



December 22, 2020

Meredith Williams, Director
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806

RE: Treated Wood Waste Variance Process

Dear Director Williams:

First of all, thank you for your attention to the treated wood waste (TWW) issue and your devotion of internal resources to develop and implement a short-term solution for the management of TWW until the Legislature has an opportunity to work on a mutually-agreeable long-term framework. We appreciate your December 16th letter outlining a variance-based short-term fix and the several conversations we have had with DTSC exploring what a variance based-system looks like.

While I speak today for RCRC, the following comments are based on several conversations with other stakeholders and many of these suggestions reflect the broader sentiments of the larger coalition.

Like you, we are particularly interested in quickly developing a framework that will avoid a substantial increase in illegal dumping and burning of TWW and that will provide a workable, reasonable management solution for generators, transporters, and facilities alike. We also share mutual objectives of reducing the timeframe for program delivery and easing the administrative burden for both DTSC and variance applicants. We offer several suggestions to achieve those goals:

Strive for a January 15 rollout date, at the latest. We understand that a temporary variance-based system for TWW management takes time to put together; however, we have serious concerns that it may take until mid-February to make variance applications available and begin processing them. We fear that this delay will create too long of a gap in which businesses and residents are left with no real, practical opportunities for management and disposal of TWW. Anything more than an exceedingly brief gap in “coverage” will result in sharp increases in illegal disposal, where cleanup and management costs are shifted to already strained state and local governments.

1215 K Street, Suite 1650, Sacramento, CA 95814 | www.rcrcnet.org | 916.447.4806 | Fax: 916.448.3154

Delays are particularly impractical for generators, who may be expected to store TWW on site until variances can be approved, which could exceed the 90-day storage limit for some generators. Given the nature of the work involved, it may be impractical or impossible for contractors to store TWW on site after project completion. This concern is most acute for smaller and residential projects where the risk of illegal disposal is highest.

Furthermore, there may be serious space constraints limiting the ability to store materials at transfer stations. Local governments and solid waste enterprises that operate those sites will be put in the unenviable position of having to turn away loads of TWW while knowing that the generator may simply dump the TWW along the side of a road rather than storing the material at their site and making a second attempt to take it to the transfer station.

Issue operator-specific, rather than site-specific variances. Based on previous conversations, it is unclear whether DTSC intends to issue site-specific or operator-specific variances. Health and Safety Code Section 25143(b)(1) makes it clear that DTSC may issue a single variance for multiple sites owned or operated by an individual or business concern.¹ While operators may operate multiple similar facilities that have a long history of managing TWW, they may also handle multiple points in the chain of custody. Issuance of operator-specific variances will substantially reduce the number of variance applications that must be submitted and reviewed. We strongly urge DTSC to avail itself of the opportunity to minimize its administrative burden (and that faced by applicants).

Make variance applications available as soon as possible. The variance application process will be new for generators, transporters, and facilities. It may take time for those entities to complete the application or have any questions answered. These entities will want to do the right thing, but many will be extremely frustrated if they are told they must obtain a variance and then experience delays before they can even begin the application process. As such, we suggest making variance applications available as close to January 1 as possible.

Explore designation of TWW as universal waste via emergency regulations. Recognizing that variances may be an awkward solution for many generators and transporters, we suggest that DTSC explore designating TWW as a universal waste pursuant to 22 CCR 66260.22 (at least temporarily). Designation of TWW as a universal waste will reduce the regulatory barriers for generators and transporters while maintaining adequate safeguards to protect public health and safety and the environment. At the same time, this approach must be accompanied by the issuance of variances for solid waste facilities, as disposal at the single hazardous waste facility permitted to accept TWW will not be a practical or economically feasible solution. We would look forward to further conversations with you about the feasibility of this approach.

¹ "The department may grant a variance upon receipt of a variance application for a site or sites owned or operated by an individual or business concern. The individual or business concern submitting the application for a variance shall submit to the department sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied for all situations within the scope of the requested variance."

Post an informational bulletin for solid waste haulers and facilities. While we appreciate DTSC's recently released fact sheet and any forthcoming Frequently Asked Questions (FAQ) documents, we urge DTSC to develop additional materials and informational bulletins. The existing fact sheet appears to be focused primarily on generators. We suggest developing similar documents for solid waste haulers, transfer stations, and solid waste landfills. In particular, we suggest including information on storage requirements (time limits and physical requirements) at different types of facilities.

Reduce or eliminate variance application fees. It remains unclear whether DTSC will charge a fee for variance applications. We note that many of those seeking variances may have limited resources available and that application costs should not pose a barrier for entities seeking to lawfully manage TWW by going through the proper permitting channels.

Continue discussions with stakeholders in border counties where the variance process may not adequately address management issues. Entities in several counties near the Oregon border dispose of their solid waste in Oregon. The sunset of Health and Safety Code Section 25150.7 creates additional challenges for those jurisdictions. Those challenges for the disposal of solid waste and TWW may not be adequately remedied through issuance of a variance by DTSC. We hope to coordinate further conversations between DTSC and relevant stakeholders and regulators as to how to resolve these issues.

In closing, we thank you again for your attention to this issue and look forward to working with you on this short-term solution and the longer-term legislative fix. Please do not hesitate to contact me with any questions.

Sincerely,



JOHN KENNEDY
Legislative Advocate

cc: Diana Vazquez Ballesteros, Legislative Director, DTSC
Rizgar Ghazi, Acting Deputy Director, Hazardous Waste Management Program, DTSC
Rick Brausch, DTSC
Caroline Godkin, Deputy Secretary for Environmental Policy, California Environmental Protection Agency
Melissa Immel, Deputy Legislative Secretary, Office of Governor Gavin Newsom