

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

DECISION OF THE BOARD

In the Matter of the Petition for Redetermination Under the Hazardous Substances Tax Law of HOWARD PUMP, INC. Petitioner

Appearances:

For Petitioner: Sanford C. Shaw
Attorney

*For Department of
Toxic Substances Control:* Ramon Perez
Staff Counsel

*For Department of Special
Taxes and Operations, State
Board of Equalization:* Janet Vining
Tax Counsel

This Decision considers the merits of a petition for redetermination, filed pursuant to Revenue and Taxation Code Section 43301, of a hazardous waste generator fee, imposed by Health and Safety Code Section 25205.5, for fiscal years 1986–87 and 1987–88. The Board heard the petition for redetermination on September 9, 1992, in San Diego, California, and took the matter under submission.

The issue before us is whether Petitioner was the generator of contaminated soil which was excavated during the cleanup of a hazardous waste spill. For the reasons stated below, we find that Petitioner was not the generator of the contaminated soil.

Petitioner was engaged in drilling a well, when vandals opened the valve on Petitioner's fuel tank and allowed approximately 400 gallons of fuel to spill on the ground. Petitioner hired an environmental firm to clean up the site, and contaminated soil and water were excavated and transported offsite for disposal.

The version of Health and Safety Code Section 25205.5 which was in effect during the period at issue required each generator of hazardous waste to pay the Board a generator fee for each generator site for each fiscal year. "Generator" was defined in Health and Safety Code Section 25205.1(e) to mean "a person who generates volumes of hazardous waste . . . at an individual site." "Generator" is also defined in the regulations of the Department of Toxic Substances Control as "any person, by site, whose act or process produces hazardous waste . . . or whose act first causes a hazardous waste to become subject to regulation" (Title 22, California Code of Regulations, Section 66260.10, previously Section 66078).

The contaminated soil excavated by Petitioner was clearly hazardous waste. However, we find that the Legislature did not intend the generator fee to apply in the circumstances presented in this case, where vandals caused the release of fuel that contaminated the soil. The contamination did not result from the normal or anticipated usage of the equipment at the site, but from an intervening criminal act. This case is distinguishable from a situation where, for example, a person purchases a gas station and finds that the underground storage tanks at the site have been leaking and have contaminated the surrounding soil. Under such circumstances, when the new owner of the gas station excavates the contaminated soil, that person is the generator of the hazardous waste and is responsible for the generator fee.

For the reasons set forth in this Decision, the petition for redetermination is granted.

Adopted at Sacramento, California, this 9th day of March, 1994.

Brad Sherman, Chairman

Matthew K. Fong, Member

Ernest J. Dronenburg, Jr., Member

Winnie Scott, Member

Attested by: Burton W. Oliver, Executive Director