

Memorandum

To : Stephen R. Rudd, Administrator
Environmental Fees Division - MIC:57

Date: June 5, 1995

From : Janet Vining
Legal

Subject: Corporation
Unpaid Interest

I am writing in response to your December 1, 1994 memorandum requesting an opinion concerning whether Corporation () owes unpaid interest charges for fiscal years 1987-88, 1989-90, and 1990-91. paid the hazardous waste facility fee for those fiscal years, but the payments were late. For the reasons set forth below, and based on certain presumptions also described below, I conclude that is not liable for such interest.

A discussion of this issue is now academic since, as you know, the Board approved proposed settlement of its refund litigation. However, I wanted to respond to your request since this issue may arise concerning other fee payers.

SB 922 (Stats. 1993, ch. 1145) changed the manner in which the hazardous waste facility fee applies to facilities undergoing closure. While the Legislature made pre-SB 922 law applicable to facility fee "payments" made before January 1, 1994, it made the new application of the facility fee retroactive as to "any other liability for the facility fee" (Health & Saf. Code, § 25205.2(g)).

Before applying these statutory provisions to the matter at hand, a factual question must be resolved. In its arbitration brief in the refund action, alleged that the facility did not receive any hazardous waste for disposal after July 1, 1987, in accordance with two consent orders entered into by and the Department of Health Services, effective July 23, 1987. admits that it continued to accept asbestos waste for disposal during the month of July, 1987, but argues that asbestos does not constitute hazardous waste for purposes of imposing the facility fee, since asbestos may be disposed of at landfills which are not required to be permitted as hazardous waste disposal facilities. In our pleadings, we alleged that also accepted hazardous waste in late 1987. I am not sure whether this waste was asbestos. If so, I presume would assert the same argument as to these latter disposals.

Stephen R. Rudd

June 5, 1995

Page 2

The question of whether [redacted] accepted only asbestos during 1987-88 and, if so, whether that fact has an impact on the applicability of the hazardous waste facility fee, was touched on in the discovery conducted in the refund litigation, but not fully argued or resolved. As noted below, the resolution of those issues affects [redacted] liability for the facility fee for fiscal year 1987-88.

If [redacted] continued to dispose of hazardous waste during fiscal year 1987-88, it is liable for the facility fee for that year under both pre- and post-SB 922 law, including any related interest and penalty.

As to the subsequent fiscal years (and 1987-88, if [redacted] can successfully argue that the acceptance of asbestos did not justify imposition of the facility fee), pre-SB 922 law applies to [redacted] "payments" of the facility fee for those years, but the outstanding interest is an unpaid "other liability" which is forgiven, based on a retroactive application of post-SB 922 law pursuant to section 25205.2(g).

Janet Vining

JV:wk

cc: David McKillip - MIC:57
Terry Grubbs - MIC:57
Larry Augusta - MIC:82
D. Robert Shuman - MIC:82