

NOTE: DTSC was formerly part of the Department of Health Services. Reference below to DTSC includes reference to the Department of Health Services.

Protested Item

The protested fees are:

<u>Petition Number</u>	<u>Period</u>	<u>Type</u>	<u>Amount</u>
	7/1/87-6/30/88	Small treatment	\$
	7/1/88-6/30/89	Small treatment	_____
TOTAL			\$

Contentions

Petitioner contends that:

1. The material in question is a raw material and its use is therefore exempt from the fee.
2. No fees are due because petitioner ceased operation prior to the billing for the fees.

Summary

Petitioner is a corporation which, since 1975, was engaged in manufacturing ferric sulfate and ferrous sulfate at facilities located in . It utilized spent "pickle liquor" which was generated at the United States steel plant in . The pickle liquor was brought into petitioner's facilities by tank truck. Pickle liquor results from the "pickling" of hot rolled steel sheet. Pickling is a process by which oxidation is removed from the steel sheet by running the sheet through an acid bath. In this case, the acid used is sulfuric acid. The ferric and ferrous sulfates are sold for use in the treatment of waste water to reduce odors.

Petitioner stopped receiving shipments of pickle liquor in March 1987 and stopped all operations before July 1, 1987. Petitioner submitted a closure plan to DTSC in May 1988 and began implementing the plan that month. The closure plan was fully implemented shortly thereafter and DTSC certified the closure in December of 1988.

Petitioner was issued an Interim Status Document (ISD) in March 1981 which authorized the treatment, recycling and storage of hazardous waste. The fees in question are based on the fact that petitioner was operating an authorized hazardous waste facility until closure was certified by DTSC and that fees were due until closure is certified. DTSC concedes that for the 1988/89 fiscal year, the applicable fee should be that for a mini treatment facility rather than for a small treatment facility. The mini treatment classification was added to the law effective September 26, 1988. It was not available for the 1987/88 fiscal year. DTSC contends that until closure is certified, the facility is authorized to treat hazardous waste and thus continues to be subject to the regulatory jurisdiction of DTSC.

Petitioner's arguments with respect to be subject to regulation as a hazardous waste facility are stated in the companion cases related to petitioner's facility. See the Decision and Recommendation with respect to _____ and _____ and _____ and _____

Petitioner further argues that since it ceased operations prior to July 1, 1987, no annual fees for fiscal year 1987/88 or later periods can apply.

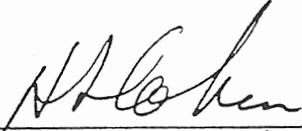
Analysis and Conclusions

The question of whether petitioner was operating a hazardous waste facility was fully discussed in the companion cases to which reference was previously made. The conclusion was that petitioner was not operating a hazardous waste facility; therefore, no fees are due. This decision was based on a decision by the director of DTSC with respect to J _____ Company and is in accord with that decision.

The question as to the effect that ceasing operations has on fees is no longer pertinent because of the above conclusion. However, it is noted that the ceasing of operations is not sufficient to halt liability for facility fees. Until closure is certified, a facility is still authorized to handle hazardous waste. The liability for fees continues, until the facility is certified as clean or sealed, and it is no longer authorized to handle hazardous waste.

Recommendation

Grant both petitions.



H. L. Cohen, Senior Staff Counsel

Date

JA

NOTE: DTSC was formerly part of the Department of Health Services. Reference below to DTSC includes reference to the Department of Health Services.

Protested Item

The protested fees are:

<u>Petition Number</u>	<u>Period</u>	<u>Type</u>	<u>Amount</u>
	7/1/87-6/30/88	Large treatment	\$ -
	7/1/88-6/30/89	Disposal
	7/1/89-6/30/90	Disposal	
	7/1/90-6/30/91	Disposal	_____
	TOTAL		\$

Contentions

Petitioner contends that:

1. The material in question is a raw material and its use is therefore exempt from the fee.

2. Petitioner should not be regarded as disposing of hazardous waste because disposal does not include unintentional discharge.

Summary

Petitioner is a corporation which, since 1975, was engaged in manufacturing ferric chloride and ferrous chloride at facilities located in . The facilities were located on property leased from Company and utilized spent "pickle liquor" which was generated by . Pickle liquor results from the "pickling" of hot rolled steel sheet. Pickling is a process by which oxidation is removed from the hot rolled steel sheet by running the sheet through a bath of hydrochloric acid. The spent liquor contains an acidic solution of ferrous chloride. Petitioner filters the liquor to obtain a ferrous chloride solution which it sells for use in the treatment of waste water to reduce odors. Filtered liquor is treated with gaseous chlorine to convert the ferrous chloride to ferric chloride solution which is also sold by petitioner.

The property leased by petitioner from _____ consists of two plots. The upper facility of about 10 acres consisted of rubber-lined concrete solar evaporation ponds. It was in use until 1987. Liquor from the upper facility was transferred to the lower facility where it was processed and loaded into rubber-lined tank cars and tank trucks. Petitioner stopped receiving pickle liquor by March 1991 and all operations ceased by July 1, 1991. After discontinuing operations at the upper facility, petitioner entered into separate agreements with DTSC and _____, pursuant to which petitioner agreed to implement an interim closure plan approved by DTSC in March 1990, and _____ agreed to assume full responsibility for final closure of the facility. The interim closure plan has been implemented by petitioner and the upper plant is now the sole responsibility of _____. A closure plan for the lower facility was submitted in July 1990 and approval is pending.

Petitioner was issued an Interim Status Document (ISD) in March 1981, which authorized petitioner to treat, store, and recycle pickle liquor and metal etchants. The ISD covered both the upper and lower facilities. In August 1988, petitioner requested DTSC to confirm that it was exempt from regulations as a hazardous waste facility because it was handling recyclable materials. DTSC has not as yet responded.

Although the facility was initially regarded as a large treatment facility, it was reclassified as a disposal facility because of leaks and spills at the upper facility. Subsequent to the issuing of the notice of facility fee for 1987/1988, an increase was asserted by letter dated August 3, 1990. The increase was based on reclassifying the facility as a disposal facility. The history of the facility operation shows spills of 1,000,000 gallons in 1978, 300,000 gallons in 1983, and 3,600 gallons in 1987.

Petitioner contends that its facility is exempt from regulation under subdivision (b) of Section 25143.2 of the Health and Safety Code because it is recycling the material in the pickle liquor. In the appeal of J _____ Company, the director of DTSC classified pickle liquor as exempt from regulation as a hazardous waste when used in the same way that petitioner uses it. A copy of that decision is attached to this Decision and Recommendation. Petitioner further contends that even if petitioner is not exempt, the facility has been improperly classified. It should be classified as a small treatment facility for all periods in question except for fiscal year 1987/88. Petitioner quotes Section 66260.10 of Title 22 of

the Code of California Regulations as defining disposal as the intentional release of hazardous waste on land or water in a site at which the waste will remain after closure. Aside from arguing that the material is not hazardous waste, petitioner contends that DTSC cannot demonstrate that the material will remain at the site after closure. Further, Section 25205.1(b), in the form in effect in 1987 and 1988, defined "disposal" as "to abandon, deposit, inter, or otherwise discard waste". Petitioner contends that spills do not constitute abandonment or discarding.

DTSC contends that the exemption for recyclable material requires a concurrence by the director of DTSC. No such concurrence has been given to petitioner. Since a determination is primarily a scientific and factual issue, which is appealable only to the Alternate Technology Division which specializes in making classifications of this nature, DTSC contends that the Board is precluded from considering this issue under Section 43301 of the Revenue and Taxation Code. Further, since fees are applied on an annual basis, petitioner's letter for concurrence would have affected fee determinations only for 1987/88 and 1988/89.

DTSC cites Section 25113(a) of the Health and Safety Code in its current form as defining disposal to include spilling and leaking. Petitioner's facility is thus a disposal facility for purposes of applying the fee. Between 1978 and 1988, disposal was defined to mean to abandon, deposit, inter, or otherwise discard waste. The spills constitute an abandonment and were thus properly classified as disposal. Intent is not an element of the definition. The fees are not imposed as punishment for malfeasance. They are imposed as compensation to DTSC for its regulatory activities. DTSC has the same burden whether a release is accidental or intentional.

DTSC further contends that a facility can be both a disposal facility and a treatment facility. The fee is, however, based on the highest category.

Petitioner makes a final contention that since no response was ever received to its two and a half-year-old request for concurrence that its operations were not subject to regulation, the Board should not be barred from jurisdiction on this issue.

Analysis and Conclusions

Section 43301 of the Revenue and Taxation Code provides in pertinent part that no petition for redetermination shall be considered by the Board if the petition is based on the grounds that DTSC has improperly or erroneously classified any substance as hazardous waste. Any appeal of a classification must be made to the director of DTSC. Any dissatisfaction with the results of any such appeal is a matter for judicial review, not appeal to the Board. The classification by DTSC of pickle liquor should be accepted for purposes of this review.

In the _____ Company matter, the director of DTSC concluded that ferrous chloride pickle liquor is a chemical intermediate as used by a manufacturer of ferrous and ferric chloride and is not a waste within the meaning of the Hazardous Waste Control Act. _____ was found not to be required to hold a facility permit. I find it anomolous that DTSC is now taking a position with petitioner contrary to a previous position. No evidence has been submitted that would require a result with respect to petitioner that would be contrary to the result in _____. Petitioner's use of the pickle liquor is as an intermediate or raw material in its manufacturing process. While clearly the pickle liquor is a waste as to _____, that does not determine its status as to petitioner. This conclusion is clearly not contrary to a technical finding by DTSC. It is in accord with the technical finding by DTSC. Findings by DTSC must be consistent and not on an ad hoc basis.

Having concluded that the pickle liquor is not a hazardous waste in the hands of petitioner, it nevertheless is necessary to discuss the spills. The fact that petitioner is not required to hold a facility permit has no bearing on the possible hazards posed by the utilization of the pickle liquor. However, two of the three spills noted were clearly prior to the periods in question here. The latest spill is stated to have been in 1987. If it occurred prior to July 1, 1987, it too was outside the period here. If it occurred after June 30, 1987, it was within the 1987/88 fiscal year and a disposal facility fee would be due for that year only.

Recommendation

Grant the three petitions on the . . . account. Grant the petition on the . . . account unless there is evidence to show that the spill occurred after June 30, 1987.



H. L. Cohen, Senior Staff Counsel

Date

JA

production of ferric chloride and concentrated ferrous chloride. As a result of this classification as a chemical intermediate, the facility is not subject to the Act as it existed at the time of the complaint. Health and Safety Code section 25122.5.

PROCEEDINGS

The Director adopts that portion of the Proposed Decision entitled PROCEEDINGS commencing with "this matter came on ..." and concluding with "Names of other persons present are a matter of record." The Director adopts the remainder of this section except that: (1) in the last paragraph on page 2, the date of June 16, 1986 is changed to October 16, 1986, the latter being the actual date upon which the Department adopted as a final decision the proposed decision dated October 2, 1985; (2) the last two sentences of the final paragraph are deleted.

ISSUE

The section entitled ISSUE in the attached Proposed Decision is hereby adopted and incorporated by reference.

FINDINGS OF FACT

Paragraphs I through IV and VI appearing in the section entitled FINDINGS OF FACT in the attached Proposed Decision are hereby adopted and incorporated by reference.

INGS

to

to, or a chemical intermediate, in the production of ferric chloride and concentrated ferrous chloride."

Paragraph VII (commencing with the words "in addition to the production" and ending with the words "subject to the Act") appearing in the section entitled DETERMINATION OF ISSUE in the Proposed Decision is hereby renumbered Paragraph VIII and is revised to read as follows:

B
Y

"Paragraph VIII

In addition to the production of ferric chloride, the ferrous chloride pickle liquor solution is processed to make concentrated ferrous chloride. To make concentrated ferrous chloride, the pickle liquor goes through either four stages: (1) pre-neutralization, (2) lime neutralization, (3) solar evaporation, and (4) storage, or six stages: the four stages just listed and (5) chlorination and (6) concentration.

B
M

These stages amount to "treatment" of pickle liquor as that term is defined above in Section 25123.5. As a consequence, ferrous chloride, as a recyclable material, does not fall within the byproduct exception specified in Section 25122.5, because, among other reasons as stated above, it is not ordinarily traded in its 'existing stage,' but is treated first."

encing

rds

NATION OF

ed and

is section

d Decision

that the

section

follows:

cursor

Paragraph VIII, appearing on page twelve of the

Proposed Decision in the section entitled DETERMINATION OF ISSUE is hereby renumbered Paragraph IX and is hereby revised to read as follows:

"Paragraph IX

In conclusion, it is the determination of the Director that U.S.S. pickle liquor is a chemical intermediate (within the meaning of Section 25122.5(b) as it existed at the time of the complaint) in the production of ferric chloride and concentrated ferrous chloride. As such, it is not classified as a recyclable material. Thus, the facility was not

subject to the provisions of the Hazardous Waste Control Act in existence at the time of the complaint."

ORDER

It is hereby ordered that the facility need not comply with the provisions of the Hazardous Waste Control Act as it existed at the time of the complaint.

Having so ordered, no further administrative hearing is necessary regarding the particular violations alleged in the complaint.

I hereby adopt the foregoing as my Final Decision in this matter.

Dated: 30 November 1987


KENNETH W. KIZER, M.D., M.P.H.
Director

PROCEEDINGS

This matter came on regularly for hearing before Robert L. Carisoza, Administrative Law Judge for the Department of Health Services, commencing at 9:00 a.m. on _____, 1985, in _____, California.

The representatives present were:

_____, representative for _____

Company (hereinafter referred to as the "Facility");

SUSAN BERTKEN, ESQ., representative for the Department of Health Services (hereinafter referred to as the "Department").

Names of other persons present are a matter of record.

Oral and documentary evidence was received and the record was held open for the submission of post-hearing briefs. Thereafter, the record was closed on July 31, 1985. On August 6, 1985, the hearing record was reopened for the taking of additional evidence, and thereafter the record was closed on September 3, 1985. On June 16, 1986, the Department adopted as a final decision the proposed decision dated October 2, 1985, which held that the Administrative Law Judge did not have jurisdiction to decide the issue of whether ferrous chloride was a "waste" within the meaning of the Hazardous Waste Control Act. Although the final decision was correct in finding that Section 25187 of the Health and Safety Code does not specifically provide for an

appeal to a Department determination that a facility is subject to the Act, that question can be, and has been, raised as an affirmative defense to the complaint filed by the Department. Since both parties have requested a formal hearing to resolve all those issues still in dispute regarding alleged violations by the Facility, this Administrative Law Judge has determined that a resolution of the question as to whether ferrous chloride is a waste could abate further hearings, and has bifurcated that issue for resolution before hearing evidence regarding any alleged violations. The Department strongly opposes this procedure and reasserts that the Administrative Law Judge does not have jurisdiction to hear this question under any circumstances. Furthermore, the Department contends that the Facility is not entitled to a fact-finding quasi-judicial hearing.

ISSUE

Is ferrous chloride a "waste" within the meaning of the Hazardous Waste Control Law, (Health and Safety Code Section 25100 et seq.)?

FINDINGS OF FACT

A preponderance of the evidence introduced during the course of the hearing establishes the following:

I

... is an inorganic chemical manufacturer. It primarily manufactures chemicals for use in waste water treatment facilities. ... began manufacturing ferric chloride in 1967.

II

Pursuant to an agreement between ... Corporation (hereinafter ...) and ... at agreed to take all of ...'s ferrous chloride solution, also known generally as "pickle liquor", commencing April 1, 1971. At that time, the pickle liquor was trucked to the ... facility located in ...

III

In 1978, I ..., pursuant to an agreement with ..., built a new facility in ... California, next to and on property owned by "... This facility was called the Ferric Chloride Facility. Pursuant to the 1978 agreement, ... would pump all of its pickle liquor to I ... t and I, ... c agreed to receive all of I ... 's pickle liquor.

IV

Pickle liquor is a generic term used to describe the acid solution that remains after steel products have completed a "pickling" process. The term "pickle liquor" is not a specific item, but can refer to many different items. In the case at hand, the interaction of hydrochloric acid with iron oxide (scale rust) produces a pickle liquor specifically known as ferrous

chloride. This ferrous chloride solution, as it is pumped to
by , contains 15 - 20% ferrous chloride, .5 -
1.0% hydrochloric acid, and the remainder is water.
produces approximately 6 - 12 million gallons of this solution
each year. uses approximately one million gallons for its
own purposes, and the remainder is pumped to , free
of charge.

V

uses the ferrous chloride solution it
receives from to make both concentrated ferrous chloride
and ferric chloride. To make ferric chloride, the solution
received from goes through six additional stages: (1)
pre-neutralization, (2) lime neutralization, (3) solar
evaporation, (4) chlorination, (5) concentration, and (6)
storage. st always processes the ferrous chloride
solution before selling it. does not sell ferrous
chloride directly as received from
currently produces approximately 6,000 tons of concentrated
ferrous chloride a year. also produces
approximately 10,000 tons of ferric chloride a year.

VI

The Department determined that the ferrous chloride
solution as received from was a hazardous waste because of
its acute oral toxicity. This was the only criterion relied upon
by the Department in establishing the ferrous chloride as a

hazardous waste.

DETERMINATION OF ISSUE

I

Is the ferrous chloride solution, as it is received by
t from , a hazardous waste, which subjects
t to the Hazardous Waste Control Act?

Health and Safety Code Section 25122¹ defines "waste" as
either of the following: "a) Any material for which no use or
re-use is intended, and which is to be discarded. b) Any
recyclable material".

II

Evidence introduced in this case clearly indicates that
subparagraph a) is not applicable, as there has been sufficient
evidence introduced to establish a use or re-use of the ferrous
chloride solution and no current intent that the material be
discarded. Does ferrous chloride, therefore, fit the definition
of "recyclable material"?

III

Health and Safety Code 25122.5 defines recyclable
material as follows:

(a) 'Recyclable material' means any material that would be
considered a hazardous waste but for the fact that both of
the following conditions exist:

(1) Some use or reuse of such material may be intended and

1

Unless otherwise indicated, all references in this decision
are to Health and Safety Code provisions as they existed at
the time of complaint.

can be demonstrated.

(2) Such material is either of the following:

(A) A spent, contaminated, or used material, or a process effluent or residue, which has been transferred by the producer of such material, effluent, or residue to an unrelated or unaffiliated person for both of the following purposes:

(i) Recycling or treatment.

(ii) Subsequent sale.

(B) Any retrograde material that has not been used or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:

(i) One year of the date when such material became a retrograde material.

(ii) One year after return to the original manufacturer.

(b) 'Recyclable material' does not include any of the following:

(1) A chemical intermediate.

(2) A byproduct that in its existing state meets all of the following requirements.

(A) Has a commercial use.

(B) Is ordinarily used as a commodity in trade by the industrial or agricultural community.

(C) The reclamation operation poses no significant hazard to public health and safety, or to domestic livestock, wildlife, or the environment.

(3) A material that is routinely reclaimed by a third party for reuse by the original manufacturer of the material.

(4) a material that is routinely reclaimed by an original manufacturer of such material, provided the reclamation is only a portion of such original manufacturer's normal production of such material.

Section 25123.5 provides in pertinent part:

'Treatment' means any method, technique, or process which changes 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.

IV

The ferrous chloride solution as received from _____ has an intended reuse, as demonstrated by _____, i.e. process the solution into ferric chloride and concentrated ferrous chloride for use by waste water treatment facilities.

Therefore, subparagraph (1) has been met. Subparagraph (2) requires that the material meet the requirements of (A) or (B). Paragraph (B) refers to "retrograde material", which is not applicable here; therefore, the ferrous chloride material would have to meet the requirements of paragraph (A). A careful review of the evidence clearly establishes that the ferrous chloride solution as received from _____ can be characterized as a spent, contaminated, or used material or a process effluent or residue which has been transferred by _____ to _____, an unrelated or unaffiliated person. Furthermore, this material is being transferred for recycling or treatment and subsequent sale. As a consequence, the ferrous chloride solution, at this point, can be characterized as a recyclable material. The analysis must continue, however, as Section 25122.5(b) imposes a limitation on subparagraph (a).

V

Subsection (b) provides that a recyclable material does not include four separately listed items. Items number 3 and number 4 are not applicable here and therefore need not be considered. Item number 1 refers to "chemical intermediate". What is, and is not, a chemical intermediate was the subject of extensive examination at the formal hearing. All parties agree, however, upon a definition of a chemical intermediate as "a precursor to a desired product" (Dictionary of Scientific and Technical Terms, Third Edition, McGraw-Hill). The Department

contains that the pickle liquor solution received by
: is not a chemical intermediate because chemical
intermediates are a specific substance or compound. Pickle
liquor is not a specific substance or compound, but can be a
number of substances or compounds. In the case at hand, the
pickle liquor contains a minimum residue of hydrochloric acid and
water.

VI

The evidence produced at the hearing established that a
chemical intermediate need not be 100% pure. To the extent that
a material performs as the buyer or user expects it to perform,
it can be considered a chemical intermediate. If the material
reacts in a manner according to its intended use, it is a
chemical intermediate. A chemical intermediate is a building
block, one step along the way of a process to reaching an end
product. Another definition referred to by the parties, found in
the Chemical and Process Technology Encyclopedia, defines a
chemical intermediate: "an intermediate generally is considered
to be a material that occurs somewhere in a chemical
manufacturing process between the introduction of the basic raw
materials and the creation of the final end products."

refines the pickle liquor it receives from before
reacting it to make ferric chloride. Such treatment does not
change the classification. It is the finding of this
Administrative Law Judge that ferrous chloride as it is received
from , is a precursor to or chemical intermediate in the

production of ferric chloride.

VII

Under Item No. 2, a recyclable material does not include a byproduct that in its existing state meets all of the following requirements: (A) Has a commercial use. (B) Is ordinarily used as a commodity in trade by the industrial or agricultural community. (C) The reclamation operation poses no significant hazard to public health and safety, or to domestic livestock, wildlife, or the environment.

The evidence produced on this question established that it does not sell, in its existing state, any of the material it receives from , but that all material is processed before being sold. Although the facility attempted to establish that ferrous chloride solution as received from has a commercial use, this evidence was not persuasive. It is clear that ferrous chloride does have a commercial use, but treatment and processing are required to make it economically feasible for both the seller and buyer. The facility presented evidence that some pickle liquor solutions may be used as a commodity in trade in some parts of the country, but ferrous chloride pickle liquor as received from is not such a commodity in trade. Again, this pickle liquor must go through a treatment process before it is ultimately sold to users. Lastly, evidence was not presented to sufficiently establish whether the reclamation operation poses no significant hazard to

public health and safety or to domestic livestock, wildlife, or the environment. Based on a thorough review of the above requirements, it is the finding of this Administrative Law Judge that, although pickle liquor as received from . . . is a . . . byproduct of the steel production process, it does not meet the requirements listed above and therefore does not fall within this exception.

VII

In addition to the production of ferric chloride, the ferrous chloride-pickle liquor solution is processed to make concentrated ferrous chloride. To make concentrated ferrous chloride, the pickle liquor generally goes through four stages: (1) pre-neutralization, (2) lime neutralization, (3) solar evaporation, and (4) storage.

It is the finding of this Administrative Law Judge that these four stages amount to "treatment" of pickle liquor as that term is defined above in Section 25123.5. As a consequence, ferrous chloride, as a recyclable material, does not fall within the byproduct exception specified in Section 25122.5, because, among other reasons as stated above, it is not traded in its "existing" state, but is treated first. Furthermore, it is the finding of this Administrative Law Judge that pickle liquor is not a chemical intermediate in the production of concentrated ferrous chloride. As a result, in the production of concentrated ferrous chloride, pickle liquor is a recyclable material; therefore the facility is subject to the Act.

VIII

In conclusion, it is the determination of this Administrative Law Judge that, although pickle liquor is a chemical intermediate in the production of ferric chloride, its classification as a recyclable material in the production of concentrated ferrous chloride subjects the facility to the provisions of the Hazardous Waste Control law.

ORDER

It is hereby ordered that the facility must comply with the provisions of the Hazardous Waste Control Act and that a further administrative hearing is necessary to hear evidence regarding the facility's alleged violation of the Act.

I hereby submit the foregoing as my proposed decision in the above-entitled matter, and recommend its adoption as the decision of the Director of the Department of Health Services.

DATED: _____



ROBERT L. CARISOZA
Administrative Law Judge

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
SACRAMENTO, CA 95814

(916) 445-1248



January 14, 1988

William F. Soo Hoo
Assistant Chief Counsel
Toxic Substances Control Division
400 P Street, 4th Floor
Sacramento, CA 95814

Dear Mr. Soo Hoo:

AUDIT APPEAL NO. 5 - REQUEST FOR
RECONSIDERATION

On January 7, 1988, you requested reconsideration of the Director's decision regarding subject appeal. My time for considering your request expired 30 days after delivery of the final decision--in this case January 11, 1988.

Government Code section 11521 as amended January 1, 1988, permits an agency to stay the expiration date for an additional ten days when necessary to evaluate the request for reconsideration. Since the request allowed only three working days for review, I took advantage of the new statutory language and extended the time period for response.

I have reviewed your arguments and find them unpersuasive. I therefore reject your request for reconsideration.

Sincerely,

A handwritten signature in black ink, appearing to read "KW Kizer", is written over a horizontal line.

Kenneth W. Kizer, M.D., M.P.H.
Director

cc:

3

RECEIVED
MOR 2 E

JAN 19 1988