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July 28, 1995

Mr. _____

Re: Applicability of Exemption for Hazardous Waste
Disposal and Generator Fees to _____

Dear Mr. _____ :

I am writing in response to your May 26, 1995 letter to Mr. Stephen Rudd, in which you requested a legal opinion concerning the application of the exemption set forth in Health and Safety Code Section 25174.7(a)(1) to the _____.

For the reasons set forth below, I conclude that _____ is a "government agency" for purposes of Section 25174.7, and is therefore exempt from the hazardous waste disposal fee (imposed by Section 25174.1) and the hazardous waste generator fee (imposed by Section 25205.5) concerning wastes which result when _____ or its contractor, removes or remedies a release of hazardous waste in the state caused by another person.

In your letter, you explain that _____ is a publicly-owned utility formed under the Municipal Utility District Act, which permits the formation of multipurpose government agencies to provide needed services on a regional basis. In accordance with the Act's provisions, voters in the East San Francisco Bay created _____ in 1923 to provide water service. In 1944, voters in six East Bay cities elected to form _____'s Special District No. 1 to treat wastewater released into the San Francisco Bay. _____ has a seven-member Board of Directors publicly elected from wards within the _____ service area.

During the construction of water and wastewater conveyance and treatment facilities, _____ sometimes encounters contaminated soil. The soil is excavated and disposed in a Class 1 landfill.

Health and Safety Code Section 25174.7(a)(1) currently provides that the hazardous waste disposal fee and generator fee

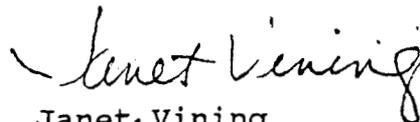
Mr. .
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do not apply to hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person. Several courts have addressed the status of water districts which are created under state law for the limited purpose of supplying water, and have concluded that such water districts are "government agencies". See, for example, People ex rel. City of Downey v. Downey County Water Dist. (1962) 202 Cal.App.2d 786; Coachella Valley County Water Dist. v. Stevens (1929) 206 Cal. 400; Rock Creek Water Dist. v. County of Calaveras (1946) 29 Cal.2d 7. In contrast, a court held that San Diego Gas & Electric is not a "government agency" because it is owned by private shareholders and accountable to a state regulatory commission, rather than publicly created or directly responsive to popular pressure (Moreland Investment Co. v. Superior Ct. (1980) 106 Cal.App.3d 1017).

Utility districts are similar to water districts in that they exercise, to a limited extent, powers of government vested in them by state law (the Municipal Utility District Act, Public Utilities Code Section 11501, et seq.), from which they draw their right to exist and power of operation (People ex rel. City of Downey v. Downey County Water Dist., *supra*, see also, Galt County Water Dist. v. Evans (1935) 10 Cal.App.2d 116). We therefore conclude that the Utility District is a "government agency" for purposes of Health and Safety Code Section 25174.7(a)(1).

Please feel free to contact me if you have any questions or need additional assistance.

Very truly yours,



Janet Vining
Supervising Staff Counsel

JV:wk

cc: Stephen Rudd
Kenneth Rumenapp

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bc: Mr. David McKillip
Mr. Lawrence Augusta
Mr. Robert Shuman