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## Department of Toxic Substances Control

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Arnold Schwarzenegger  
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### 45-DAY PUBLIC NOTICE AND COMMENT PERIOD

#### ALTERNATIVE MANAGEMENT STANDARDS FOR TREATED WOOD WASTE

**Department Reference Number: R-2005-04**

**Office of Administrative Law Notice File Number: Z-06-1113-01**

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**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, division 4.5, chapter 11, article 5, Appendix XII, and to add title 22, California Code of Regulations, sections 66261.9.5, and 67386.1 through 67386.11.

#### **PUBLIC HEARING AND WRITTEN COMMENT PERIOD**

A written comment period has been established commencing on November 24, 2006, and closing on January 8, 2007. DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on January 8, 2007 in the Byron Sher Auditorium, 2<sup>nd</sup> Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on January 8, 2007 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the

security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Ms. Nicole Sotak, Chief, Environmental Analysis and Regulations Section, at (916) 327-4508 or by e-mail at [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov) by January 4, 2007. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Mr. Adrian Recio at (916) 324-3095 or by e-mail at [arecio@dtsc.ca.gov](mailto:arecio@dtsc.ca.gov).

## **AUTHORITY AND REFERENCE**

These regulations are being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 25150.7. This section directs DTSC to adopt regulations establishing management standards for treated wood waste as an alternative to the requirements specified in chapter 6.5 of the California Health and Safety Code and title 22, division 4.5 of the California Code of Regulations (general hazardous waste regulations).

Health and Safety Code section 58012 (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991.) This section grants DTSC authority to adopt regulations to execute its duties.

These regulations implement, interpret, or make specific the following:

Health and Safety Code section 25150.7 and 25150.8 and Section 13173 of the California Water Code.

There are no comparable federal regulations for the types of treated wood waste addressed by these proposed regulations.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Existing Law**

Current State law establishes streamlined interim management standards for managing treated wood waste (TWW) that is also a hazardous waste. The interim management standards found in Health and Safety Code section 25150.7(e) remain in effect until January 1, 2007. To allow expeditious management of TWW after that date, the legislature directed DTSC to adopt in regulations, by January 1, 2007, permanent alternative management standards to replace the interim statutory standards to allow for the continued management of treated wood waste under streamlined standards.

Generally, the Health and Safety Code section 25150.7:

- Defines treated wood waste
- Limits the alternative management standards to treated wood waste that is hazardous only due to the wood treatment chemicals. That is, the wood cannot be identified as hazardous waste for other constituents that were applied to the wood such as lead from paint.
- Limits the alternative management standards to treated wood waste that is not regulated under the federal hazardous waste control law, Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. Sec. 6901 et seq.). Thus, these regulations must be limited to “non-RCRA hazardous waste.”
- Excludes waste utility generated treated wood waste that is subject to Health and Safety Code section 25143.1.5 from the requirements of 25150.7 and these proposed regulations.
- Allows treated wood waste to be disposed at a hazardous waste landfill or non-hazardous waste landfills that meet modern liner and leachate collection system requirements and that have waste discharge requirements (permits issued by the Regional Water Quality Control Boards) that allow acceptance of treated wood waste or designated waste. Note that the statute requires that these proposed regulations continue to allow disposal at these facilities.
- Prohibits disposal outside of the landfills referred to above, burning of treated wood waste, scavenging of treated wood waste, and reclamation and reuse that is not consistent with the State’s hazardous waste recycling laws.
- Establishes labeling requirements for labels that must be provided to treated wood retailers and wholesalers.
- Requires the treated wood industry to make proper handling and disposal information available to specified persons using treated wood.
- Directs DTSC, in consultation with the California Integrated Waste Management Board, the State Water Resources Control Board, and the Office of

Environmental Health Hazard Assessment, to adopt permanent regulatory alternative management standards as necessary for safe management of treated wood waste. It also specifies certain provisions for the management standards.

- Cancels any pre-existing variances for treated wood waste.
- Allows the regulated community to choose to comply with either the general hazardous waste control law or the alternative management standards for managing their treated wood waste.

Health and Safety Code section 25150.8, states that treated wood waste is no longer a hazardous waste when it is accepted by a non-hazardous landfill qualified to dispose of treated wood waste.

Existing treated wood waste alternative management standards (Health & Safe. Code § 25150.7(d) - (e)):

- The landfill that accepts treated wood waste must comply with the following standards:
  - Prevent scavenging of treated wood waste.
  - Ensure that management of the treated wood waste at the landfill complies with Chapter 6.5 of the Health and Safety Code as modified by these regulations.
  - Ceases to accept treated wood waste if monitoring reveals a release in the treated wood waste disposal portion of the landfill. The landfill may recommence accepting treated wood waste if corrective action eliminates the release.
- Generators, transporters, and intermediate handling facilities must comply with the following standards:
  - Prevent scavenging of treated wood waste.
  - Not store for more than 90 days.
  - Store in a manner that is protected from run-on and run-off, on a surface that is sufficiently impervious to prevent contact with the ground and leaching of treated wood waste constituents to the soil or water.
  - Not mix with other wood waste prior to disposal.
  - Comply with the California Occupational Safety and Health Administration (Cal/OSHA) statutes and regulations relating to hazardous waste.

Required provisions in the treated wood waste regulations (Health & Safe. Code § 25150.7(g)(2) et seq.):

- The regulations must ensure that treated wood waste 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.

- Treated wood waste is reused only for purposes for which the treatment chemical is contemporaneously registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).
- Treated wood waste is managed in compliance with all applicable laws.
- Any size reduction (cutting, splitting, etc.) is conducted in a manner that prevents release of hazardous constituents to the environment and complies with Cal/OSHA rules. All sawdust and fragments of treated wood waste generated during size reduction must be captured and managed as treated wood waste.
- Training requirements must ensure that all employees involved in the acceptance, storage, transport, and other management of treated wood waste are trained in the safe and legal management of treated wood waste, including, but not limited to, procedures for identifying and segregating treated wood waste.

Required provisions to be excluded in these the treated wood waste regulations (Health and Safe. Code § 25150.7(g)(2) et seq.):

DTSC is prohibited from adopting regulations that:

- Impose a requirement as an addition to, rather than as an alternative to, one or more of the requirements of Health and Safety Code, division 20, chapter 6.5.
- Would supersede the statutes allowance to dispose of treated wood waste in qualified non-hazardous waste landfills.
- Would supersede any other provision of this chapter that provides a conditional or unconditional exclusion, exemption, or exception to a requirement of this chapter or the regulations adopted pursuant to this chapter, except the department may adopt a regulation pursuant to this subdivision that provides an alternative condition for a requirement specified in this chapter for an exclusion, exemption, or exception and that allows an affected person to choose between complying with the requirements specified in this chapter or complying with the alternative conditions set forth in the regulation.

Current federal law addresses only treated wood waste that is regulated as a “RCRA hazardous waste” as defined in Health and Safety Code section 25120.2. It requires management of treated wood waste that is a RCRA hazardous waste to comply with the general management standards for hazardous waste. The universe of treated wood waste that is addressed by these regulations is classified as “non-RCRA hazardous wastes” and is not subject to regulation as a hazardous waste under federal law.

## **Policy Statement Overview**

**Broad Objectives:** Satisfy the mandate of Health and Safety Code section 25150.7(g) to adopt regulations specifying alternative management standards for non-RCRA treated wood waste.

**Specific Objectives:** DTSC recognizes the following secondary objectives for adopting these regulations:

- Conform the regulatory requirements for managing treated wood waste to the temporary statutory requirements to the extent that experience with implementation of those standards shows them to be both necessary and sufficient for protection of human health and the environment.
- Apply the least amount of regulatory burden to managing treated wood waste that is consistent with the provisions of Health and Safety Code section 25150.7 and protection of human health and the environment.
- Apply performance standards in lieu of detailed prescriptive standards to the maximum extent possible.

## **Proposed Regulations**

The proposed regulations would establish permanent streamlined management standards for treated wood waste with which the regulated community may comply in place of the general hazardous waste control laws. They apply only to treated wood waste that is identified as a hazardous waste under State law but is not regulated as a hazardous waste under federal law; thus, these standards have no federal counterpart. These streamlined management standards generally mirror the interim statutory alternative management standards in Health and Safety Code section 25150.7(e). The proposed regulatory standards:

- Add new language to existing regulations that redirects treated wood waste handlers to Chapter 34 Alternative Management Standard for Treated Wood Waste.
- Add a new waste code for treated wood waste to the list of State waste codes.
- Exclude from the scope of these proposed regulations treated wood waste that is:
  - Addressed by Health and Safety Code section 25143.1.5.
  - Hazardous for reasons other than or in addition to the wood treatment chemicals (for instance, lead-based paint).
  - Burned, recycled, reused, or reclaimed unless those activities are in compliance with the general standards of the hazardous waste control law.

- Reused for a use that is not within the registered use for the treatment chemical under the FIFRA and its implementing regulations.
  - Intended to be burned.
- Prohibit specified activities such as burning, scavenging, mixing with other wastes prior to disposal, storage on the ground, and disposal to land outside of a qualified landfill, and removal, destruction, obliteration, or defacing of any identifying mark or label that identified the material as treated wood waste.
- Define terms necessary for implementation to these regulations.
- Establish labeling requirements and exemptions from labeling requirements.
- Establish requirements for storing treated wood waste including:
  - Access control.
  - Storage under tarps.
  - Storage in containers.
  - Storage in buildings.
  - Storage on a containment pad.
  - A performance standard for other types of storage.
  - Accumulation time limits.
  - Training requirements for employees handling treated wood waste.
  - Exemptions for household generated treated wood waste and short term accumulation at the site of generation.
- Establish requirements for off site shipments of treated wood waste including:
  - The consignee must agree to accept the shipment.
  - Authority to ship to an off site temporary accumulation area if the treated wood waste is transported by the generator, the generator's employees, or the generator's agent and the shipment uses a shipping paper containing specified information and the treated wood waste handler retains that document for three years.
  - A prohibition on transportation in a manner that fails to prevent unauthorized access; loss, dispersion, and leaching of TWW; protect the TWW from precipitation; and, under conditions normally incidental to transportation, prevent release of TWW to the environment.
- Establish standards for tracking treated wood waste from the generation or accumulation site, receipt of treated wood waste, and reporting of receipt of shipments. Additionally, the regulations direct DTSC to make the reports publicly available and require treated wood waste handlers to retain records. Households are exempted from recordkeeping requirements.
- Require significant (>10,000 lbs/year) generators of treated wood waste to obtain a hazardous waste identification number and to notify DTSC of exceeding that quantity limit.
- Establish authority and standards for specified treatment of treated wood waste including:

- Allowing resizing for transportation under specified conditions.
- Requiring protective handling of resized treated wood waste and sawdust.
- Training of employees involved in resizing treated wood waste.
- Establish standards for disposing of treated wood waste. These standards conform to the statutory requirement that disposal in non-hazardous waste landfills continue under the same conditions under these regulations.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

DTSC has prepared an Initial Study and a draft Negative Declaration which indicates no significant effect from the project on the environment. These documents are being noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines. The CEQA Notice and draft CEQA documents are posted on the DTSC Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/TWW.cfm> or may be obtained from Ms. Nicole Sotak, of DTSC's Environmental Analysis and Regulations Section as specified below. Comments regarding the CEQA notice will be accepted until December 4, 2006.

### **PEER REVIEW**

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

### **BUSINESS REPORT**

Proposed section 67386.8 would require certain solid waste facilities that accept treated wood waste to submit semi-annual reports of treated wood waste accepted at the facility to DTSC. It is a discretionary decision for a solid waste facility to decide if they will accept treated wood waste. If a solid waste facility chooses to accept this waste, in lieu of a hazardous waste facility permit, a semi-annual report pursuant to section 67386.8 is required. The additional business resulting from volume of this additional waste stream should offset the cost of reporting. Information needed is specified and the facility is directed to report electronically, a simpler and more efficient medium for reporting. Furthermore, this reporting requirement will provide data needed to complete the report Health and Safety Code section 25150.7(k) requires DTSC to prepare, by June 2011, regarding the successful compliance and implementation of this regulation. DTSC finds that reporting treated wood waste received is necessary for the health, safety, or welfare of the people of California.



Proposed section 67386.9 would require the largest generators of treated wood waste to obtain an identification number and to notify DTSC that their generation of treated wood waste has exceeded 10,000 lbs in the calendar year. DTSC will use the EPA Identification Numbers and generator notifications to track large TWW shipments that represent the greatest risk to human health and the environment. DTSC finds that requiring ID numbers and notification from the largest treated wood waste generators is necessary for the health, safety, or welfare of the people of California.

#### **FISCAL IMPACT ESTIMATES:**

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs to local agencies. There is a potential savings to the local agencies of about \$1,300,000.

**Cost or Savings to Any State Agency:** There is a potential savings to State agencies of \$910,000 per year, some of which will be offset by resources necessary to train staff on new regulations.

**Cost or Savings in Federal Funding to the State:** DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

**Effect on Housing Costs:** DTSC has made an initial determination that there will be no impact on housing costs.

#### **Cost Impacts on Representative Private Persons or Businesses:**

DTSC has made an initial determination that the adoption of this regulation will save California businesses significant amounts of money when compared with the regulatory requirements that would come back into effect on January 1, 2007. This regulation offers alternative management standards for TWW that are less onerous and less expensive than existing hazardous waste requirements. DTSC estimates that savings would average about \$200 for households and about \$800 for businesses due to reduced transportation and disposal costs. DTSC has considered proposed alternatives

that would lessen any adverse economic impact on business and invites interested persons to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
2. Consolidation or simplification of compliance and reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

**Significant Statewide Adverse Economic Impact on Businesses:**

DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

**Assessment Statement:**

- (A) **Creation or elimination of jobs within California** – DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** – DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** – DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

**Effect on Small Businesses:**

DTSC has determined that provisions of this rulemaking may have an effect on small businesses. Adoption of these regulations will save California small businesses that generate treated wood waste significant amounts of money when compared with the regulatory requirements that would otherwise come back into effect on January 1, 2007.

## **CONSIDERATION OF ALTERNATIVES**

Alternatives available for consideration were severely limited by the prescriptive directives provided in the statutory language. Health and Safety Code section 25150.7(g)(2) directed DTSC to incorporate a list of specific controls.

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

## **AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS**

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Nicole Sotak of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

## **POST-HEARING CHANGES**

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Nicole Sotak at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

## **CONTACT PERSONS**

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Mr. William Beckman of DTSC at (916) 324-8293 or, if unavailable,

Ms. Evelia Rodriguez of DTSC at (916) 322-3810. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc/> and subscribe to the applicable Listserv. You may also leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Ms. Nicole Sotak, Chief  
Environmental Analysis and Regulations Section  
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Ms. Sotak's phone number is (916) 327-4508. If Ms. Sotak is unavailable, please call Mr. James McRitchie at (916) 327-8642.