

Memorandum

To: Stephen R. Rudd, Administrator
Environmental Fees Division (MIC:57)

Date: February 6, 1996

From: Janet Vining
Legal Division

Subject

Request for Legal Opinion #95-10

I am writing in response to your November 9, 1995 request for an opinion concerning the settlement agreement between the Department of Toxic Substances Control (the "Department") and [redacted]. For the reasons set forth below, we conclude that the Board should not adjust [redacted]'s liability until the agreement can no longer be voided; that is, in one year if [redacted] has not submitted a variance request to the Department. or, if such a request is submitted and denied, sixty days from the date of the denial if [redacted] does not notify the Department of its intent to void the settlement agreement. In addition, the parties can modify the settlement agreement rather than void it, and, if a modification is made, the new language should be reviewed to determine when the liability can be adjusted.

The dispute involves the hazardous waste facility fee for 1986-87 through 1991. According to the settlement agreement, [redacted] operates hazardous waste disposal facilities in [redacted] (the "[redacted] facility") and [redacted] (the "[redacted] facility"). The [redacted] facility received non-RCRA wastes prior to March 15, 1985 and, since that date, has not received any hazardous waste except asbestos waste and infectious waste. [redacted] argued that it never owed the facility fee for the [redacted] facility because (1) the facility was included in a variance from the permit requirement that the Department issued to the [redacted] facility in August, 1985, and (2) the facility formally closed in 1987 and its closure was approved by the Central Valley Regional Water Quality Control Board. The Department responded that the [redacted] facility was not included in the [redacted] facility variance, and the [redacted] facility has not satisfied the Department's closure requirements.

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Please feel free to contact me if you have additional questions or would like to discuss this memo.

Janet Vining

IV:es

cc: Mr. Dave McKillip (MIC:57)
Mr. Jeff George (MIC:57)
Ms. Carol Reisinger (MIC:57)
Ms. Mary Armstrong
Mr. Dennis Mahoney, Dept. of Toxic Substances Control