

Mr. E. V. Anderson  
Excise Tax Administrator

June 29, 1990

Gary J. Jugum  
Assistant Chief Counsel

Definition of "Disposal"

Attached for your signature is a memorandum to Mr. C. David Willis, Deputy Director of the Department of Health Services' Toxic Substance Control Program. The subject of the memorandum is the definition of "disposal". Since the Board's interpretation of the meaning of "disposal" may have implications for DOHS's facility permit program, we believe it is appropriate to give DOHS an opportunity to comment.

GJJ:wak  
2290C

Attachment

cc: Ms. Janet Vining

Mr. C. David Willis  
Deputy Director  
Department of Health Services  
Toxic Substances Control Program  
P.O. Box 942732  
Sacramento, CA 94234-7320

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Excise Tax Administrator

Definition of "Disposal"

This memo concerns the definition of "disposal" for purposes of imposing the various hazardous waste fees.

In a September 27, 1989 letter to John E. Scandura, Chief of Site Mitigation in DOHS's Long Beach office, an attorney representing the \_\_\_\_\_ company requested clarification concerning the application of hazardous waste fees to remedial activities which have occurred or will take place at \_\_\_\_\_'s facility. A copy of the letter was sent to the State Board of Equalization.

Under the \_\_\_\_\_ remediation proposal, which has been approved by DOHS, soil contaminated with friable asbestos materials will be graded, levelled, and permanently capped. In addition, \_\_\_\_\_ will remove other contaminated soils to the same area, and also cap these soils permanently.

The soils that are to be left in place and, at most, graded and levelled before being capped, will not be "disposed of", and thus no land disposal fee (Health & Saf. Code § 25174.1) or Superfund tax (§ 25345) will apply. Since no hazardous waste will be generated, no generator fee will be due concerning the soils that remain in place.

The contaminated soil that will be moved to a different part of the site and then capped presents another issue. There is no indication that the soil is being treated in any manner to reduce its hazardous nature, and \_\_\_\_\_ acknowledges that moving the soil to another part of the site constitutes a "disposal", with attendant land disposal fee, Superfund tax, and generator fee.

We are writing to advise you that the Board agrees with that the moving of the soil constitutes a "disposal" for

purposes of the Health and Safety Code. This conclusion may have implications in your permit program, since . . . may thus be required to apply for and obtain a facility permit or variance.

In a separate matter, a taxpayer removed fuel tanks from his property, and removed contaminated soil to roadways, also located on his property, where the soil was aerated and then allowed to remain in place as resurfacing material. The Board's position is that, for the following reasons, this action constitutes a "disposal" of the soil, subject to appropriate fees.

Health and Safety Code Section 25113 defines "disposal" to mean either of the following:

- (1) The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste so that the waste or any constituent of the waste is or may be emitted into the air or discharged into or on any land or waters, including groundwaters, or may otherwise enter the environment.
- (2) The abandonment of any waste.

Section 25123.5 defines "treatment" to mean "...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 any material contained therein, or removes or reduces its harmful properties or characteristics for any purpose." While the above-mentioned taxpayer's action involves the "placing" of waste on the land, suggesting it is a disposal, the aeration facilitates a change in the character or composition of the waste, thus suggesting that the activity is a "treatment".

More specific definitions of "land disposal" and "treatment" appear in Article 7.7 of Chapter 6.5 (The Hazardous Waste Management Act of 1986). There, "land disposal" is defined as "placement in or on the land" (§ 25179.3(h).) "Treatment", as defined in Section 25179.3(j), specifically excludes "[T]reatment occurring directly in or on the land, such as land treatment, except that treatment may include in situ treatment necessary for site mitigation." While these definitions apply only to Article 7.7, they provide guidance in interpreting the more general definitions of "disposal" and "treatment" in Sections 25113 and 25123.5, respectively. In addition, following these more specific definitions serves to promote consistent application of statutory requirements in California's hazardous substances control program.

Since the taxpayer places the contaminated soil on roadways and aerates it, the soil is "disposed of" rather than "treated", as treatment occurring directly in or on the land is specifically excluded from the meaning of "treatment", and is instead considered "land disposal". We intend to communicate this position to the taxpayer, but wish to so advise you because, again, this conclusion may have an impact on DOHS's facility permit program. The taxpayer may be required to obtain a permit as a disposal facility, or obtain a variance from that requirement.

Please contact me within 45 days from the date of this letter if you have any comments or wish to discuss these matters further. If we do not hear from you, we will respond to the taxpayers accordingly.

EVA:wak  
2268C

cc: Mr. Gary J. Jugum  
Mr. Robert M. Frank  
Mr. Dennis Mahoney, Department of Health Services  
Ms. Janet Vining