

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:)
)
) No.)
)
)
)
Petitioner)

The Appeals conference in the above-referenced matter was held by Staff Counsel Michele F. Hicks on _____ in Sacramento, California.

Appearing for Petitioner:

[Faint signature and name of petitioner's representative]

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

Colleen Murphy
 Senior Staff Counsel

Appearing for the Environmental
 Fees Division of the Board:

Debra Kalfsbeek
 Senior Tax Auditor

Protested Item

Amount

Annual generator fee for the period
 1/1/89 to 12/31/89 based on 56 tons
 of hazardous waste (soil contaminated with
 foundry metals).

Petitioner's Contention

Petitioner contends that no waste was generated in 1989.

Summary

Petitioner operated a foundry which began operations in the late 1950s. In the early 1970s, the foundry was expanded. During the expansion, soils and sand material located on the site was used as fill material which was paved for a parking area.

The foundry stopped operations in 1987. Tests of the soil and sand showed elevated levels of copper, lead and zinc. Some of the material was treated to bring its metal concentration down. However, some of the material could not be fully fixated and was classified as California non-RCRA hazardous waste solid. This material constituted the 56 tons of waste material that petitioner disposed of in 1989.

Petitioner contends that it did not generate any hazardous waste in 1989. The hazardous waste was generated prior to 1991. In 1991, petitioner voluntarily cleaned up the site after operations at the foundry ceased. The Department of Toxic Substances Control contends that waste was generated when the contaminated soil was excavated. Copies of manifests obtained from the Department of Toxic Substances Control show that petitioner disposed of over 50 tons of hazardous waste in 1989.

Analysis and Conclusions

During the audit period, Health and Safety Code Section 25205.5 imposed an annual fee on every generator of hazardous waste. Section 25205.1(e) defined a "generator" as "a person who generates volumes of hazardous waste on or after July 1, 1988...." In Santa Clara Ranches, a published decision issued on December 10, 1991, this Board held that the generator of contaminated soil is the person who excavates and manifests the soil for disposal because excavation is the act which first causes the hazardous waste to become subject to regulation. Petitioner excavated and disposed of the soil in 1989 and therefore was the "generator" of the contaminated soil. Accordingly, petitioner is liable for the fee.

Recommendation

Redetermine without adjustment.

Michele F. Hicks
Michele F. Hicks, Staff Counsel

4/21/51
Date

JA

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:)
)
) No. 14) 010
)
)
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Petitioner)

The Appeals conference in the above-referenced matter was held by Staff Counsel Michele F. Hicks on _____ in Sacramento, California.

Appearing for Petitioner:

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

Colleen Murphy
 Senior Staff Counsel

Appearing for the Environmental Fees Division of the Board:

Debra Kalfsbeek
 Senior Tax Auditor

Protested Item

Amount

Annual generator fee for the period 1/1/91 to 12/31/91 based on 3,720 tons of hazardous waste (soil contaminated with foundry metals).

Petitioner's Contention

Petitioner contends that no waste was generated in 1991.

Summary

Petitioner operated a foundry which began operations in the late 1950s. In the early 1970s, the foundry was expanded. During the expansion, soil and sand material located on the site was used as fill material which was paved for a parking area.

The foundry stopped operations in 1987. Tests of the soil and sand showed elevated levels of cooper, lead and zinc. Some of the material was treated to bring its metal concentration down. However, some of the material could not be fully fixated and was classified as California non-RCRA hazardous waste solid. This material constituted the 3,720 tons of waste material that petitioner disposed of in 1991.

Petitioner filed a Disposal Fee Return and paid the disposal fee. Petitioner filed a Generator Fee Return showing zero due.

Petitioner contends that it did not generate any hazardous waste in 1991. The hazardous waste was generated prior to 1991. In 1991, petitioner voluntarily cleaned up the site after operations at the foundry ceased. The Department of Toxic Substances Control contends that waste was generated when the contaminated soil was excavated.

Analysis and Conclusions

During the audit period, Health and Safety Code Section 25205.5 imposed an annual fee on every generator of hazardous waste. Section 25205.1(e) defined a "generator" as "a person who generates volumes of hazardous waste on or after July 1, 1988...." In Santa Clara Ranches, a published decision issued on December 10, 1991, this Board held that the generator of contaminated soil is the person who excavates and manifests the soil for disposal because excavation is the act which first causes the hazardous waste to become subject to regulation. Petitioner excavated and disposed of the soil in 1991 and therefore was the "generator" of the contaminated soil. Accordingly, petitioner is liable for the fee.

Recommendation

Redetermine without adjustment.

Michele F. Hicks
Michele F. Hicks, Staff Counsel

1-15
Date

JA