

**Memorandum**

To : Tony Munso - MIC:57  
Environmental Fees Division

Date: August 12, 1994

From : Janet Vining  
Legal Division

Subject:

I am writing in response to your April 25, 1994 memorandum concerning the application of the facility fee to [redacted]. It is your opinion that, for 1992, 1993, and 1994, [redacted] is subject to the annual fee paid by operators authorized to operate pursuant to permit-by-rule because it operated a transportable treatment unit ("TTU"). Further, you believe that [redacted] is exempt from the facility fee for those years, but is subject to the facility fee for 1989-90 and 1990-91. For the reasons set forth below, we conclude that [redacted] is liable only for the PBR fee beginning in 1994, and is exempt from the facility fee and PBR fee for all prior years.

On September 23, 1992, [redacted] was billed as a large treatment facility for 1989-90 and 1990-91. [redacted] filed a petition, and the Department of Toxic Substances Control ("DTSC") advised the Board that the facility size should be changed. On May 12, 1993, the Board redetermined the amounts to minitreatment for 1989-90 and small treatment for 1990-91. In addition, the facility was billed as a minitreatment facility for 1991 and a small treatment facility for 1992.

By letter dated April 27, 1993, [redacted] advised the Board that it would withhold its April facility fee prepayment pending the outcome of SB 922, which was then under consideration by the Legislature. On September 21, 1993, [redacted] filed for bankruptcy under Chapter 11, and the redetermined amounts were included in the Board's claim.

Health and Safety Code Section 25200.2(b), which was added by SB 922, states that the operator of a TTU must pay the same annual fee as facilities authorized to operate pursuant to permit-by-rule, as specified in Section 25205.14(a). The TTU operator is exempt from paying the facility fee imposed by Section 25205.2 "for any year or reporting period during which the unit was operating for any activity authorized under permit, except as specified in subdivision (b) of Section 25205.12."

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Section 25205.12(a) exempts the owner of a facility authorized to operate pursuant to permit-by-rule from the facility fee for any activities authorized by permit-by-rule at that facility for any year or reporting period during which the facility operates or operated. Section (b) states that the retroactive portion of this facility fee exemption "does not apply to any facility which was authorized by [DTSC] to operate on or before June 1, 1991, for any fees paid or billed prior to September 1, 1992."

It appears that the Legislature's intent in adopting Health and Safety Code Section 25200.2(b) was to allow a TTU to pay the same fee as a facility operated pursuant to permit-by-rule, even if the TTU has a full hazardous waste facility permit. In addition, the Legislature intended to give TTU's the same exemption from the facility fee afforded to PBR facilities, with the same limitation that applies to that exemption. The new rate for TTU's is applicable only beginning with the effective date of SB 922 (January 1, 1994), since there is no indication that the rate is to be applied retroactively. However, the exemption from the facility fee for TTU's is fully retroactive, unless the fees were paid or billed prior to September 1, 1992. Since [redacted] was not billed for fees until after that date, the limitation does not apply, and [redacted] is exempt from the facility fee for any year during which it operated under permit. In addition, [redacted] is not required to pay the fee applicable to a PBR facility until January 1, 1994, when Section 25200.2(b) went into effect.

Therefore, [redacted]'s only liability is for the fee paid by PBR facilities, beginning January 1, 1994.

Please call me if you would like to discuss this issue or need additional information.

JV:wk

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cc: Mr. Stephen R. Rudd - MIC:57  
Mr. Dennis Maciel - MIC:57  
Mr. David McKillip - MIC:57  
Mr. Larry Augusta - MIC:82

*Janet Vining*