

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition )  
 for Redetermination Under the ) DECISION AND RECOMMENDATION  
 Hazardous Substances Tax Law of: )  
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 )  
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 )  
Petitioner )

The Appeals conference in the above-referenced matter was held by Paul O. Smith, Staff Counsel on [redacted], in Santa Rosa, California.

Appearing for Petitioner:

Appearing for the Department  
 of Toxic Substances Control  
 (DTSC):

No Appearance

Appearing for the Environmental  
 Fees Division of the Board:

Charles W. Press  
 Senior Tax Auditor

Protested Item

The liability is: \$

Annual generator fee for the period  
 July 1, 1987 to June 30, 1988, based  
 on 7.58 tons of hazardous waste generated.

### Petitioner's Contentions

Petitioner contends that the tonnages listed on the manifests were rounded off, and therefore overstated. Petitioner also contends that the actual tonnage of hazardous waste generated in the period in issue was below 5 tons, and therefore no fee is due.

#### Summary

During the period in issue petitioner \_\_\_\_\_, dba \_\_\_\_\_, operated an automotive parts and machine shop. In 1981, petitioner steam cleaned a 300-350 gallon container used for waste oil. In 1987, the tank was removed from petitioner's premises. On July 29, 1987, a "Uniform Hazardous Waste Manifest" form was completed and executed by petitioner and the transporter. This form indicated that 200 gallons of "Waste Combustible Liquid, N.O.S, NA1993", consisting of 60 percent wash water and 40 percent petroleum oil and sludge, was transported from petitioner's site to a hazardous waste disposal site. The disposal site operator acknowledged receipt of the materials on August 3, 1987.<sup>1/</sup> On October 30, 1987, another "Uniform Hazardous Waste Manifest" form was completed and executed by petitioner's associate and the transporter. This form indicated that 5 cubic yards of "Hazardous Waste Solid N.O.S. ORM-E 9189", consisting of soil contaminated with waste oil, was transported from petitioner's site to a hazardous waste disposal site. The disposal site operator acknowledged receipt of the materials on October 31, 1987.

The conversion factor for gallons to tonnage was determined to be .00417, and the standard conversion factor for cubic yards to tonnage is 1.35.<sup>2/</sup> The 200 gallons of waste converts to .835

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<sup>1/</sup> At the conference petitioner acknowledged his signature on the form, but could recall how the 200 gallon amount was determined.

<sup>2/</sup> The Department and DTSC concluded that the conversion factor for cubic yards could not be used for soil. They arrived at a standard conversion factor for liquid based on the weight of water, which they believed was the average weight of most liquids. The conversion factor for soil was arrived at from field audits of various taxpayers. The weight of the soil in the audits ranged from 1.2 to 1.5 tons per cubic yard, and based on these findings the Department decided that 1.35 was the proper conversion factor for soil.

tons, and the 5 cubic yards of contaminated soil converts to 6.75 tons, respectively. Thus, pursuant to the manifests of July 29, 1987, and October 30, 1987, the total hazardous waste generated by petitioner was 7.58 tons. Petitioner contends that the manifest weight has been rounded up, and therefore overstates the tonnage of waste generated.

On March 9, 1992, the Department of Toxic Substances Control (DTSC) advised the Board of Equalization's Special Taxes Department, Environmental Fees Division (Department) that petitioner was a generator of 5.04 tons of waste, and fees were due in the 5-50 ton category for a generator.<sup>3/</sup> On April 22, 1988, the Department issued a Notice of Determination to petitioner for generator fees. On April 25, 1988, petitioner timely filed a Petition for Redetermination.

#### Analysis and Conclusions

California regulates the treatment, storage, and disposal of hazardous waste through the Hazardous Waste Control Act. (Health & Saf. Code, § 25100 et seq.; Cal. Code Regs., tit. 22, § 66001 et seq.) Health and Safety Code section 25117<sup>4/</sup> provides in relevant part that hazardous waste is waste that meets any of the criteria for the identification of a hazardous waste adopted by DTSC pursuant to section 25141. Section 25205.1 provides in relevant part that "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1986, in those amounts specified in subdivision (b) of section 25205.5, at a site, and who has not paid a hazardous waste facility fee for that site. Section 25205.5 provides in relevant part that in addition to fees imposed elsewhere, every generator of hazardous waste shall pay a fee for each generator site for each fiscal year, or portion thereof. Subdivision (b) provides in relevant part that a fee is due from a generator that generates more than 5 tons, but less than 50 tons, of hazardous waste during the state's fiscal year commencing on or after July 1, 1986.

Here, the parties agree that petitioner was a generator. Petitioner argues that during the period in issue he did not generate more than 5 tons of hazardous waste. The only evidence of the amount of waste generated by petitioner is the above manifests, which combined indicate that petitioner generated 7.58

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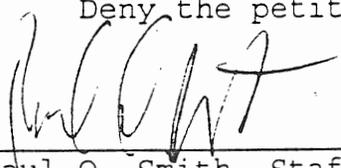
<sup>3/</sup> The correct tonnage is 7.58, as determined above.

<sup>4/</sup> All statutory references are to the Health And Safety Code, as in effect during the periods in issue, unless stated otherwise.

tons of hazardous waste during the relevant period. Further, petitioner does not dispute that he and his associate signed the manifests as generators of the waste, and that such waste was removed from his site. Absent evidence to the contrary, I must conclude that the Department's determination is proper.

Recommendation

Deny the petition.

  
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Paul O. Smith, Staff Counsel

JA

  
\_\_\_\_\_  
Date