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Responsible Carrier

An ocean common carrier transported a cargo of bricks to Europe. The bricks contained heavy metals. The consignee refused to accept the bricks, and the bricks were eventually ordered to be removed from the country by environmental authorities. The bricks were carried back to California by the carrier, and the carrier disposed of them as hazardous waste, listing itself as the generator on the manifests. The consignor of the bricks refused to accept the bricks on their return to California. The carrier is considered the generator of the waste because it first caused the bricks to become subject to regulation. 8/1/90.

Mr. Robert M. Frank
Environmental Fees Unit

August 1, 1990

Janet Vining
Legal

(Redacted) Shipping Lines

This is in response to your April 3, 1990, memorandum concerning abandoned cargo which (redacted) Shipping Lines disposed of as hazardous waste. I apologize for the delay in responding to your memo.

(Redacted) Shipping Lines (Redacted) is an ocean freight common carrier. In December 1986, (redacted) accepted cargo for shipment to Europe. The cargo was abandoned by the European consignee, and eventually ordered out of the country by environmental authorities. The cargo was returned to (redacted) which disposed of it as hazardous waste, listing itself as the generator on the manifests. (Redacted) states that it sent the cargo to Utah for disposal in February of 1989, but the manifests are dated February 1988. The waste, originally generated by (redacted) of (redacted) California, consisted of 171 tons of "metal contaminated bricks". It appears that (redacted) went bankrupt in about 1985.

Your question is whether (redacted), the common carrier, is responsible for hazardous waste taxes and fees associated with the disposal of the cargo abandoned by the European consignee and not returnable to (redacted), the original generator. We conclude that it is.

I spoke with (redacted) of (redacted) Shipping Lines, who offered the following information. The materials shipped consisted of broken pieces of refractory brick from the furnace at the (redacted) factory, which was demolished when the factory was torn down after (redacted) went out of business. The furnace had three layers of refractory brick. The inner layer contained traces of zirconium, a metal which can be extracted and reused. The bricks were shipped to an entity in Rotterdam that intended to remove the zirconium. However, rather than bricks from the inner layer of the old furnace, bricks from the middle layer, which did not contain zirconium, were sent. When the Rotterdam party tested the bricks and discovered that they were not the bricks it had contracted for, it refused to accept the shipment.

(Redacted) originally sold the bricks to a broker, who booked their international shipment through a forwarding agent. The goods traveled on a bill of lading. When the Rotterdam party refused to accept the bricks, they remained at the terminal, and various costs for storage and equipment use mounted. While the bricks did not contain zirconium, they had a high mercury content, and Rotterdam authorities ordered the goods removed from the country. (Redacted) attempted to return the bricks to the broker

and to the successors of (redacted), including (redacted), but none agreed to accept the bricks. (Redacted) then contracted with an environmental consultant to arrange the appropriate disposal of the bricks as hazardous waste.

(Redacted) generated the waste when the furnace was demolished. However, it was (redacted) that first caused the bricks to become subject to regulation by bringing them back into California, manifesting them as hazardous, and transporting them out of state for disposal at a hazardous waste landfill. Under the broad definition of "generator" found in the Department of Health Services' regulations (22 C.C.R. § 66078), (redacted) is the generator of the waste and subject to the generator fee. Neither the Health and Safety Code nor the Revenue and Taxation Code provides any exemption that would be applicable in the rather unique facts of this case.

There is no question that (redacted) submitted the waste for disposal, and is therefore subject to the appropriate disposal fees. (Redacted) must pay the disposal fee imposed by Health and safety Code Section 25174 (now Section 25174.1) at the rate specified for out-of-state disposals. Since (redacted) removed a release of hazardous waste caused by another (redacted) Section 25345.3(a) exempts it from payment of the Superfund tax for disposal of the bricks. However, at the time the bricks were submitted for disposal, the Health and Safety Code did not impose the Superfund tax concerning waste disposed out of state.

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