

Memorandum

To: Stephen R. Rudd, Administrator
Environmental Fees Division

Date: September 12, 1995

From: Janet Vining
Legal

Subject: **Permitted Facility Size; Request 95-07**

I am writing in response to your August 24, 1995 request for an opinion concerning the appropriate classification of a hazardous waste storage facility operated by . For the reasons set forth below, we conclude that the facility's appropriate classification in 1991, 1992 and 1993 was as a mini-storage facility.

Plant , located at California, was permitted as a hazardous waste storage facility and transfer station effective April 23, 1985. The permit was issued for a five-year period and was not renewed prior to or after the expiration date of April 23, 1990. However, the facility thereafter continued to operate in a manner requiring a permit, and paid the facility fee for a mini-storage facility in 1991, 1992 and 1993. The last date on which waste was stored at the facility was January 10, 1991. I submitted a closure plan to the Department of Toxic Substances Control (the "Department") on April 7, 1992, and a revised plan was submitted on May 21, 1993. The Department certified the site closed on October 26, 1993.

While the storage facility was undergoing closure, was also engaged in a large cleanup operation (resulting in 2,400 manifested loads of waste) in order to prepare the site for sale. The cleanup included razing buildings and removing contaminated soil and other debris. During the cleanup, hazardous waste was placed in roll-off bins, tested, and shipped offsite. stated that most waste was shipped offsite within 30 days, and none was stored longer than 90 days. also stated that it did not stockpile hazardous waste onsite.

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Generally, we have classified a storage facility as mini-storage during its closure period if no waste is stored in the facility while closure activities take place. Your question is whether [redacted] should be classified as a large storage facility because of the cleanup activities it undertook at the same time the permitted storage facility was undergoing closure.

[redacted] obtained a permit to operate a storage facility in an existing structure. The Department has indicated that, if it had investigated [redacted] and found any storage outside the permitted facility in excess of 90 days, [redacted] would have been in violation of the permit. In other words, the storage facility permit did not authorize [redacted] to store waste in other areas on the property. We know that facility operators are often required to obtain separate permits for various activities conducted on one site. In addition, facility operators may conduct one activity at a site pursuant to the tiered-permitting program, while conducting other activities pursuant to a full permit. One permit does not necessarily cover all activities conducted at a site.

Since the accumulation of waste related to [redacted] s cleanup operation occurred in an area distinct from the structure permitted as a storage facility, and since that accumulation did not occur in a manner which required [redacted] to obtain another storage facility permit, or modify its existing storage facility permit to allow the additional activity, we conclude that [redacted] should be classified as a mini-storage facility in 1991, 1992, and 1993.

Janet Vining

JV:wk

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