

Memorandum

To: Mr. Stephen R. Rudd, Administrator
Environmental Fees Division (MIC:57)

Date: April 4, 1996

From: Janet Wining
Legal Division

Subject: Activity Fee Billing; DTSC Transmittal #

I am writing in response to your March 26, 1996, memorandum to Walt Larson concerning an activity fee billing for [redacted]. I agree with your conclusion concerning the correct fee due from [redacted], and I disagree with [redacted] argument that it should not be charged interest. Interest is due on the correct amount of the fee beginning 30 days after the date of the original notice of determination for the fee.

At the request of the Department of Toxic Substances Control ("DTSC"), the Board issued a notice of determination to [redacted] on September 14, 1995, for a Class 3 permit modification for its transportable treatment unit ("TTU"). [redacted] asserted that it should have been assessed the fee for a permit renewal rather than a permit modification. DTSC and the Board agreed, and the fee was adjusted accordingly.

Two changes made to the Health and Safety Code, both effective January 1, 1996, affect the calculation of the activity fee due from [redacted]. First, Section 25205.7(b)(3) was amended by SB 1291 (Ch. 640, Statutes of 1995) to provide, among other things, that the fee for a permit renewal application for a TTU (including any application pending before DTSC as of January 1, 1996) is determined according to the type of permit authorizing the operation of the TTU, as provided in Section 25200.2. Second, Section 25200.2 was amended by SB 289 (Ch. 423, Statutes of 1995) to state that, if DTSC has not issued regulations for the permitting of TTU's by March 1, 1996, TTU's will be regulated pursuant to permit-by-rule regulations if they were authorized to operate under permit-by-rule on January 1, 1996, and pursuant to standardized permit regulations if they were authorized to operate under a hazardous waste facility permit on January 1, 1996.

[redacted]'s permit renewal application for its TTU was pending before DTSC as of January 1, 1996, and, therefore, the fee for that renewal application is determined by the type of permit

authorizing the operation of the TTU pursuant to Section 25200.2. Since DTSC has not adopted regulations covering the permitting of TTU's, and [redacted]'s TTU was authorized to operate under a hazardous waste facility permit on January 1, 1996, the fee for [redacted]'s permit renewal application is the same as the permit renewal application fee for a standardized permit facility.

[redacted] argues that, since its request for redetermination is based upon the Legislature's actions, it should not be charged interest on any amount due until it is notified of the correct fee. [redacted] further requests that the activity fee billing be "dismissed", subject to reimposition of an appropriate fee after March 1, 1996.

[redacted] was properly billed for an activity fee in September of 1994, after it submitted an application to DTSC. DTSC determined that the application was for a permit modification and requested that the Board bill [redacted] for the fee established in the Health and Safety Code for such an application. The Revenue and Taxation Code established a due date for the fee (Section 43152.10) and provided for the imposition of interest if the fee was not paid when due (Section 43156). A subsequent decision by DTSC, as well as legislative changes, resulted in a reduction in the amount of the fee due. However, the event which triggered the application of the fee (the filing of the application) occurred before the original notice of determination issued. Therefore [redacted] should be required to pay interest on the reduced fee, beginning 30 days after the date of assessment.

Please contact me if you have additional questions or would like to discuss this matter further.

Janet Vining

JV:lm

cc: Mr. Dave McKillip
Mr. Jeff George
Ms. Carol Reisinger