

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 88-195
U. 88-196

CIBA-GEIGY CORPORATION
P.O. Box 113
McIntosh, AL 36553,

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Taxpayer.

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FINAL ORDER

The Revenue Department denied two petitions for refund of sales tax and use tax filed by Ciba-Geigy Corporation ("Petitioner") concerning the period January 1, 1985 through December 31, 1985.

The Petitioner appealed to the Administrative Law Division and a hearing was conducted on March 30, 1989. John R. Nix, Esq. and Dewitt Reams, Esq. appeared for the Petitioner. Assistant counsel Duncan Crow represented the Department. Based on the evidence presented by the parties, the following recommended findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The issue to be decided is whether certain materials purchased by the Taxpayer in connection with two projects at its facility in McIntosh, Alabama were acquired primarily for the control, reduction or elimination of air or water pollution and thereby exempt from sales and use tax pursuant to Code of Ala. 1975, §§40-23-4(a)(16) and 40-23-62(18), respectively. The projects involved: (1) the closure of two settlement ponds used for the treatment of pollutants flowing from the Taxpayer's manufacturing facility, and

(2) above-ground vaults" used for the storage or disposal of the pollutants removed from the settlement ponds. The parties agree that the dollar amounts contained in the refund petitions are correct.

1. The Settlement Ponds

The Petitioner maintains a number of settlement ponds near its manufacturing facility which are used for holding or treating the contaminated materials flowing from its manufacturing processes.

The two ponds in issue were idle in 1985 and were subsequently closed in accordance with a closure plan mandated and approved by both the Environmental Protection Agency ("EPA") and the Alabama Department of Environmental Management ("ADEM"). The closure plan was required to prevent any possible seepage of the contaminants into the surrounding ground water.

In closing the ponds, the sludge-like contaminants were chemically dewatered and then dredged from the pond floor. A minimum of two feet of the underlying clay was also removed. The surface was then covered with a high density polyethylene liner which was anchored into the surrounding clay. The ponds were then backfilled with clay and topsoil, and natural vegetation was planted to prevent erosion and to restore the area to its natural appearance.

2. The Above Ground Vaults

The contaminated sludge was removed from the ponds and stored in a series of above-ground vaults. The vaults are a series of

separate cells contained in a master vault system. The vault system was constructed in accordance with EPA and ADEM guidelines, and its only function is the permanent storage of waste materials coming from the Petitioner's manufacturing plant. The entire vault area is approximately 125 feet long, 50 feet wide and 25 feet deep.

The base of the vault complex was constructed by first preparing and compacting the surface clay. A high density polyethylene liner was then laid and covered with a three foot thick layer of clay. A layer of sand was then added as a leak detection system. A second polyethylene liner was added and covered with a layer of sand to allow for drainage.

The contaminated material was placed on the prepared base and compacted to a specific thickness. When a cell reached capacity, the mass was covered with another polyethylene liner, which was welded on all sides so that the contents were totally sealed. Clay, sand, topsoil and natural vegetation was then added to restore the area to its natural appearance.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-4(a)(16) provides an exemption as follows:

(16) The gross proceeds from the sale of all devices or facilities, and all identifiable components thereof or materials for use therein, acquired primarily for the control, reduction or elimination of air or water pollution and the gross proceeds from the sale of all identifiable components of or material used or intended for use in structures built primarily for the control, reduction or elimination of air and water pollution.

Code of Ala. 1975, §40-23-62(18) provides an exemption as follows:

(18) The storage, use or consumption of all devices or facilities, and all identifiable components thereof or materials for use therein, used or laced in operation primarily for the control, reduction or elimination of air or water pollution, and the storage, use or consumption of all identifiable components of or materials used or intended for use on structures built primarily for the control, reduction or elimination of air or water pollution.

The above exemptions were enacted to allay a company's expense in purchasing required pollution control devices and equipment. "The goal of the exemption is to encourage all businesses to control pollution and to assist them in their compliance with mandatory environmental regulations." Chemical Waste Management, Inc. v. State, 512 So.2d 115, at 117.

The Department admits that the settlement ponds were used for pollution control, but contends that the materials used in closing the ponds were not related to pollution control, and thus should not be exempt. The Department further contends that the above ground vaults were for storage only, and thus do not qualify for the exemptions.

However, the evidence is clear that the materials used in the pond closures were used to prepare the contaminated sludge for further for further treatment or to prevent seepage of any residual contaminants into the surrounding ground water. The materials were thus acquired primarily for the control and prevention of water

pollution as required by strict EPA and ADEM guidelines, and as such are exempt under the above statutes.

The storage vaults were constructed for the sole purpose of string the contaminated sludge from the settlement ponds (and other unrelated contaminants). Clearly the permanent storage of contaminants constitutes the control of pollution so that any materials acquired primarily for that purpose should be exempt.

The Department argues that the Chemical Waste case is applicable. In that case, a similar exemption from ad valorem taxes was disallowed. The gist of the Court's decision was that the hazardous waste dump in issue was operated to make a profit, and that the intent to control pollution was only incidental to the primary profit motive. Thus, the Court distinguished between the control of pollution unrelated to a company's primary business, but done as required by government guidelines for the purpose of protecting the public interest.

The present fact situation is clearly distinguishable from the Chemical Waste case. The settlement ponds and storage vaults are unrelated to the Petitioner's primary business and are not in themselves profit making activities. But for pollution control, the ponds and vaults would not have been constructed. The fact that the potential pollution sought to be abated is a "hazardous waste" is not material. "Hazardous waste" may pollute the air or water just as non-hazardous substances.

The above considered, the materials in issue were acquired

primarily for the control, reduction or prevention of water pollution and thus are exempt from sales and use tax. The refunds should be granted.

The Taxpayer's liability should be recomputed based on the above findings, and any refund(s) due the Taxpayer should thereafter be granted. This Order shall constitute the final order for purposes of judicial review according provisions of §41-22-20, Code of Alabama 1975.

Done and ordered this the 24th day of May, 1989.

JAMES M. SIZEMORE, Commissioner