

WASTE AWAY GROUP, INC.	§	STATE OF ALABAMA
WASTE DISPOSAL SOLUTIONS, LLC		DEPARTMENT OF REVENUE
CHEMICAL WASTE MANAGEMENT, INC.	§	ADMINISTRATIVE LAW DIVISION
1001 Fannin Street, Suite 4000		
Houston, Texas 77002,	§	
Petitioners,	§	DOCKET NO. S. 02-810
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

Waste Away Group, Inc., Waste Disposal Solutions, LLC, and Chemical Waste Management, Inc. (together “Petitioners”) applied to the Department for a sales and use tax exemption certificate. The Department denied the application. The Petitioners appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). The parties submitted the case on a joint stipulation of facts. Hardwick Walthall and Curtis Liles, III represented the Petitioners. Assistant Counsel Wade Hope represented the Department.

ISSUE

The issue is whether certain equipment and materials purchased and used by the Petitioners at their hazardous waste disposal landfills in Alabama are exempt from sales and use tax pursuant to the pollution control exemptions at Code of Ala. 1975, §§40-23-4(a)(16) (sales tax) and 40-23-62(18)(use tax).

FACTS

The stipulated facts are as follows:

1. Petitioners own and operate landfills within the State of Alabama.
2. Petitioners’ business operations at the landfill sites consist of the secure disposal of solid waste provided by their customers for a fee.

3. Petitioner's landfills produce a byproduct called leachate that is hazardous to the environment and could pollute the underlying soils and local groundwater system of the surrounding area if not controlled.

4. Leachate is produced by rainwater or other precipitation falling over the solid waste at Petitioner's landfills and collecting in the landfill.

5. The composite liners and leachate control and treatment system equipment and materials at issue are purchased and maintained by the Petitioners to control and treat their own pollution, the leachate byproduct generated at their landfills.

6. The installment and maintenance of composite liners and leachate control and treatment systems by the Petitioners are necessary in order to comply with mandatory environmental permitting requirements established and enforced by the Alabama Department of Environmental Management.

7. Petitioners have applied for a sales and use tax exemption under Alabama Code Sections 40-23-4(a)(16) and 40-23-62(18) for the purchase and use of composite liners and leachate control and treatment system equipment.

ANALYSIS

Section 40-23-4(a)(16) exempts from Alabama sales tax "all devices or facilities . . . acquired primarily for the control, reduction, or elimination of air or water pollution. . . ."

Section 40-23-62(18) provides a substantively identical exemption from Alabama use tax for "all devices or facilities . . . used or placed in operation primarily for the control, reduction or elimination of air or water pollution. . . ."

In *Chemical Waste Management, Inc. v. State*, 512 So.2d 115 (Ala.Civ.App. 1987), the Alabama Court of Civil Appeals addressed the scope of a similar pollution control exemption relating to ad valorem tax. At issue was whether Chemical Waste Management's entire hazardous waste disposal facility at Emelle, Alabama was exempt from ad valorem tax.

The trial court denied the overall exemption, but granted the exemption “for that equipment used to filter air from storage tanks or to clean rainwater which falls into open storage pits.” *Chemical Waste*, 512 So.2d at 116.

The Court of Civil Appeals affirmed the trial court, finding that the exemption did not apply if the subject property was acquired primarily as an integral and necessary part of a profit-motivated business activity. The Court thus held that Chemical Waste Management’s entire facility was not exempt because “the taxpayer’s containment equipment is the very property from which its profits are derived.” *Chemical Waste*, 512 So.2d at 118. However, like the trial court, the Court of Civil Appeals also distinguished between the non-exempt equipment used by Chemical Waste to control its customers’ pollution, and the exempt equipment used to control its own pollution.

The vast majority of this taxpayer’s property and equipment is used in hazardous waste management. That is the service which the taxpayer’s business provides. As such, it can be distinguished from the ancillary equipment used to clean rain water and filter air – that equipment is not integral to the taxpayer’s stated purpose of managing hazardous waste.

Chemical Waste, 512 So.2d at 118.

The Petitioners in this case are not seeking an exemption for the equipment they use to contain and treat the waste obtained from their customers for a fee. Rather, they claim only that the composite liners and other materials used exclusively to control the leachate should be exempt. As stipulated, leachate is a hazardous waste byproduct produced when rain, snow, and other precipitation falls onto the Petitioners’ landfills.

Applying the rationale of *Chemical Waste Management*, the property in issue is exempt from sales and use tax because it is acquired and used to treat the Petitioners’ own pollution. It is not used to control or treat the waste from the Petitioners’ customers, nor

does it enhance the profitability of the Petitioners' landfills.

One could argue that but for the Petitioners' profit-motivated activities, i.e. the operation of landfills, there would be no leachate created, and thus no need for the materials used to control and treat the leachate. But that argument would also apply to any industry that creates pollution as a by-product of its profit-motivated activity. For example, but for a paper mill making paper, there would be no need for the scrubbers, defoamers, and other equipment needed to control and treat the pollution created by the process. Clearly, however, such equipment used to control the pollution created by the paper-making process is exempt. Likewise, the property in issue that is acquired and used to control and treat the ancillary leachate resulting from the Petitioners' profit-motivated activity is also exempt. It is irrelevant that the Petitioners' profit-motivated activity is itself pollution control.¹

The Department is directed to issue sales and use tax exemption certificates to the Petitioners allowing them to purchase tax-free the composite liners and other property used

¹ The Administrative Law Division has applied the rationale of *Chemical Waste Management* in numerous cases. See, *Air Products and Chemicals v. State of Alabama*, U. 95-359 (Admin. Law Div. O.P.O. 12/14/95) (exemption denied for the taxpayer's use of equipment that produced oxygen used in treating wastewater pollution); *Wastewater Disposal Services v. State of Alabama*, U. 91-144 (Admin. Law Div. 8/23/91) (exemption denied for equipment used by a taxpayer in the business of disposing of wastewater produced by oil and gas wells); *Industrial Safety Products, Inc. v. State of Alabama*, S. 90-257 (Admin. Law Div. 9/17/92, Final Order on Application for Rehearing 11/18/92) (exemption denied for equipment sold to asbestos removal contractors because the contractors used the equipment in their profit-motivated business); *Waste Away Group, Inc. v. State of Alabama*, U. 88-107 (Admin. Law Div. 2/16/90) (exemption denied for garbage trucks and roll-off containers used by a taxpayer in its solid waste disposal business). The above and other Administrative Law Division cases involving the sales and use tax pollution control exemptions can be found on the Department's web sit at www.ador.state.al.us.

to control and treat leachate.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 16, 2003.