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Excavation

The person who excavates contaminated soil and manifests it for disposal is regarded as the generator of hazardous waste because excavation is the act which produces hazardous waste and which first causes hazardous waste to become subject to regulation. 4/12/94.

STATE OF CALIFORNIA BOARD
OF EQUALIZATION
BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition for
Redetermination Under the Hazardous
Substances Tax Law of:) DECISION AND RECOMMENDATION
)
)
) No. (Redacted)
)
)
)
Petitioner)

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

Appearing for Petitioner: (Redacted)

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, Staff Counsel

Date