generator fee for hazardous waste which is generated during an activity performed by, or in a business conducted by, the bank or a department or division of the bank, regardless of whether the activity or business is directly related to banking.

(12) INSURANCE COMPANIES. An insurance company that pays an "in lieu" tax, pursuant to Article XIII, Section 28 of the California Constitution (codified as Revenue and Taxation Code Section 12204), is not subject to the generator fee for hazardous waste which is generated during an activity performed by, or in a business conducted by, the insurance company or a department or division of the insurance company, regardless of whether the business or activity is directly related to providing insurance.

(13) EXEMPT WASTE. A waste is not subject to the generator fee if it is exempt from regulation or classification as a hazardous waste under Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100) or the regulations promulgated thereunder. A waste is exempt from regulation or classification as a hazardous waste for purposes of this paragraph if the waste is exempt from all provisions of Chapter 6.5 of Division 20 of the Health and Safety Code and the regulations promulgated thereunder, except those provisions which are necessary in order for DTSC to make or rescind the determination that the waste is exempt from regulation or classification as a hazardous waste, or to compensate DTSC for making or rescinding such a determination.

History: Adopted July 1, 1999, effective October 8, 1999.

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