Exemptions Government Agency-Sewer Line Cleanup

A company discharged lead waste into the municipal sewer system in violation of the city's ordinances and a pretreatment plan submitted by the company. The city was exempt from the land disposal fee and generator fee concerning hazardous waste generated while the city endeavored to bring the company into compliance with its discharge requirement and while the city and the company cleaned out the contaminated sewer lines. 12/10/93.

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC: 82)
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December 10, 1993

Mr. (Redacted)
(Redacted)
(Redacted)

Re:

Dear Mr. (Redacted)

I am	(unreadable)	letter of April 14, 1993,
concerning	(unreadable)	hazardous waste land disposal
fee imposed	(unreadable)	Section 25174.1 to the City
of (redacted)	(unreadable)	sludge. I apologize for
the delay	(unreadable)	

After	(unreadable)	with Mr. (redacted) of
the City of	(unreadable)	Department. The facts of
this matter	(unreadable)	are as follows.

Background

In 198?	(unreadable)	implemented federally
required	(unreadable)	charges to the City sewer

system. The City adopted an ordinance which set standards and limits for organic constituents and heavy metals in such discharges. Subsequently, the City became aware that the sewer sludge produced at its sewer facility contained hazardous levels of lead. An investigation revealed the source of the lead to be the (redacted) Corporation ("redacted"), a battery manufacturer. The City started to work with (redacted) to reduce the lead content in the discharges. In 1981 or 1982, (redacted) submitted a plan to

the City to reduce the volume of discharge and to install pretreatment equipment which would reduce the lead content.

The pretreatment plan provided for yearly sampling of (redacted)'s discharge. In 1985, (redacted)'s discharge met the requirements of the City's ordinance. However, in 1988, the discharge was found to contain high levels of lead. Early in 1989, the City set out to prove that (redacted)'s pretreatment plan was not reducing the lead content of the discharge.

(Redacted) closed its operation in January 1990. It had already entered into a consent agreement with the Department of Toxic Substances Control that would have required it to close in June 1990. In August 1990, the lead levels in the City's sewer sludge had reduced to below the hazardous waste levels. The lead levels remained constant until January, 1991.

The City completed its investigation of the sewer lines in August 1990, and found accumulations of lead in the sewer lines. The City required (redacted) to clean out the contamination by January 1991. However, (redacted)'s act of forcing the lead accumulations through the lines caused the lead content of the sewer sludge to rise again. As part of the cleanup, (redacted) also removed sediment from the lines and sent it out-of-state. The City was listed as the generator of this waste, and paid disposal and generator fees. The City billed (redacted) for its costs, but has not been reimbursed.

From 1982 on, the Department of Health Services and the Regional Water Quality Control Board permitted the City to landspread the sewer sludge. The agencies limited the landspreading to 30 pounds of sewer sludge per acre per year.

In 1984, the Alternative Technology Division of the Department of Health Services classified the City's sewer sludge as non-hazardous, even though tests showed sufficient lead levels to qualify the sludge as hazardous. The City did not receive a variance for the sludge.

From 1984 to 1990, the City relied on the 1984 classification. The sewer sludge that had accumulated since 1984 was landspread in 1987. From 1987 to 1990, the City continued to accumulate the sludge. In 1990, test results showed that the sludge contained higher lead levels than allowed by state law. The City sought a variance for the sludge, but the application was denied in April, 1991. The City then divided the piles and applied to Toxics to classify the pile with the least contamination as non-hazardous. When Toxics did not agree, the City adopted a remediation plan for the waste which had accumulated from 1987 to 1992. The waste was manifested to an offsite disposal facility, and the City paid the appropriate disposal fee and generator fee.

Application of the Fees

Section 25174.1 of the Health and Safety Code imposes the disposal fee on each person who annually submits more than 500 pounds of hazardous waste for disposal in the state. Section 25205.5 imposes the generator fee on every generator of 5 tons or more of hazardous waste as a site during the calendar year. Section 25174.7(a) (1) states that the disposal fee and generator fee do not apply to hazardous wastes which result when "a state or local agency, or its contractor, removes or remedies a release of hazardous waste caused by another person. …"

The Board staff has had several opportunities to consider the application of this exemption to activities undertaken by state or local agencies. The staff found that the exemption applies where a state agency purchases property and must remediate soil contamination before the property can be used. On the other hand, the staff found that the exemption did not apply where a redevelopment agency demolished buildings to make way for development, even though the demolition of the buildings produced hazardous waste.

Generally, where the usual management of state or local agency activities or services results in the generation of hazardous waste, the state or local agency is liable for the generator fee and, if the waste is submitted for disposal, the disposal fee. The Section 25174.7(a) (1) exemption only applies where the state or local agency specifically performs an activity to remove or remedy a release of hazardous waste caused by another person.

Based on a fuller understanding of the facts of this matter, we have reconsidered our earlier opinion and now conclude that the exemption set forth in Section 25174.7(a) (1) applies to the hazardous waste generated while the City endeavored to bring (redacted) into compliance with its discharge requirements, and while the City and (redacted) cleaned out the contaminated lines.

In contrast to the usual operation of the sewer system by the City, the City's activities comprised a specific effort to address the problem as it was occurring. The City had established discharge standards and limits in a city ordinance and, had (redacted) complied with those standards and limits, the resulting sludge would not have been hazardous. As soon as the City discovered that (redacted) was violating the ordinance, it acted promptly to remedy the situation. In addition, part of the contamination in the sewer sludge resulted from (redacted) cleaning out the accumulated lead in the sewer lines. Under these circumstances, we find that the exemption set forth in Health and Safety Code Section 25174.7(a) (1) applies to the hazardous sewer sludge manifested by the City.

If you have any questions, please feel free to call me.

Very truly yours,

Janet Vining
Supervising Staff Counsel

JV:wk

cc: Mr. (redacted), City of (Redacted)
Mr. Charles A. White, California Waste Management
Mr. Dennis Mahoney, Dept. of Toxic Substances Control
Mr. Dave McKillip
Mr. John Isham
Mr. Larry Augusta