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AUDITORS

Memorandum

To : Robert O'Neill, Jr.
Environmental Fees Division
MIC:57

Date: February 14, 1994

From : Janet Vining
Supervising Staff Counsel

Subject: **Bulking of Hazardous Waste**

I am writing in response to your July 21, 1993 memorandum concerning the bulking of hazardous waste. I apologize for the delay in responding to your request.

Your questions involve the application of the hazardous waste disposal fee to waste which is removed from containers and mixed before being shipped for disposal, i.e. the "bulking" of waste. The term "bulking" is not clearly defined by statute. When used in this memo, it means the process of opening containers and placing their contents in a larger container. Nothing is added to the waste or taken out of it, and the waste is not subjected to any other type of processing.

It is the Board's position that, when a generator submits hazardous waste to a treatment facility for treatment prior to disposal, the generator is not subject to the disposal fee. However, if the treatment of the hazardous waste results in a hazardous residue, and the treatment facility submits that residue for disposal, the treatment facility is liable for the disposal fee on the residue.

This position is based on our interpretation of Health and Safety Code Section 25174.1, which imposes a disposal fee on each person who disposes of hazardous waste or submits hazardous waste for disposal. The Department of Health Services' regulations originally imposed a separate fee on generators who disposed of their waste onsite and those who submitted their waste offsite for disposal. This distinction appeared in several early versions of Section 25174.1, which imposed a fee on persons who disposed "of hazardous wastes onsite", as well as those who submitted "hazardous waste for disposal offsite". We believe that the current language of Section 25174.1, which imposes the fee on each person who "disposes of hazardous waste" or submits "hazardous waste for disposal", makes references to the same two categories -- those

persons who dispose of waste onsite and those who submit waste for disposal offsite. It is our opinion that the treatment facility that manifests treated waste to a disposal site is the person who "submits hazardous waste for disposal", rather than the generator who sent the waste to the treatment facility.

The question you have presented is whether a facility that mixes similar wastestreams and then sends the bulked waste to a disposal site is the person who submitted waste for disposal offsite, and is therefore liable for the disposal fee. Based on the Board's current application of the disposal fee to treatment facilities, a secondary question is whether the mixing of similar wastestreams constitutes "treatment" such that the generator or generators who produced the original wastestreams would not be subject to the disposal fee, but the entity that mixed them would be subject to the disposal fee when it submitted the combined wastestreams for disposal.

Health and Safety Code Section 25123.5 defines "treatment" as "any method, technique, or process which changes or is designed to change the physical, chemical, or biological character or composition of any hazardous waste or material contained therein, or removes or reduces its harmful properties or characteristics for any purpose."

Some facilities receive different types of hazardous waste and perform various operations on the waste to prepare it for disposal. These facilities are usually engaged in treatment and are required to be permitted by the Department of Toxic Substances Control as treatment facilities. The facilities that store waste must also be permitted as storage facilities. The operations the facilities may perform on the waste include, for example, stabilization, solidification, and neutralization. These operations may render the waste non-hazardous, may result in the reduction of the waste and the creation of a hazardous residue which is then disposed of, or may result in the waste being stabilized in preparation for disposal. Some of the activities performed by the facility are required in order to meet disposal standards imposed by law.

Bulking appears to be an activity that can meet the statutory definition of "treatment", since the waste in the larger container may be of a different physical, chemical or biological character than the waste in the smaller containers. Therefore, the facility that engages in bulking may be required to be permitted as a treatment facility. The facility may bulk waste for economic reasons, and the bulking may not be required in order to prepare the waste for disposal. However, if the

operation meets the definition of "treatment", we should apply the Board's position concerning the disposal fee, as outlined above. Therefore, when the generator submits the waste to the facility to be bulked and sent for disposal, and the process of bulking the waste constitutes treatment, the generator has submitted the waste for treatment rather than disposal. The facility is the entity that submits the hazardous waste for disposal, and it must pay the disposal fee.

If the waste is not removed from its original containers, and is simply stored at the facility prior to being manifested to a disposal facility, the facility has not engaged in treatment as to such waste, and it is the original generator of the waste, rather than the facility, that is responsible for the disposal fee.

In your memo, you question the application of the disposal fee to wastestreams that are the same and those that are different. The analysis set forth above is premised on a finding that the bulking of the waste constitutes treatment, and this determination is, in turn, based on a finding that the bulked waste differs in physical, chemical or biological character from the separate wastestreams. If the wastestreams were identical, and there was no change in the character of the waste, there would be no treatment, and the facility that bulked the wastestreams would not be liable for the disposal fee.

You also asked if it mattered whether the streams were liquids or solids. Again, the basic question is whether treatment occurred, and whether the resulting combined wastestream has a different physical, chemical or biological character.

The conclusions reached in this memo rely on a determination of whether any specific handling of hazardous wastestreams constitutes "treatment". I have discussed the issue of "bulking" with several representatives of the Department of Toxic Substances Control, and there does not appear to be a clear consensus among the Department's staff concerning whether bulking meets the definition of treatment.

I recommend that you contact the Department and request a position on whether bulking is a form of treatment, or under what circumstances bulking will be considered treatment. While I have offered our opinion concerning the definition of "treatment", the Department is the appropriate agency to make the final determination concerning what constitutes treatment,

Robert O'Neill, Jr.

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and the Board's actions should be consistent with the Department's approach.

Please contact me if you have any questions or wish to discuss this matter further.

Janet Vining

JV:wk

bulking.ro

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