

TREATED WOOD WASTE COMMENTS / LETTERS

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April 12, 2006

Eduardo Nieto
Supervising Hazardous Substances Engineer
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Dear Mr. Nieto:

The Division of Maintenance in the Department of Transportation (Caltrans) appreciates the opportunity to comment on the regulatory straw proposal for the Management of Treated Wood Waste (TWW) dated February 27, 2006. Caltrans requests that you consider one of the following options, listed in priority order:

1. Continue existing requirements for the management of non-Resource Conservation and Recovery Act hazardous TWW found in the Health and Safety Code Section 25150.7 after the sunset date of January 1, 2007; or
2. Include Caltrans under the Utility Service Exemptions; or
3. Manage TWW as universal waste.

If the above options are not viable, then Caltrans has comments and suggested language on the proposed TWW Alternative Standards as follows:

Section 67386.5 – Labeling

Comments:

The proposed language addresses TWW transported within California and excludes TWW transported out of California. Labeling and/or placarding of transport containers are covered under Title 49 Federal Code of Regulations, Parts 171-180 and in Title 8 California Code of Regulations, Section 5194. An alternative method to communicate the hazards of TWW and ensure safe handling is through hazardous communications, Material Safety Data Sheet, shipping papers and best management practice written to comply with the National Pollution Discharge and Elimination System (NPDES) permits.

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Section 67386.6 – Accumulation

Comments:

Caltrans requests The Department of Toxic Substances Control (DTSC) include performance standard based statutory language (Best Management Practices) and/or include exemptions in accumulation periods.

The State Water Resources Control Board issued an NPDES Storm Water Management Plan (SWMP) permit to Caltrans to regulate storm water discharges from Caltrans facilities. Caltrans' SWMP establishes Best Management Practices (BMP) for concentrated flow conveyance controls. The BMP prevents run-on and run-off to the extent practical for pollutants. Accumulation of waste at Caltrans facilities is covered under various BMP, preventing pollutant discharge to the waterways.

TWW accumulation time varies at facilities and is dependent on factors affecting the locations and replacement of guardrails or signposts due to damage caused by the traveling public. Urban areas most often have a higher replacement rate of guardrails or signposts than remote locations. Storage containers (transport bins) may fill within 90 days in high accident areas while it may take up to a year in remote locations. The focus of the accumulation time should be to remove waste when it can no longer be effectively contained to prevent run-on or run-off, prior to exceeding the container storage capacity or breeches the container.

Suggested Language:

67386.6 (c) – A person shall accumulate TWW in a container that prevents run-on or run-off. The TWW shall be transported to a disposal facility within 90 days after container is filled to its maximum capacity.

Section 67386.7 – Transportation

Comments:

DTSC proposes manifesting and tracking TWW when transporting. Requiring manifesting of TWW would be an increased burden in managing this waste stream. Caltrans proposes the use of an alternative tracking mechanism conducted under current laws at the disposal facility.

A Disposal Reporting System exists and is required by solid waste landfills under the Public Resource Code, Section 41821.5 and 4181.2. Information from the shipping paper could be used to assist in tracking the generator, transporter, and type of waste. Tipping fees could be collected when disposing of materials to assist landfills in tracking TWW.

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Caltrans ensures its TWW is disposed of properly in two ways: contract language (Public Contract Code) and disposal receipt. The waste disposal contract is an agreement where contractors agree to dispose of waste as directed by Caltrans and in compliance with all Federal and California environmental, employee and transportation laws/regulations (DTSC; California Occupational Safety and Health Administration; Federal Department of Transportation; Department of Motor Vehicles, and California Highway Patrol). The contract stipulates that the contractor will be reimbursed for disposal charge with receipt. A contractor's invoice must include this receipt for payment. The invoice is verified and records kept for three years beyond the close of the contract.

Suggested Language:

Replace proposed Section 67386.7 with the following:

67386.7 (a) – A person managing TWW shall comply with the following requirements:

(1) Shipping Paper:

A shipping paper containing all of the following information shall accompany the TWW while in transport:

- (A) The quantity of TWW being transported;
- (B) The TWW generation site address;
- (C) The shipment start date;
- (D) The name, address and telephone number of generator; and
- (E) The name, address and telephone number of the transporter.

(2) Landfill requirements;

A landfill that receives a shipment of TWW shall:

- (A) Comply with the requirements of Sections 66265.71 and 66265.72 of this division.
- (B) Track the amount of TWW, information about the generator and transporter of TWW and originating generation site.

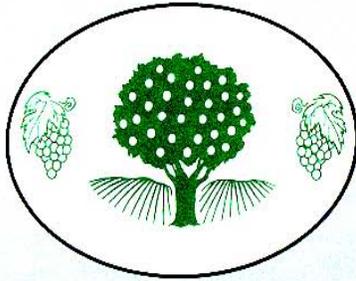
Please consider the above mentioned options and if you have any questions regarding these options or comments, please contact Charleen Fain-Keslar at (916) 654-4269.

Sincerely, ORIGINAL SIGNED

DONALD E. FOGLE
Office of Homeland Security

Eduardo Nieto
April 12, 2006
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c: **Sri Balasubramanian**
Charlene Fain-Keslar



CALIFORNIA GRAPE & TREE FRUIT LEAGUE

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April 4, 2006

Department of Toxic Substances Control
Attn: William Beckman – Treated Wood Waste Workshop Comments
P.O. Box 806
Sacramento, California 95812-0806

Dear Mr. Beckman:

On behalf of the California Grape & Tree Fruit we would like to thank you for holding public a meeting March 16, 2006, and soliciting comments on the Treated Wood Waste issue. The League represents about 85 percent of the volume of California's table grape and deciduous tree fruit communities which will be greatly affected by the regulations that are adopted under the mandate of AB 1353.

Our members want to ensure that treated wood wastes – grape stakes – are handled, transported and disposed of in a manner that is safe for the public and environment. But it is crucial that the regulations are economically viable to ensure that the rule doesn't turn into a burden for California growers and shippers. The League shares the views of the bill author, Assembly Member Barbara Matthews, who stated "that the homeowners and businesses who generate treated wood waste would have a practical, economical way to properly dispose of it," in comments on the issue.

In reviewing the proposed straw proposal there were some concerns.

- The proposed regulations place restrictive mandates and requirements on generators and disposers which would discourage the proper disposal of treated wood waste. It would be in everyone's favor to have regulations that encourage participation by establishing regulations that are workable and attainable.
- One example of the restrictive standards has to do with a 90-day limit on the accumulation of treated wood wastes. The majority of our growers' operations are located in rural areas – with the largest amount of table grape vineyards in Kern and

Tulare counties – making it difficult to justify disposing of treated grape stakes every 90 days. An entire vineyard removal would be fitting to travel to one of two landfills that accept treated grape stakes. It is important to note that each facility is at least a 100-mile round trip from most growers and shippers.

- It is unnecessary that the regulations for treated wood wastes mirror the requirements in dealing with high risk hazardous wastes because treated wood wastes were deemed to fall under “unique circumstances” by the legislature. Therefore, requiring manifests, labels, accumulations restrictions, transportation and treatment requirements should not included in the interim standards.
- The table grape industry began handling the removal of treated grape stakes differently about three years ago when the stakes could no longer be burned or chipped. Since that time there has been confusion on what the requirements are in disposing of treated wood stakes. At one time Tulare County growers were being permitted to burn the stakes while Fresno County growers were not allowed to burn them. It has been an added issue for the agricultural industry to comply with the requirements, which comes with an added cost.
- Proper disposal of grape stakes costs money. Stacking the treated stakes results in added labor, transporting equates to added fuel and labor costs, and disposal at certified facilities comes with fees. There is funding available through the Environmental Quality Incentive Program (EQIP) under the Natural Resources Conservation Service. This program pays a cost share rate of up to 50% of the cost, not to exceed \$75 a ton, for loading, transportation and disposal of treated wood stakes. The funding process is fairly lengthy and takes about six months, which would conflict with the 90-day accumulation requirement. Grape stakes don’t have to be removed from the ground to begin the EQIP application process but priority is given to growers with stakes already removed.

California table grape growers want to comply with the requirements to properly dispose of treated grape stakes and currently face many hurdles to do so. It is hoped that a workable and user-friendly set of regulations are adopted by the Department of Toxic Substances Control that will not increase the level of burden required to dispose of treated grape stakes.

Sincerely,

Gabrielle Kirkland

Director
Environmental and Regulatory Affairs

March 30, 2006

Mr. William Beckman,
Hazardous Substances Engineer
California Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: Proposed Regulations for Management of Treated Wood Waste

Dear Mr. Beckman:

I am writing to provide my comments on the Department's recent draft regulations for management of treated wood waste (TWW) pursuant to California Health and Safety Code Section 25150.7, AB 1353. As you know, I authored AB 1353, and its language was intended to provide the greatest latitude in the development of your regulations and for the broadest interpretation, not the most prescriptive.

AB 1353 requires certain treated wood waste (generally classified as non-RCRA hazardous waste) to be disposed of in a class I hazardous waste landfill, or in the composite-lined portion of a class II or class III solid waste landfill, and specifies the requirements for management and disposal of such treated wood waste.

I authored this bill, in part, because of the unique circumstances surrounding treated wood waste. First, not all treated wood waste is hazardous. Second, the science supports the less burdensome disposal of this material in the composite-lined portion of a landfill, rather than in a class I hazardous waste landfill.

My colleagues in the legislature agreed, as AB 1353 received almost unanimous, bi-partisan support when it was passed. Additionally, both the supporters and representatives of the environmental community worked diligently to come to an agreement on each of the provisions of my bill. Virtually every word, phrase and comma was thoroughly analyzed to make sure that both the environment would be protected and that the homeowners and businesses who generate treated wood waste would have a practical, economical way to properly dispose of it. Further, worker safety, waste hauler needs, and landfill requirements were carefully balanced.

Much of AB 1353 provides a detailed, proscriptive set of statutory requirements for education, notification, handling, and transportation of treated wood waste. The draft regulations DTSC has recently proposed do not comport with the spirit and intent of AB 1353 because they contain unnecessary and burdensome requirements which DTSC must reconsider.

I would suggest the Department listen closely to those who will be required to comply with the regulations and that DTSC streamline and minimize the next draft. I also suggest that the Department pay particularly close attention to the needs of agriculture and rural communities by adopting practical accumulation, tracking, transporting and disposal rules that meet the needs of those constituents, while still protecting the environment.

Sincerely,

BARBARA S. MATTHEWS
Assemblymember, 17th Assembly District

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March 30, 2006

William Beckman
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812

Dear Mr Beckman,

RE: Comments on Treated Wood Waste Alternative Management Standards

The County of Sonoma would ask the Department of Toxic Substances Control (DTSC) to consider several realities when developing alternative management standards for treated wood waste (TWW).

1. Original purpose and use of treated wood.
2. The ubiquitous nature of TWW.
3. The generators of TWW.
4. The purpose of the Universal Waste Rule.
5. Maximizing proper disposal of TWW by removing barriers to proper disposal.
6. Specific recommendations for alternative management standards.

Unlike the majority of wastes regulated by DTSC, treated wood (TW) is a product that is specifically designed to be used in an outdoor environment with exposure to the weather, including rain. In that respect treated wood differs from other regulated hazardous wastes even those used in the outdoor environment, such as pesticides. With pesticides there are management controls for application, which are designed to limit exposure, particularly during rainstorms. It is reasonable to expect the majority of TWW managed will already have spent years in an exposed outdoor environment prior to disposal. Therefore, concerns and standards that require special handling to avoid run-off is rather moot. The product will have already leached most of what it will leach already. If the State deems the product acceptable for use in exposed, outdoor settings, then why impose very expensive management standards at the time of disposal, which will only serve as a deterrent to proper disposal?

The Universal Waste Rule (UWR) was designed for ubiquitous wastes generated by parties that do not regularly generate hazardous waste when the waste can be handled safely under reduced regulations. The County can see no better waste stream to apply the UWR to than TWW, considering the majority of generators of TWW are not currently regulated for hazardous waste management. The handling of TW does not require special training nor the use of personal protection equipment, and therefore TWW can be handled safely by laypersons. It is not possible to “spill” TWW, so even in the case of a vehicle accident involving TWW, merely picking up the TWW would be sufficient mitigation. Understanding that DTSC does not current have authority to designate UW’s, why not develop alternative standards that mimic the UWR? The public is already familiar with the UWR requirements, and the UWR appears to be functioning well with other designated wastes.

The fewer the regulations and the lower the cost of handling TWW, the more likely the material will be dispose of properly. This is particularly important when it is not always possible to identify TWW in waste wood. We need the cooperation of the public to identify and segregate TWW, so we need to make the handling and disposal requirements as easy as reasonable and as inexpensive as possible. If UWR style regulations are not sufficient, then the original use of TWW needs to be reconsidered.

The County’s specific recommendations for alternative management standards for TWW based on the concept regulations dated February 27, 2006 are as follows:

1. §67386.2 Clarify under what conditions burning TWW is acceptable or unacceptable. This statement seems to be in direct contradiction to §67386.3.
2. §67386.3 states that “ (a)(2)scavenged” is a prohibited activity; however, “(a)(5) reused, reclaimed or recycled, with or without treatment, *unless the reuse is consistent with the currently approved use of the preservative which the wood has been treated*” allows for the potential of reuse. Scavenging is the precursor to reuse. We suggest that scavenged be added to (5) scavenged, reused, reclaimed or recycled....
3. Labeling requirements should reflect UWR requirements: (a) a unit shall be labeled “Treated Wood Waste”; (b) In lieu of labeling a unit a generator or agent may accumulate TWW within a designated area demarcated by boundaries that are clearly labeled with one of the following phrases: “Treated Wood Waste.”
4. §67386.6 should reflect the UWR:
 - a) A TWW generator or agent may accumulate TWW for no longer than one year from the date the TWW is generated, or received from another generator or agent, unless the requirements of subsection (b) and (c) of this section are met.
 - (b) At no time is a generator or agent to accumulate in excess of ?? pounds of TWW before TWW is sent for final disposal, unless the 67386.6(b)(1)(2) and (3) are met. At no time shall accumulation exceed ?? pounds of TWW before TWW is sent for final disposal.
 - (1) [site (B), (C) & (D) from proposed TWW regs.]
 - (c) A TWW generator or agent may accumulate universal waste for longer than one year from the date the TWW is generated, or received from another generator or agent, if such activity is solely for the purpose of accumulation of such quantities of TWW as necessary to facilitate proper recovery, treatment, or disposal. However, the generator or agent bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of TWW as necessary to facilitate proper recovery, treatment, or disposal.
 - (c) A TWW generator or agent shall be able to demonstrate the length of time that the TWW has been accumulated from the date it becomes a waste or is received. The generator or agent may make this demonstration by:
 - (1) Placing the TWW in a container and marking or labeling the container with the earliest date that any TWW in the container became a waste or was received;
 - (2) Marking or labeling the individual unit of TWW with the date it became a waste or was received;
 - (3) Maintaining an inventory system on-site that identifies the date the TWW being accumulated

became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any TWW in a unit or a group of containers of TWW became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any TWW in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the TWW has been accumulated from the date it becomes a waste or is received.

5. The training requirements under §67386.6 should be simplified. The UWR simply states: “A large quantity handler of universal waste shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.” Rather than suggesting that hazardous waste handling training is necessary, please consider the realistic dangers in handling TWW.

6. The proposed regulations for transportation §67386.7 are the most excessive standards proposed and pose the biggest barrier to proper disposal. The County opposes the entire section and recommends that the standards allow the use of Bills of Lading for shipment. There should be an exemption that quantities 15,000 pounds (the estimated maximum a standard flat bed truck construction truck or roll-off bin can transport) or less do not require a Bill of Lading, if being transported from the original source for the purposes of proper disposal. All subsequent transport of any quantity of TWW must be shipped on a Bill of Lading with of the standard requirements for maintenance of such documents. This flexibility would allow generators to maintain a normal relationship with landfills, but also assure that agents serving as consolidation points for TWW track and maintain records of TWW volumes and disposal destinations. In many ways, this reflects the service relationship of household hazardous waste facilities, where the generator has limited responsibilities, and the consolidation point has more. Requirements can also be made that landfills accepting directly from original sources track volumes received. Bills of Lading are sufficient for universal waste, the County sees no reason why they are not sufficient for TWW.

***Allied Waste Industries, Inc.
California Refuse Removal Council
Norcal Waste Systems, Inc.
Rural Counties' Environmental Services Joint Powers Authority
Sanitation Districts of Los Angeles County
Solid Waste Association of North America, California Chapters
Waste Management***

March 30, 2006

William Beckman
California Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

SUBJECT: COMMENTS ON DRAFT STRAW REGULATIONS FOR TREATED
WOOD WASTE (HSC Section 25150.7, AB 1353)

Dear Mr. Beckman:

Thank you for the opportunity to provide comments on the draft straw implementation regulations for treated wood waste (TWW) pursuant to California Health and Safety Code Section 25150.7, AB 1353. As you know, the undersigned are representatives of a coalition of California entities providing comprehensive solid waste and C&D collection, transportation, processing, recycling, and disposal services. While we support the overall objective of the draft regulations to adopt alternative management standards for non-RCRA TWW, consistent with statute, we would like to offer the following suggestions to modify the draft regulations.

One of our primary concerns is that the draft regulations contain certain provisions whereby TWW would be managed according to hazardous waste standards. We believe that this is unwarranted and inconsistent with the intent of AB 1353. AB 1353 provides for alternative management standards for TWW, recognizing that TWW poses less of a threat to human health and the environment, when managed properly, than other hazardous wastes. In this respect, TWW is more like Universal Waste than traditional hazardous waste.

As stated in the Universal Waste Rule, Title 22 CCR Section 66261.9, Universal Wastes are commonly generated by a wide variety of types of establishments and by a large number of generators. Additionally,

“Systems to be used for collecting [Universal Waste]...would ensure close stewardship of the waste...The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes...”

This definition of Universal Waste aptly describes TWW. Accordingly, we believe it appropriate to use many of the Universal Waste management practices as a model when managing TWW. Our specific comments on the draft TWW regulations are offered below.

Section 67386.2 Applicability

The draft regulations and associated documents provide some guidance as to what constitutes TWW. However, many formulations are used in wood treatment. Therefore, we request that DTSC provide guidance on the specific types and kinds of TWW that are covered by the regulations and how to recognize them in the field.

We recognize that CCA and Pentachlorophenol treated wood waste are likely to be hazardous when encountered. However, we are not aware of any other treated wood waste products that would be hazardous. We are concerned with the Department's representation that creosote treated wood may be hazardous. We are not aware of any substantial data indicating that creosote treated wood is hazardous. If the Department has such data, we request that it be shared with the public prior to the initiation of any rule-making. In the absence of any such significant data we strongly suggest that creosote treated wood not be included in any regulations that would presume it to be hazardous.

Section 67386.3 Prohibited Activities

The listed activities that are prohibited include mixing TWW with other wood waste prior to disposal. The intent of this provision is unclear. Any landfill that may accept TWW under these regulations would likely also be allowed to accept untreated wood waste. TWW will likely arrive at an appropriate landfill mixed with some wood waste that is not treated. If both the non-treated wood waste and the TWW are acceptable for disposal, it should not matter if they are disposed of together. Therefore, Section 67386.3(a)(3) should be deleted or better defined so that if there is a specific concern relating to mixing wood waste prior to disposal, it is stated in this section.

Section 67386.4 Definitions

A definition of Treated Wood Waste should be included in the list of definitions. As written, the regulations are not clear as to what is covered.

Section 67386.5 Labeling

We agree that TWW should be labeled at the point of generation. However, due to the nature of operations at solid waste facilities such as transfer stations, material recovery facilities (MRFs), and C&D processing facilities, and in view of the condition of the TWW once it arrives at these facilities, labeling each TWW unit is unwieldy and potentially unsafe. When TWW is managed at these facilities, labeling should be allowed in the area or on the container where TWW is accumulated, consistent with Universal Waste labeling requirements.

The label itself should contain specified information for the TWW but there should be flexibility in regards to the label content, size, and format. Again, the Universal Waste labeling requirements provide an appropriate model for TWW labeling.

For reasons explained later in this letter, the TWW label should not include reference to a manifest document number.

In view of the above, we propose that Sections 67386.5(a) and (b) be amended as follows:

“(a) TWW generated, accumulated, stored, or transported within California shall be conspicuously labeled. The person controlling the TWW shall ensure that each unit or the area or container in which the TWW is contained is labeled. In order to clearly indicate the nature of the waste to the receiving party and/or any observer, the TWW shall be labeled or marked with the following:

“TREATED WOOD WASTE” — ~~Potential health hazard if mishandled. Do not burn or scavenge. California State Law prohibits improper disposal. If found contact the nearest police or public safety authority, or the California Department of Toxic Substances Control at (800) 698-6942.~~

Generator Name and Address: _____

Accumulation Date: _____

Manifest Document Number: _____

(b) The generator of TWW, managed in accordance with the alternative management standards of this article, shall label each unit of TWW or the area or container that contains TWW and ensure that labels are maintained in compliance with the requirements of subsection (a).”

Section 67386.6 Accumulation

Storage Practices

It is important that TWW be maintained in a manner that minimizes releases to the environment. Section 67386.6(2) provides several examples of storage practices that may be used to achieve this goal. Because facility operators may have additional, alternative practices that can achieve the same goal, there should be a provision that allows these options.

Therefore, Section 67386.6(E) should be added to the regulation as follows:

“(E) Alternative Storage: The TWW shall be accumulated by other alternative means such that a release to the environment is minimized.”

Accumulation Time

Section 67386.6(c) of the draft regulations specifies that TWW shall not be accumulated for more than 90 days. In many areas of the state, insufficient TWW is accumulated to allow disposal within 90 days to be economically feasible. Therefore, this section should be amended as follows:

“(c) A person shall not accumulate TWW for more than 90 days- after the TWW accumulation area or accumulation container is full.”

Training

Section 67386.6(e) pertains to employee training. We believe it is important that employees are properly trained in TWW management and safe handling practices. As in the Universal Waste regulations, training topics specific to the waste are appropriate; however, reference to general hazardous waste training rules are unnecessary. Therefore, Section 67386.6(e)(1) should be deleted.

New Section – Accumulation at Permitted Solid Waste Facilities

The draft TWW regulations specify disposal of TWW in either a Class I hazardous waste landfill or in a composite-lined portion of a solid waste landfill unit that meets certain requirements. We support these provisions. We understand that under the current draft regulations, accumulating and managing TWW at transfer stations, MRFs, and C&D processing facilities (“TWW accumulation facilities”), aside from loadchecking functions, would require a hazardous waste facility permit.

We believe that restricting these facilities from non-loadchecked accumulation of TWW will lead to illegal dumping. In most cases, these facilities act as the de facto local dump, and if generators are not allowed to bring TWW there (where it would be properly managed), all too often they will find an expedient, illegal alternative.

Furthermore, in some locations the TWW accumulation facility is located at some distance from the landfill where TWW can be accepted for disposal. Moreover, many of these landfills are not open to the public. By disallowing TWW accumulation facilities to manage non-loadchecked TWW, the state will encourage practices that increase the threat to human health and the environment rather than minimize it.

Offsite TWW accumulation facilities (for example, at solid waste transfer stations and material recovery facilities) can provide an essential service in the proper management of TWW. They operate under stringent permit and regulatory requirements. Therefore, we propose a new section that allows both loadchecked and non-loadchecked TWW to be managed at a permitted transfer station, material recovery facility, or C&D processing facility.

Section 67386.7 Transportation

This section of the draft regulations places TWW management under hazardous waste transportation and tracking standards. We believe that TWW can be managed to meet the statutory requirements, and to minimize impacts to human health and the environment, with alternate transportation provisions. Again, the Universal Waste management standards provide a model from which TWW transportation requirements can be developed.

Under the Universal Waste rule, shipments are tracked through a record in the form of a log, invoice, manifest, bill of lading or other shipping document (22 CCR 66273.39(b)). We believe that adopting these practices would be in keeping with the intent of AB 1353 to track TWW and would simplify the tracking process, particularly in view of the recent changes to the hazardous waste manifesting requirements.

Therefore, Section 67386.7 should be amended to delete (a) and replace it with:

“(a) A person managing TWW shall keep a record of each shipment of TWW sent from the facility to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each TWW shipment shall include the following information:

 (1) The name and address of the TWW generator facility, and destination facility where the TWW was sent;

 (2) The quantity of TWW sent;

 (3) The date the shipment of TWW left the facility.”

Apparently, one of the reasons that your Department proposed using a manifest for TWW was to ensure the collection of data regarding the shipment of TWW. We are not clear about what the purpose and need of such data may be. Substantial justification for the need of such information would have to be clearly documented prior to the regulatory imposition of such new reporting requirements. If such reporting can be justified, we suggest a simpler method of obtaining this data is simply for any landfill that receives hazardous TWW for disposal must submit an annual report to the Department. However, we do not believe there is sufficient need for intermediate facilities, such as transfer stations, MRFs and C&D facilities, to report this information.

Section 68386.9 Standards for Disposal of TWW

Existing regulations and permit conditions specify health and safety requirements for landfill workers. Therefore, Section 673986.9(b)(4) should be deleted.

Mr. William Beckman
California Department of Toxic Substances Control
March 29, 2006

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In closing, we appreciate the opportunity to provide these comments for your consideration. Please contact any of the undersigned if you have any questions or require further information.

Sincerely,

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President, Sector Strategies
for Allied Waste Industries, Inc.
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Cc: Peggy Harris, Division Chief, DTSC

March 30, 2006

William Beckman, Hazardous Substances Engineer
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, California 95812-0806

Re: Treated Wood Waste Workshop Comments

Dear Mr. Beckman,

The Western Wood Preservers Institute (WWPI) appreciates the opportunity to comment on the draft conceptual discussion regulations DTSC published for discussion at the March 16, 2006 workshop on Treated Wood Waste. As you know, WWPI is the Trade Association representing the Treated Wood industry in Western North America. As such, WWPI was a major participant in the drafting and passage of AB 1353 (Mathews, 2004).

The California Legislature overwhelmingly passed AB 1353 dealing with disposal of Treated Wood Waste (TWW) in the state. The foundation of the legislation was an acknowledgment by the legislature that TWW presents “*unique circumstances*” (H&S Code Sect. 25150.7(a)) *that justify management of it in a less burdensome manner than “ordinary” hazardous waste*. Passage provided for an exemption of TWW from hazardous waste control laws if it is disposed of in the composite lined units of appropriate municipal landfills and would thus be *deemed to be a solid waste and not a hazardous waste*. The legislation further outlined management standards and directed that regulations for the disposal of TWW be developed under a principal of practicality.

Legislative Background

The legislation represented a cooperative consensus effort among legislators, numerous interest groups, and state agencies, and encompassed a number of key principals and requirements including:

- ❖ That TWW (treated wood materials which the generator had determined are no longer useful as a product and must be disposed) which may be designated by state criteria as a state only hazardous waste does not represent a significant risk to the public or the environment. TWW is a unique material which can be appropriately disposed under criteria significantly less restrictive than high risk hazardous waste materials.
- ❖ A study of state information on landfills demonstrated that disposal of treated wood waste in a composite-line portion of solid waste municipal landfills is appropriate and protective of human health and the environment. Thus far 29 landfills are approved to receive the materials and as many as 50 other facilities are likely technically acceptable.
- ❖ The legislation required certain specific actions to help assure the safe use and handling of treated wood and disposal of TWW. Several bill requirements have been completed:

- Industry program of posting safe use and handling information posters.
- Industry Guidance document on appropriate identification, handling and disposal of TWW provided to users.
- State developed guidance on disposal of TWW.
- ❖ The regulations included interim management standards for TWW. It was the understanding and agreed intent that these interim guidelines would form the basis of eventual regulations.
- ❖ The legislation required that by January 2007 the DTSC in consultation with the California Integrated Waste Management Board, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment adopt management regulations. **It is this regulatory process that is now underway.**

Appropriate Principles for Consideration in Regulation Development

In the successful negotiation of the bill there were significant compromises, including many of the items in the interim management standards. The acceptance of a regulatory process was made with the understanding of all parties that the regulations would be based upon the agreements that were reflected in the interim management standards. To that end the following items reflect appropriate common goals and principals in the best interest of the public and the industry for the development of the regulatory management standards.

- ❖ **The regulations should encourage (and not discourage) the appropriate disposal by generators of TWW in approved landfills thereby minimizing any unintended exposure of the material to the public or environment. Appropriate disposal will be best accomplished by minimizing restrictive mandates and bureaucratic requirements placed on the generators and disposer.**
- ❖ **Recognize that the legislature found that TWW presents “unique circumstances” (H&S Code Sect. 25150.7(a)) that justify management of it in a less burdensome manner than “ordinary” hazardous waste.**
- ❖ **Fully incorporate the legislatures’ mandate that the regulations adopted pursuant to AB 1353 addressing management of TWW be limited to what is “practical” (H&S Code Sect. 25150.7(g)(2)(A)).**
- ❖ **The Regulations should reduce or minimize any unnecessary burdens they place on TWW generators, haulers or disposers. Requirements normally associated with high risk hazardous wastes dealing with matters such as manifesting, labeling, accumulation restrictions, transportation and treatment requirement should not be included in exceedance of those in the legislated interim management standards. The Regulations should not limit other options, including disposal by burning in state approved facilities.**
- ❖ **The point of control for tracking and monitoring of TWW volumes should be at the point of entry to the landfill through utilization of basic and practical bills of lading or load characterizations with minimum record keeping and reporting requirements placed on the landfill operators.**

Given the foregoing, while we appreciate the hard work and thought that went in to the Department discussion draft, we believe that the draft is unduly burdensome and exceeds the legislative intent. As

such, we do not believe it would be approved by the Office of Administrative Law, pursuant to the Government Code §11349.1

In order to provide a basis for further discussion, we have prepared the attached re-draft of the department's proposal. We look forward to discussing it with you. If there are any questions, please feel free to contact our legislative advocate, Ms. Kathryn Lynch at (916) 443-0202.

Sincerely

R. Dennis Hayward, Executive Director
Western Wood Preservers Institute

cc: Ms. Peggy Harris, Chief, Regulatory & Program Development Division
The Honorable Barbara Matthews, California State Assembly
Ms. Kathryn Lynch, Legislative Advocate, Lynch & Associates

Treated Wood Waste

Chapter 34 Alternative Management Standards for Specified Hazardous Wastes

Article 1: Scope

(a) This chapter establishes alternative management standards for the following specific wastes:

- (1) Treated Wood Waste (TWW) as defined in section 67385.3; and
- (2) Reserved.

Article 2: Management of Treated Wood Wastes (TWW)

§ 67385.1 Scope

(a) This article provides an alternative set of management standards in lieu of Health and Safety Code , Chapter 6.5 requirements and implementing regulations as hazardous wastes under chapters 11 through 16, 18, and 20 through 22 of this division for a person managing treated wood waste (TWW). All other chapters of this division apply.

§ 67385.2 Applicability

(a) This article applies only to TWW that is a hazardous waste solely due to the presence of preservatives regulated under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and which has been determined to be a hazardous waste pursuant to Chapter 11 of this division;

(b) The following materials are not eligible for alternative management options for TWW and are subject to regulation as hazardous waste:

- (1) wood subject to regulation as a hazardous waste under the federal act;
- (2) wood that is hazardous due to the presence of coatings, paint, or other treatments that are not regulated under FIFRA;
- (3) wood that is burned, recycled, reclaimed, or reused, except as otherwise lawfully permitted, or managed in accordance with the applicable requirements of chapter 6.5 of the Health and Safety Code;
- (4) TWW that is designated to be reused, but not in compliance with current FIFRA regulations; and

§ 67385.3 Definitions

The definitions set forth in section 66260.10 of this division shall apply unless otherwise defined. The following definitions shall apply to the terms used in this article:

“Treated wood” means wood that has been treated with a chemical preservative for purposes of protecting the wood against attacks from insects, microorganisms, fungi, and other environmental conditions that can lead to decay of the wood and the chemical preservative is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 and following).

“Treated wood waste” means treated wood that has been discarded or disposed of, or treated wood in the possession of a person who has determined that it will be discarded or disposed of.

“TWW” means treated wood waste.

§ 67385.4 General Requirements

Any person in possession of TWW shall ensure all of the following:

(a) TWW is properly stored, treated, transported, tracked, disposed of, and otherwise managed so as to prevent, to the extent practical, releases of hazardous constituents to the environment, prevent scavenging, and prevent harmful exposure of people, including workers and children, aquatic life, and animals to hazardous chemical constituents of the treated wood waste.

(b) TWW is not reused, with or without treatment, except for a purpose that is consistent with the approved use of the preservative with which the wood has been treated. For purposes of this subparagraph, “approved uses” means a use approved at the time the treated wood waste is reused.

(c) TWW is managed in accordance with all applicable laws.

(d) Any size reduction of TWW is conducted in a manner that prevents the uncontrolled release of hazardous constituents to the environment, and that conforms to applicable worker health and safety requirements.

(e) All sawdust and other particles generated during size reduction of TWW are captured and managed as TWW.

(f) All employees involved in the acceptance, storage, transport, and other management of TWW are trained in the safe and legal management of TWW, including, but not limited to, procedures for identifying and segregating TWW.

§ 67385.5 Identification of TWW

(a) The generator of TWW shall communicate to any transporter that he or she is being given possession of TWW.

(b) The transporter of TWW shall communicate to any solid waste facility or operation that it is being given possession of TWW.

§ 67385.6 Accumulation

(a) TWW shall be maintained in a manner that prevents unauthorized access and minimizes release to the environment.

(b) A person shall not accumulate TWW for more than one year, or until a commercially viable load, not to exceed 40 cubic yards, is accumulated, whichever is longer.

§ 67385.7 Tracking TWW Shipments

(a) The owner or operator of a solid waste landfill shall keep a record of each shipment of TWW received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of TWW received shall include the following information:

- (1) The name and address of the TWW generator or shipper from whom the TWW was sent;
- (2) The quantity of TWW received;
- (3) The date of receipt of the shipment of TWW.
- (4) The portion of the landfill unit into which the TWW is placed.

(b) The owner or operator of a solid waste landfill shall retain the records described in subsection (a) of this section for at least three years from the date of receipt of a shipment of TWW.

§ 67385.8 Standards for Disposal of TWW

(a) When disposed to land, TWW shall be disposed in either a Class 1 hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to Division 7 (commencing with § 13000) of the Water Code for discharges of designated waste, as defined in § 13173 of the Water Code, or TWW.

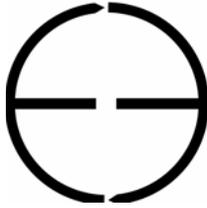
(b) A solid waste landfill that accepts TWW shall comply with the following requirements:

- (1) Comply with the requirements § 67385.4 for handling TWW;

(2) Ensure that any management of the TWW at the solid waste landfill prior to disposal complies with the applicable requirements of this article;

(3) Monitor the composite-lined portion of a landfill unit at which TWW has been disposed. When a release is verified, cease discharge of TWW to that landfill until corrective action results in cessation of the release. The landfill shall notify the department that TWW is no longer to be discharged to that landfill unit and again when corrective action results in cessation of the release; and

(4) Handle TWW in a manner consistent with all applicable requirements of the California Occupational Safety and Health Act of 1973 (Chapter 1 (commencing with § 6300) of Part 1 of Division 5 of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.



**California Council for
Environmental and
Economic Balance**

100 Spear Street, Suite 805 San Francisco, CA 94105

March 30, 2006

Mr. William Beckman, Hazardous Substances Engineer
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806

RE: Treated Wood Waste Workshop Comments

Dear Mr. Beckman,

Please accept the following comments submitted on behalf of the California Council for Environmental and Economic Balance.

We acknowledge the draft's recognition of the statutory provisions of Section 25143.1.5, however, the proposed language appears to be misleading in the way that it is written. It is not that utility generated treated waste wood (TWW-Utility) would not be eligible for this program, it is the fact this program is not applicable to TWW-Utility due to the statutory exemption from Chapter 6.5 contained in Section 23143.1.5 if the TWW-Utility is handled in accordance with the conditions of that section. As such, we suggest that proposed section 67386.2(b)(2) be removed, and instead, capture the Utility exemption from Chapter 6.5 by adding the following bold/italicized statement to the end of the proposed Applicability section,

22CCR 67386.2(a):

"(a) This article applies only to TWW that is a hazardous waste solely due to the presence of preservatives regulated under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) **and TWW that is not subject to Health and Safety Code Section 25143.1.5.**"

In addition, we believe that this draft is unduly burdensome and exceeds legislative intent of AB 1353, Mathews of 2004. In particular, the proposed requirements for manifesting, labeling, accumulation, transportation, etc. inappropriately exceed the legislated interim management standards.

Appropriate disposal by TWW generators will be best accomplished by minimizing restrictive mandates and bureaucratic requirements placed on the generators and disposers.

As has been acknowledged by the SWRCB, the requirements of Section 25143.5 are protective of groundwater. The additional management requirements proposed by this draft far exceed that which is necessary to protect public health and the environment and are excessively costly.

The Council looks forward to working with you on revisions to this draft.

If you have any questions please contact me at 916-444-7337.

Sincerely,

Robert W. Lucas

Cc: Ms. Peggy Harris, Chief, Regulatory & Program Development Division
Watson Gin, DTSC
The Honorable Barbara Matthews, California State Assembly