

**INITIAL STATEMENT OF REASONS**  
**Alternative Management Standards for Treated Wood Waste**  
**Department of Toxic Substances Control Reference Number: R-2005-04**  
**Office of Administrative Law Notice File Number: Z-**

**EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS**

The proposed regulations do not duplicate or conflict with federal regulations for Management of non-RCRA treated wood waste because the U.S. Environmental Protection Agency (U.S. EPA) does not identify the wastes addressed by these regulations as hazardous wastes. Thus, there are no corresponding federal regulations.

**STUDIES RELIED ON**

DTSC has found this rulemaking presents no potential for a significant impact on the environment under the California Environmental Quality Act (Public Resources Code section 21000 et seq.). A draft initial study and negative declaration is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

**ALTERNATIVES CONSIDERED**

DTSC held two public workshops throughout the state to present the regulation concepts under consideration. The workshops were held serially with the second considering a proposal modified by the comments received at the first workshop. After the second workshop, the proposal was again modified and distributed for further public review and comment. A broad range of interested parties, including local agencies, environmental advocates and industry representatives, participated in the discussions. Comments received during and after the workshops were used to develop language for the proposed regulations.

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. The alternatives considered were:

- 1) The use of hazardous waste manifest was discussed during public workshops. DTSC received many comments stating that a hazardous waste manifest was unnecessary and burdensome for treated wood waste transportation and tracking. DTSC revised the language and removed this requirement; and

- 2) The most burdensome alternative would be to do nothing. This would result in treated wood waste becoming subject to full hazardous waste management standards and an unmet statutory mandate for DTSC.
- 3) Designating TWW as a universal waste was considered. However, under universal waste regulations, management standards specific to TWW would need to be developed and merged into existing universal waste regulations. The proposed regulations establish alternative standards for TWW similar to universal waste standards but in a stand-alone format that provide maximum flexibility in addressing the unique characteristics of TWW.

## **DETAILED STATEMENT OF REASONS**

### **Adopt new section 66261.9.5 Requirements for Treated Wood Waste**

This section is added to article 1, chapter 11, and specifies that treated wood waste are eligible for an exemption from regulations under chapters 12 through 20 by handling in accordance with alternative management standards for treated wood waste found in chapter 34 in lieu of existing hazardous waste management standards. This section is necessary to ensure that treated wood waste handlers are informed of the optional alternative management standards.

### **Amend Appendix XII to Chapter 11 of Division 4.5 of title 22.**

A waste code would be added, in numerical and alphabetical order, for treated wood waste ("614 Treated wood waste"). It is necessary to add a waste code for treated wood waste to allow DTSC to separately track the amount of treated wood waste managed under the full general hazardous waste regulations. DTSC must report on amounts of treated wood waste managed in the State as required by Health and Safety Code section 25150.7(k). In order to accurately assess the amounts of treated wood waste generated and disposed, DTSC must know both the amounts reported by the non-hazardous waste landfills authorized by Health and Safety Code section 25150.7 to receive treated wood waste under these alternative management standards and the amount managed under the optional full hazardous waste management standards. This waste code will allow the latter quantities to be tracked using the hazardous waste manifest tracking system.

Health and Safety Code section 208 was repealed in 1995 under SB 1360: therefore, it is necessary to delete section 208 from the authority cited.

### **Adopt new section 67386.1. Scope**

This section is necessary to establish the scope of the wastes that may be managed under these proposed regulations.

### **Section 67386.1(a)**

This subsection states that these regulations are alternative management standards for treated wood waste and specifically states which existing hazardous waste statutes and regulations do not apply. The exempted standards provide requirements for:

California Code of Regulations, title 22, division 4.5

- Chapter 12: Generators. These regulations provide separate generator standards in lieu of chapter 12;
  - Chapter 13: Transportation. These regulations provide separate standards for transporters and for transportation of treated wood waste in lieu of chapter 13;
  - Chapters 14 and 15: Permitted and interim status facility standards. These regulations authorize specific treatment and offsite storage activities and provide regulatory requirements for those activities in lieu of both chapter 14 and chapter 15 standards;
  - Chapter 16: Recyclable hazardous wastes. These regulations provide specific limitations on how treated wood waste can be reused and recycled in lieu of the chapter 16 general hazardous waste recycling standards;
  - Chapter 18: Land disposal restrictions and treatment standards. Non-RCRA treated wood waste is not subject to any land disposal restrictions or treatment standards;
  - Chapter 20: The Permit Program. These regulations provide separate standards for offsite storage of treated wood waste and for non-hazardous disposal. These activities are authorized outside of the hazardous waste permit program; and
- Health and Safety Code, division 20, chapter 6.5
    - Article 6: Transportation. These regulations provide separate standards for transportation of treated wood waste in lieu of article 6;
    - Article 6.5: Hazardous waste haulers. These regulations provide separate standards for hazardous waste transporters of treated wood waste in lieu of article 6.5; and
    - Article 9: Permitting of facilities. These regulations provide separate standards for offsite storage of treated wood waste and for non-hazardous disposal. These activities are authorized outside of the hazardous waste permit program.

Although the alternative management standards for TWW do not require TWW facilities to obtain hazardous waste facility permits, TWW facilities are subject to corrective action requirements pursuant to California Code of Regulations, title 22, section 66264.101 and section 25187 of the Health and Safety Code.

**Section 67386.1(b)**

This section recognizes the existing authority of DTSC and other governmental agencies to adopt or enforce additional requirements to those in these proposed regulations. While this regulation does not specifically grant that authority, it is necessary to restate this authority to clarify the ability of other State and local agencies to adopt additional standards to address specific local or other conditions and problems.

**Adopt section 67386.2. Applicability.**

This section establishes which wastes are eligible for management under these standards and which wastes are not.

**Section 67386.2(a)**

This subsection introduces the following subsections that list criteria that must be met for treated wood waste to be eligible for management under these regulations. It specifies that the wastes in question are wood wastes and then gives additional criteria in subordinate subsections.

**Section 67386.2(a)(1)**

This subsection limits the scope of the wastes eligible for management under these proposed regulations to wood wastes that are also identified as hazardous wastes. This limitation is necessary because DTSC's authority to regulate treated wood is limited to those treated wood wastes that are hazardous wastes. Treated wood wastes that are not hazardous are outside the jurisdiction of DTSC. Chapter 11 is the portion of the hazardous waste regulations where standards for classifying waste as hazardous waste are set forth.

**Section 67386.2(a)(2)**

This subsection limits the treated wood wastes that can be managed under these proposed regulations to treated wood wastes that are not hazardous waste for reasons other than the wood treatment chemicals identified in the regulation as "registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use as a wood preservative." This subsection implements Health and Safety Code section 25150.7(c) which establishes the limitation.

**Section 67386.2(a)(3)**

This subsection limits the treated wood wastes that can be managed under these proposed regulations to treated wood wastes that are not regulated as hazardous waste under the Federal hazardous waste control law, RCRA, and its implementing regulations. This subsection implements Health and Safety Code section 25150.7(c)(1) which establishes the limitation. Note that the limitation is also separately necessary because DTSC cannot establish hazardous waste regulations which are less stringent than those applied by the federal hazardous waste control regulations in Title 40, Code of Federal Regulations, for wastes regulated under those federal regulations. They are the "minimum national standards" for management of hazardous waste.

**Section 67386.2(b)**

This subsection introduces treated wood wastes to which the proposed regulations would not apply. This subsection states that treated wood waste that is exempted from hazardous waste management requirements by Health and Safety Code section 25143.1.5 is outside of the scope of these regulations. This subsection implements Health and Safety Code section 25150.7(c)(2).

### **Section 67386.2(c)**

This subsection introduces wood wastes that are ineligible for the proposed regulations. It is necessary to implement the following subsections that actually list the criteria for being ineligible for management under these regulations.

#### **Section 67386.2(c)(1)**

This subsection states that treated wood waste identified as hazardous waste due to chemicals other than the treatment chemicals is ineligible for management under these regulations. This subsection implements Health and Safety Code section 25150.7(c). Examples of wood precluded from management under this subsection includes, but is not limited to, wood painted with lead-based paint, duck boards from electroplating shops contaminated with heavy metals, and wood painted with hazardous antifouling paints.

#### **Section 67386.2(c)(2)**

This subsection precludes treated wood waste intended to be burned from being managed under these proposed regulations. This limitation is necessary because burning treated wood waste reduces the wood waste to a small amount of ash which contains the heavy metals used in treating the wood. Additionally, any volatile organic compounds (such as pentachlorophenol) are likely to be released with the combustion gases along with dust-like ash containing heavy metals. To ensure that hazardous constituents are not released into the air when burning hazardous wastes, strict hazardous waste permit standards are enforced.

Both because of the potential for human exposure to concentrated hazardous constituents in the ash and because of the potential for airborne release of hazardous constituents, it is necessary to preclude management of treated wood waste that will be burned under these streamlined management standards, and instead requiring compliance with the full and highly protective general hazardous waste management standards.

### **Adopt section 67386.3. Prohibited Activities.**

This section lists the activities that cannot be done to or with treated wood waste under these regulations. It is necessary because the streamlined and relatively simple alternative management standards do not provide sufficient control over the precluded activities to ensure protection of public safety and the environment.

#### **Section 67386.3(a)**

This subsection introduces the list of management activities that cannot be done under these streamlined standards.

#### **Section 67286.3(a)(1)**

This subsection prohibits burning treated wood waste under these regulations. As discussed in the entry for section 67386.2(c)(2) above, burning treated wood waste poses significant risks of release of hazardous constituents in the combustion gases

and exposure to humans in the ash and cannot be regulated protectively under these streamlined and simple management standards.

**Section 67386.3(a)(2)**

This subsection prohibits scavenging of treated wood waste under these regulations. Scavenged wood exits the hazardous waste management system and can be burned or used improperly with no controls and no protections. It is necessary to preclude scavenging of treated wood waste under these streamlined standards. Note that the statute, in Health and Safety Code section 25150.7(d)(2)(A), requires landfills disposing of treated wood waste to prevent scavenging. Likewise, prevention of scavenging is a required component of these regulations pursuant to Health and Safety Code section 25150.7(g)(2)(A). Thus, this subsection is necessary to implement both statutory provisions.

**Section 67386.3(a)(3)**

This subsection prohibits commingling of treated wood waste with other wastes under these proposed regulations if the treated wood waste was previously segregated. This provision is necessary to ensure that treated wood waste is not hidden in large volumes of other construction or other waste and sent to ineligible landfills.

However, treated wood waste is sometimes generated in a manner that commingles it with other waste by the nature of the generating activity. For instance, demolition of a structure necessarily mingles all of the materials from the structure and it would neither be necessary nor reasonable to require that the demolition firm sort the pile of debris to remove any treated wood waste. The provision "...if previously segregated" recognizes that treated wood waste cannot always be segregated when generated.

**Section 67386.3(a)(4)**

This subsection prohibits storage of treated wood waste in contact with the ground. This prohibition is necessary to implement the criterion in Health and Safety Code section 25150.7(g)(2)(A) that the regulations minimize the migration of hazardous constituents to the environment. Such migration is most likely when the materials are placed directly in contact with the soil.

DTSC recognizes that treated wood is generally used directly in contact with the soil and that resistance to soil organisms is one of the major intended characteristics of treated wood. However, treated wood waste includes all manner of physical states including degraded and disintegrating wood, saw dust and very small scraps of treated wood waste, and other damaged and easily degraded states. Small pieces with a high surface area to volume ratio and disintegrated wood can be expected to leach more hazardous constituents into the soil. Sawdust and very small pieces of treated wood waste whether cut to small size or weathered or degraded to small size is much more likely to be lost to the soil when the treated wood waste is removed for disposal.

**Section 67386.3(a)(5)**

This subsection prohibits managing treated wood waste that is recycled, with or without treatment, unless in compliance with subsection 67386.3(c). This subsection is necessary to comply with the statutory requirement of Health and Safety Code section 25150.7(g)(1)(B), that treated wood waste is not reused, with or without treatment, except when the wood is reused in conformance the contemporaneous allowed use for the specific chemical preservative used on the treated wood.

Note, however, that this subsection does not preclude recycling of treated wood waste in a manner that is inconsistent with the current registered uses of the wood treatment chemical. That reuse would be allowed if it were consistent with the general hazardous waste recycling requirements and the waste was managed in compliance with the general hazardous waste recycling standards. The waste could not, however, be managed in compliance with these alternative management standards, then be recycled in a manner inconsistent with this subsection.

#### **Section 67386.3(a)(6)**

This subsection prohibits treatment of the treated wood waste in any manner other than those treatment activities expressly allowed by proposed section 67386.10. Generally, treatment of a hazardous waste requires authorization from DTSC because hazardous waste treatment activities pose a high risk of release of hazardous constituents. This authorization is required by Health and Safety Code section 25201. Authorization is granted for most treatment activities only after a long and extensive review of the waste and the treatment process culminating in either a self-implementing authorization or a complex and difficult hazardous waste permit.

Because these regulations are streamlined and simple, DTSC is proposing to allow only a few lower risk treatment activities under the authority granted by Health and Safety Code section 25150.7(g). All other treatment activities such as incineration, reclamation, etc are prohibited under these proposed regulations but may be authorized under the more protective standards of the hazardous waste control laws.

#### **Section 67386.3(a)(7)**

This subsection prohibits disposal of treated wood waste to land except as allowed in proposed section 67386.11. This prohibition is necessary to implement the mandate of Health and Safety Code section 25150.7 that disposal be allowed consistent with and limited to that allowed by 25150.7(d). All other disposal under these regulations would be inconsistent with that statute. Note that treated wood waste could still be disposed at other locations under the general hazardous waste control laws; however, those locations would generally be fully permitted hazardous waste landfills.

#### **Section 67386.3(b)**

This subsection prohibits intentionally removing, obliterating, defacing, or destroying a label or mark that identifies treated wood waste as treated wood waste prior to disposal in a landfill. This provision is necessary to ensure that treated wood waste continues to be recognized as material that requires special handling and proper disposal. If the marks disappear, one can assume that much of the treated wood waste will simply be

tossed in the nearest dumpster or burn pile. Note that the mark is no longer important once the treated wood waste has been disposed in the landfill because the treated wood waste will have been buried at that point.

### **Section 67386.3(c)**

This subsection prohibits managing treated wood waste that is recycled, with or without treatment, unless the treated wood waste is reused and all the following conditions apply:

1. reuse is onsite;
2. at the time of reuse, reuse is consistent with a FIFRA approved use of the preservative with which the wood has been treated; and
3. prior to reuse, the TWW is handled in compliance all applicable management standards of this chapter.

The FIFRA compliant criterion for reuse is a restatement of a statutory requirement. Reuse is limited to onsite. More onerous recordkeeping and tracking requirements would be required if reuse were extended to offsite applications. Limiting reuse to onsite application ensures continuity of management controls by the generator (i.e., consistency with FIFRA, liability of hazardous waste, compliance with applicable standards).

The FIFRA compliance requirement was engendered by recent changes to the registrations for arsenical treated wood preservatives. Much of this wood was used for decks and playground structures for many years and arsenical treated wood will make up much of the treated wood waste for years to come. In re-evaluating the registration of the arsenical based wood preservatives, the U.S. EPA found that children playing on these decks and playground structures could be exposed to high levels of arsenic picked up from the wood surfaces. This provision implements Health and Safety Code section 25150.7(g)(2)(B), a criterion that must be met by these regulations. Thus, arsenical treated wood could be reused for the mud sill on a house, but not for the deck under these regulations.

Subsection (c)(3) establishes the management standards that must be met when handling the TWW prior to reuse. This is necessary to ensure that activities are in compliance with safeguards established under this chapter such as labeling, protective accumulation and resizing.

Subsection (c) is necessary to allow TWW to be reused in manner equivalent to a currently FIFRA approved product without requiring compliance with labeling, accumulation, and disposal requirements of this chapter. This section also clarifies that all alternative management standards apply to TWW prior to reuse and that reused TWW removed from service are subject to all alternative management standards.

Note, however, that this subsection does not preclude recycling of treated wood waste pursuant to Health and Safety Code section 25143.2.

**Adopt section 67386.4. Definitions.**

This section defines terms used in the regulations so that the entities defined can be clearly identified and the duties and obligations of all parties managing the treated wood waste are clearly understood. Generally, the definitions used throughout the hazardous waste control law apply; this section adds specific definitions for this chapter of the regulations.

**“Agent”** This term establishes the relationship between the generator or other handler of treated wood waste and another person hired to manage the treated wood waste. It is necessary to clearly identify who must comply with these regulations.

**“Class 1 hazardous waste landfill”** This term defines the type of hazardous waste landfill commonly referred to as a class 1 landfill. The statutory language used this term, but did not provide a definition. It is necessary to clearly identify what type of landfill may accept treated wood waste.

**“Composting facility” and “Transformation facility”** These definitions are used to exclude composting and transformation facilities from the types of solid waste facility that can accept treated wood waste. During the consultation with the California Integrated Waste Management Board (CIWMB) as directed by Health and Safety Code section 25150.7(g), the CIWMB requested that treated wood waste be excluded from two types of solid waste facilities: composting facilities and transformation facilities, because the treatment chemicals could both contaminate the products of the facilities and make composting or gasification less economically feasible by making the plants own waste products hazardous wastes. Both types of facilities are defined by referring to the Public Resources Code.

**“Resizing”** This term identifies those treated wood waste treatment methods that involve reducing the size of treated wood waste. It is necessary to define the type of treatment allowed to make treated wood waste more amenable for storage, transportation, and reuse.

**“Solid Waste Landfill”** This term identifies those landfills that are candidates for accepting treated wood waste. Normally, hazardous wastes must be disposed at hazardous waste facilities as defined in section 66260.10. The solid waste landfill is defined by reference to the Public Resources Code. Note that all solid waste landfills cannot accept treated wood waste; there are additional standards that must be met for a solid waste landfill to accept treated wood waste (see proposed section 67386.11.)

**“Transfer or Processing Station”** This term identifies those facilities that accept solid waste, including (potentially) treated wood waste, for transshipment to a solid waste landfill or to a material recovery facility to separate out different types of recyclable wastes. It is defined by reference to the Public Resources Code.

**“Treated wood”** This term establishes the class of materials which, when discarded, become treated wood waste. It is defined as wood treated with preserving chemicals registered under the federal pesticide control law, FIFRA.

**“Treated Wood Waste”** This term identifies the material regulated under these regulations. This definition is used with two other definitions to determine if a “wood waste” that is also “treated wood” is eligible for management under these proposed regulations. It is defined by reference to proposed section 67386.2(a) which defines eligibility for the proposed regulations in more detail.

**“TWW”** This acronym is necessary to more succinctly refer to treated wood waste.

**“TWW approved landfill”** This term identifies those landfills where treated wood waste may be disposed. The definition is consistent with the standards in Health and Safety Code Section 25150.7(d) for disposal of treated wood waste.

**“TWW facility”** This term establishes the types of facilities that may accept treated wood waste. Note that only the TWW approved landfill or the class I hazardous waste landfill may dispose of treated wood waste. The other types of facilities can accept treated wood waste, but must act as intermediaries for moving the treated wood waste towards the ultimate disposal sites.

Pursuant to consultation with the CIWMB as required by Health and Safety Code section 25150.7(g), composting and transformation facilities, both regulated by the CIWMB, are precluded from accepting treated wood waste.

**“TWW handler”** This term establishes a class of entities which generate, handle, collect, process, accumulate, store, transfer, treat, recycle, or dispose of treated wood waste. To streamline management of treated wood waste, essentially the same rules apply to all persons managing treated wood waste other than the disposal site and the transporter. Defining this term is necessary to create a succinct term for the management standards which follow.

**“Unit”** This term creates a single quantity of treated wood waste that can then be subject to accumulation time limits, labeling, and shipping rules. DTSC is defining unit as broadly as possible to take into account all the methods that could be used to store treated wood waste including a broad performance standard for methods of aggregating treated wood waste that are not covered in the list of possible units.

**“Wood waste”** This term is proposed to create a larger class of waste materials which consist of wood intended to be used as products and wood generated in the use of wood products. It includes most wood products sold as lumber and panel goods and wastes and offcuts from use of those products. The definition excludes wood production wastes such as forest residues, green waste, branches and stumps. The definition is used by identifying which wood wastes are also treated wood as defined in this

proposed section. The intersection of those two sets is “treated wood waste,” the material regulated under these proposed regulations.

To become wood waste, wood products must meet the pre-existing definition of “waste” found in section 66261.2 and Health and Safety Code section 25124. This is consistent with the way in which other hazardous wastes are identified.

DTSC understands that agricultural support poles or stakes are often removed as new plantings mature or during the normal course of agricultural operations. The intent when purchased is for periodic use. DTSC agrees that agricultural support poles or stakes used in this manner would not become waste when handled as a commodity, until they were removed for discard either by disposal or by use in another manner. Thus, agricultural support poles or stakes can be used multiple times without becoming waste.

A commodity intended for continued use is handled in a manner that acknowledges its value; management of a waste that no longer has use as originally intended is typically handled in a manner that minimizes costs to the generator. An agricultural support pole or stake managed as a commodity would, for instance, likely be protected from theft and from environmental degradation between uses.

For instance, in a case where a farmer claimed that agricultural support poles or stakes were in continuous use and not being discarded, the manner in which the stakes are managed would indicate the veracity of that statement. Storage on a pallet with neatly stacked agricultural support poles or stakes kept in a safe location would clearly indicate that the stakes are a valuable commodity and would clearly not be waste. On the other hand, a pile of debris including agricultural support poles or stakes in a disorderly pile would clearly indicate that the stakes were not being managed as a valuable commodity and the stakes were waste and had been discarded.

### **Adopt section 67386.5. Labeling**

This section establishes requirements for labeling treated wood waste. It sets forth language for the label and information to be included. Lastly, this section exempts household generated treated wood waste under specified circumstances.

#### **Section 67386.5(a)**

This subsection establishes the basic requirement that treated wood waste be clearly marked as treated wood waste. It requires that each unit or area used for accumulating treated wood waste be marked and that the mark be visible. Labeling treated wood waste is a basic necessity for ensuring that treated wood waste is properly managed to prevent human and environmental exposure and that it is ultimately properly disposed. The regulations allow flexibility in labeling treated wood waste; the handler may label each unit of treated wood waste or may label the area in which the treated wood waste is stored.

The label serves several necessary purposes:

- It informs workers and others that the material is treated wood so that they can properly manage the treated wood waste and not use it for improper purposes or dispose of it improperly.
- The label informs the landfill where the treated wood waste will be disposed that the material is treated wood waste. This allows landfill personnel to manage the treated wood waste safely and in compliance with these standards.
- The label informs inspectors from environmental agencies such as DTSC, the CIWMB or its agents, or the local Certified Unified Program Agency that the material is treated wood waste. Then, the inspector can verify that the material is being managed in compliance with the protective standards of these proposed regulations.
- The label informs persons such as public works crews finding abandoned treated wood waste that the material must be managed safely and in compliance with these regulations. The label also identifies the person responsible for proper handling so that persons mismanaging treated wood waste may be brought into compliance with these regulations and that person can be assessed the costs of cleanup and proper disposal by public agencies.

This subsection also states that the area used for accumulation of treated wood waste must be clearly identified and used solely for accumulation of treated wood waste. This standard ensures that the prohibition on commingling treated wood waste with other wastes is not violated and that persons entering the area are put on notice that the material therein is treated wood waste.

### **Section 67386.5(b)**

This subsection sets forth the information that must be on the label. It requires a statement that the waste is “treated wood waste” and the words “do not burn or scavenge.” This is necessary to identify the material as treated wood waste in order to ensure proper management subsequently.

The prohibition on burning or scavenging is repeated here for several reasons:

- Burning treated wood waste is the most hazardous treated wood waste management activity that can be reasonably expected because it can volatilize hazardous constituents and leave toxic heavy metals in very mobile ash.
- Scavenging must be prohibited to ensure that the treated wood waste is not used in inappropriate uses. For instance, most treated wood cannot be used in the interior of a house.
- Scavenging must also be prohibited to avoid burning of treated wood waste. Many persons scavenge wood from construction sites for home heating and camp fires – which are dangerously inappropriate uses for treated wood waste.

The TWW handler’s name and address are necessary in order to identify the person responsible for the TWW. The accumulation start date is necessary to allow inspectors to verify that the handler is in compliance with the accumulation time limits set forth in proposed section 67386.6.

**Section 67386.5(c)**

This subsection requires that each handler of the treated wood waste keep the label in good condition and visible during transport. This provision is necessary to ensure that the transporter and the receiving facility are clearly placed on notice that the material is a treated wood waste so that it can be properly managed and disposed.

**Section 67386.5(d)**

This subsection exempts household generated TWW that is accumulated for a short time (30 days) from the labeling requirement. This exemption is necessary because the homeowner and the small job contractor that generate household treated wood waste are not in the business of managing construction and demolition debris and are unlikely to understand the complexities of the hazardous waste control laws. The time period for the exemption is set by the Department to 30 days to ensure that the waste will be removed quickly. Scavenging of treated wood waste is more likely at an existing home where there are no access controls and security provisions. Note that exempting household treated wood waste from the labeling requirement does not exempt the household treated wood waste from proper ultimate disposal.

**Section 67386.5(e)**

This subsection exempts household generated treated wood waste from the labeling requirement while being transported to an approved TWW facility. It does, however, make the exemption conditional upon the transporter informing the TWW facility that the material is treated wood waste so that it can be properly managed.

**Adopt section 67386.6. Accumulation**

This section establishes the basic requirements for storing treated wood waste prior to transport to a treated wood waste facility. It establishes technical standards for storage and accumulation time limits. This section establishes technical standards for four types of storage methods, and then establishes a performance standard for utilizing other types of storage methods. It establishes criteria for a longer accumulation time and training standards for employees handling the treated wood waste being accumulated. Lastly, this section establishes two exemptions from these standards for small quantities of treated wood waste.

**Section 67386.6(a)**

This subsection establishes the general introduction to the specific storage method standards. It implements Health and Safety Code section 25150.7(g)(2)(A) by requiring access control and release prevention. This section is necessary to introduce the subordinate subsections that expand on unit-specific requirements.

**Section 67386.6(a)(1)**

This subsection establishes the rules for access control to the treated wood waste. Access control is necessary to prevent improper reuse, scavenging, burning, and employee exposure. It implements Health and Safety Code section 25150.7(g)(2)(A). Two types of access control are allowed under this standard: a physical barrier, or keeping the treated wood waste accumulation area in visual control. To allow flexibility

in meeting this standard, further detailed prescriptive standards for access control are not proposed for this aspect of treated wood waste management.

### **Section 67386.6(a)(2)**

This subsection introduces the list of standards for specific types of units used to accumulate treated wood waste. It requires that treated wood waste be protected from run-on and run-off (rainwater flow), and prevented, to the extent possible, from contact with soil. These standards implement the mandate of Health and Safety Code section 25150.7(g)(2)(A) that the regulations for management of treated wood waste prevent release of hazardous constituents to the environment. They are necessary to ensure that water does not wash sawdust and other small particles and pieces of treated wood waste from the accumulated wood and to ensure that rainwater does not leach hazardous constituents from the treated wood waste into the environment.

This subsection then introduces several methods for storing TWW and specific requirements for each method.

### **Section 67386.6(a)(2)(A)**

This subsection creates requirements for using the block and tarp method for storing the treated wood waste. In this method, treated wood waste is elevated above the ground on blocks and covered with a tarp. The subordinate subsections, sections 67386.6(a)(2)(A)1-3 then give standards for the block and tarp as follows:

1. Treated wood waste must be elevated to prevent contact with the soil and run-on that is reasonably foreseeable. This is necessary to ensure that the hazardous constituents from the wood and any adherent small particles (sawdust, small cutoffs) are not left on the soil when the wood is shipped off and not washed off by rain, and hazardous constituents are not leached into the environment by the rain. However, given the probabilistic nature of rainfall amounts, no handler can protect the treated wood waste from run-on and run-off from an unanticipated large storm.
2. The treated wood waste is covered to prevent exposure to precipitation. Covering the wood is the purpose of the tarp and is necessary to prevent migration of hazardous constituents into the environment. Similar to run-on and run-off, rainwater can wash adherent small particles from the treated wood waste and may leach hazardous constituents from the treated wood waste into the environment.
3. The treated wood waste must be moved within 90 days of generation or receipt from another handler. This standard is necessary because block and tarp control is intrinsically temporary. Tarps degrade in the environment and are shredded by the wind. Moving the pile within 90 days is necessary to ensure that the tarp retains its integrity during storage.

### **Section 67386.6(a)(2)(B)**

This subsection establishes the standards for storing treated wood waste in containers. Containers include, but are not limited to, drums, bins, and dumpsters. The subsection

allows storage in containers for up to one year. The long storage time is allowed because containers meeting the specified standards are robust and provide protective storage. It is necessary, however, to limit storage even in robust containers to one year to ensure that treated wood waste is not accumulated in lieu of ultimately being disposed. If too much treated wood waste is accumulated, there is a very real possibility that the business can cease to operate without properly disposing of the treated wood waste placing the burden of proper disposal on the State or local government. The subordinate subsections, sections 67386.6(a)(2)(B)1-3 then give standards for the containerized storage as follows:

1. This subsection requires that containers used to hold treated wood waste hold the treated wood waste reliably without release. It is necessary to require such robust containers in order to allow the extended holding time of one year. Likewise, containers that have holes or are made of flimsy materials will not contain treated wood waste and would not meet the mandate of Health and Safety Code section 25150.7(g)(2)(A) to prevent releases.
2. This subsection requires that the containers resist water if they are exposed to run-on, run-off, and/or precipitation. This subsection is necessary because containers used outside must not allow entry of sufficient water to wash saw dust and small bits of treated wood waste into the environment or to leach out hazardous constituents.
3. This subsection requires that containers of treated wood waste be transported to a proper treated wood waste facility within 90 days of being filled to capacity. This subsection is necessary to allow containers to be used for longer periods to aggregate treated wood waste from multiple sources to save money. Once the container is full, retaining it onsite in excess of 90 days serves no purpose and exposes State and local government to the risk of abandoned waste disposal.

#### **Section 67386.6(a)(2)(C)**

This subsection establishes the standards for storing treated wood waste in storage buildings. Buildings are robust containers that prevent run on and run off, precipitation from contacting the wood in reasonably expected circumstances. Accumulation for up to one year is allowed for storage buildings because those buildings offer superior protection from run-on, run-off, and precipitation. It is necessary to limit the accumulation time in storage buildings for the same reasons as the accumulation time is limited for containers.

#### **Section 67386.6(a)(2)(D)**

This section establishes the rules for storing treated wood waste on a containment pad. Normally, a containment pad would be a concrete or asphalt pad that would hold the treated wood waste. The accumulation on a containment pad is limited to 180 days from the generation or receipt date for the treated wood waste. This number is intermediate between the short time allowed for blocking and tarping and the longer times allowed for containers and storage buildings. The wood must be protected from run-on, run-off, and precipitation on the pad, but the time must be shorter than for storage methods with

permanent covers like buildings or containers. The subordinate subsections sections 67386.6(a)(2)(D)1-3, make the protections required more specific.

1. This subsection implements the mandate of 25150.7(g)(2)(A) by keeping the treated wood waste off of the soil.
2. and 3. These subsections protect the treated wood waste from run-on, run-off, or precipitation. Such protection is necessary to ensure that adherent particles such as sawdust or small bits of treated wood waste are not washed into the environment and that hazardous constituents are not leached from the wood into the environment.
4. This subsection allows the treated wood waste to be accumulated uncovered if the containment is designed to capture and hold all precipitation and any captured water is properly managed. Note that many parts of the State do not see rain for months at a time and this is a reasonable way to manage treated wood waste in those locations during those months. However, it is necessary to condition such storage with capture of any liquids because of adherent bits of treated wood waste such as sawdust and small pieces washed off the treated wood waste pile and because of hazardous constituents leached from the treated wood waste. Properly managing the water means properly classifying the water as hazardous or non-hazardous waste and then disposing it in compliance with all applicable laws including, but not limited to, the POTW discharge standards, the hazardous waste criteria, and the Water Code rules for discharge of wastes to the waters of the State.

#### **Section 67386.6(a)(2)(E)**

This subsection creates a performance standard that can be utilized in lieu of the prescriptive methods for storing treated wood waste that are addressed in prior subsections.

The subsection places the familiar standards on this “other” category of storage unit requiring control of precipitation, run-on, run-off, and isolation from the soil. It is necessary to limit the storage in these unspecified units to 90 days because the unit is not specified and may not be capable of long term containment of the treated wood waste and hazardous constituents.

#### **Section 67386.6(b)**

This subsection limits all treated wood waste accumulation to no more than one year after the date of generation or the date received from another handler unless the conditions for an exception (found in the subsequent subsection) are met. This limitation is necessary to ensure that treated wood waste is not accumulated in lieu of ultimately being disposed. If too much treated wood waste is accumulated, there is a very real possibility that the business can cease to operate without properly disposing of the treated wood waste placing the burden of proper disposal on the State or local government.

**Section 67386.6(c)**

This subsection creates an exception from the one year maximum accumulation time if the sole reason for the extension is to accumulate sufficient quantities for proper disposal (in a qualifying landfill). A handler exceeding one year accumulation time would have to be able to prove that the sole reason for the extension was to facilitate proper disposal.

**Section 67386.6(d)**

This subsection requires that a person accumulating treated wood waste be able to demonstrate the length of time that the treated wood waste has been accumulated. This standard is purposely left as a performance standard to allow flexibility in that demonstration. The demonstration can be made by the accumulation start date on the label. Other ways to make that demonstration include, but are not limited to: records of shipment, records of receipt of treated wood, records demonstrating that the timeframe of work that generated the treated wood waste was less than one year. This subsection is necessary to facilitate enforcement of this chapter.

**Section 67386.6(e)**

This subsection establishes the training requirements for employees handling treated wood waste. Training is necessary for several reasons:

- To ensure that the treated wood waste is properly managed.
- To inform the employees that they are working with a hazardous material.
- To alert the employees to any risks they would face from the treated wood waste hazardous constituents.
- To ensure that the employees are aware of the proper disposal of the treated wood waste.

The training records are retained for three years and are available for review by representatives of State and local government agencies. Record retention is necessary to ensure that training is actually performed. Records of training dating from the time of the claimed training provide strong evidence that the training actually occurred.

The proposed regulations require that the training include a number of topics described below.

**Section 67386.6(e)(1)**

This subsection requires that employees be given all applicable Cal/OSHA required training for the activities and wastes that they are handling. This provision satisfies the mandate of Health and Safety Code section 25150.7(g)(2)(F) for training in safe management of treated wood waste.

**Section 67386.6(e)(2)**

This subsection requires that the employees be trained in procedures for identifying and segregating treated wood waste. This provision satisfies the mandate of Health and Safety Code section 25150.7(g)(2)(F) for training in identifying and segregating treated wood waste.

**Section 67386.6(e)(3)**

This subsection requires that the employees be trained in safe handling practices for treated wood waste. This provision satisfies the mandate of Health and Safety Code section 25150.7(g)(2)(F) for training in safe management of treated wood waste.

**Section 67386.6(e)(4)**

This subsection requires that the employees be trained in the requirements for managing treated wood waste. This provision satisfies the mandate of Health and Safety Code section 25150.7(g)(2)(F) for training in legal management of treated wood waste.

**Section 67386.6(e)(5)**

This subsection requires that the employees be trained in proper disposal methods for treated wood waste. This provision satisfies the mandate of Health and Safety Code section 25150.7(g)(2)(F) for training in safe and legal management of the treated wood waste.

**Section 67386.6(f) and Section 67386.6(g)**

These subsections exempt households and small businesses from the accumulation requirements of section 67386.6 under the following conditions:

- The treated wood waste is at the site of generation.
- The treated wood waste is not kept at the site for more than 30 days.
- The treated wood waste is not physically altered except as provided in the section setting forth allowed treatment (section 67386.10).
- For businesses, the treated wood waste is not allowed to accumulate in quantities greater than 1000 pounds.

These exemptions are proposed because the amounts of treated wood waste involved are very low and the allowed onsite accumulation time is very short. Given the small quantities and the short duration of environmental exposure, there is little risk of significant environmental contamination from these households and business generators. Additionally, the duties to establish accumulation units and train employees are unnecessary for these smallest generators of treated wood waste.

**Adopt section 67386.7. Offsite Shipments.**

This section establishes standards for offsite shipment of treated wood waste. It establishes the types of locations where the treated wood waste could be sent, requires prior agreement to accept the treated wood waste, allows offsite consolidation of treated wood waste generated at remote locations, and establishes a performance standard for the actual transportation.

**Section 67386.7(a)**

This subsection allows a handler to ship treated wood waste only to a treated wood waste facility or a treated wood waste approved landfill. These limitations are necessary to ensure that treated wood waste is not sent to a landfill that does not meet the

requirements of Health and Safety Code section 25150.7(d). Additionally, this requirement keeps treated wood waste from going to another kind of improper facility such as a composting facility where the hazardous constituents could enter the food chain or an incineration facility where the treated wood waste would be burned. The sole exception to this requirement would be a handler taking advantage of the special exception in subsection (c).

#### **Section 67386.7(b)**

This subsection requires a handler to obtain an agreement from the receiving handler to accept the treated wood waste prior to shipping the treated wood waste. This provision is necessary to ensure that the load of treated wood waste will not be rejected by the receiving handler. If the load is rejected, the probability that it joins the piles of other illegally discarded wastes on the side of the road increases greatly.

#### **Section 67386.7(c)**

This subsection allows a handler of treated wood waste, under specified conditions, to transport treated wood waste generated at a remote site back to a consolidation site for accumulation. There are many requirements attached to this allowance found in the subordinate subsections. This allowance is necessary because treated wood waste may be generated at remote locations without access control and in small amounts. For example, CalTrans generates treated wood waste in scattered locations where motorists have collided with posts. There is no access control at random locations on the roads and there usually are few pieces of treated wood waste generated in the post's replacement. Much better access control (preventing scavenging, burning, and improper reuse) is achieved if the wood is transported back to the CalTrans corporation yard. Management of the wood is also much more efficient because the CalTrans yard can aggregate large quantities of wood prior to paying for offsite shipment and disposal. Other entities that could use this provision include, but are not limited to, cities, counties, and farmers.

#### **Section 67386.7(c)(1)**

This subsection allows transport between the remote location only by the generator, employees of the generator, or an agent of the generator. This limitation is necessary to ensure that the treated wood waste stays in the possession of the generator until it is sent to a general treated wood waste approved facility or landfill in compliance with subsection (a).

#### **Section 67386.7(c)(2)**

This subsection requires a shipping document for moving the treated wood waste between the remote location and the consolidation site. This document is necessary to track the waste between locations to ensure that all of the treated wood waste reaches its intended location. Additionally, the document is necessary to inform any inspectors or the California Highway Patrol that the waste is being shipped between a remote location and a consolidation site. The information required on the shipping document appears in the subsequent subsections:

(A) The quantity, by weight or volume, of treated wood waste. This is necessary to allow an inspector to determine that all of the treated wood waste generated at the remote site is accepted and managed at the consolidation site.

(B) The location of the remote site where the treated wood waste was collected. This is the generating site. This information is necessary to ensure that all waste taken to a consolidation site is actually eligible to be managed at a consolidation site.

(C) The accumulation start date at the remote site, the date that the waste left the remote site, and the date that the shipment arrived at the consolidation site. This information is necessary to ensure that the total amount of time the waste is accumulated does not exceed the allowed accumulation time and to ensure that the waste was promptly delivered to the consolidation site.

(D) The name, address, and telephone number of the generator, and of the consolidation site if different than the generator. This section is necessary to identify the responsible party in the case of mismanagement.

(E) The name of the individuals who transported the treated wood waste to the consolidation site. This information is necessary both to identify the responsible party in the case of mismanagement and to inform the person transporting the treated wood waste that they could face a penalty for improper disposal of the treated wood waste.

### **Section 67386.7(c)(3)**

This subsection requires that records of shipment from the remote site to the consolidation site be retained for at least three years after the shipment of the treated wood waste from the consolidation site. This requirement is necessary to ensure that improperly disposed waste can be tracked back to the generator and to ensure that the generator can account for all the treated wood waste that they have generated.

### **Section 67386.7(d)**

This subsection establishes a performance standard for transporting the treated wood waste to the consolidation site. The standards are necessary to implement the criterion of Health and Safety Code section 25150.7(g)(2)(A) for waste being transported to the consolidation site.

### **Adopt section 67386.8. Tracking Shipments.**

This section establishes rules for documents used to ship treated wood waste and retention of those documents. It also establishes a semi-annual report requirement for landfills that dispose of treated wood waste.

### **Section 67386.8(a)**

This subsection establishes documentation requirements for treated wood waste shipped offsite. The treated wood waste handler is required to keep a record of offsite shipments, but is given flexibility to keep the log in the form of a log, invoice, manifest, bill or lading, shipping document, or a receipt from the receiving facility. This requirement is necessary to ensure that each load shipped from the generator's facility ultimately ends up at a treated wood waste facility. Note that this information is also

necessary to gather information for the report required by Health and Safety Code section 25150.7(k) on the success of the program. The subordinate subsections establish the specific information that must be tracked:

**Section 67386.8(a)(1)**

This subsection requires that the name and address of the receiving facility be on the shipping paper. This is necessary to verify that the TWW was sent to and received by an appropriate TWW facility

**Section 67386.8(a)(2)**

This subsection requires the handler to put the estimated or actual weight of the treated wood waste being shipped on the shipping document. This is necessary to ensure that all of the treated wood waste arrives and to generate the report required by Health and Safety Code section 25150.7(k). Weight was chosen over volume because virtually all solid waste facilities have truck scales and use those scales to bill their customers. Thus, little or no physical change to solid waste landfills is needed to comply with this standard. If there is no scale available or weighing the load is impractical, the facility is allowed to estimate the weight of the load as long as the assumptions (density, volume, etc) are recorded in the shipment records. Again, this information is necessary to ensure that all the material shipped from the originating facility arrives at the receiving facility.

**Section 67386.8(a)(3)**

This subsection requires the shipper to record the date of shipment on the shipping paper. This information is necessary to assess compliance with the accumulation time limits. Note that putting the date on virtually all official papers is customary and normal for businesses so that this requirement is not a significant new burden.

**Section 67386.8(b)**

This subsection requires each treated wood waste handler to keep a record of each treated wood waste shipment received at their facility. The handler is given the flexibility to use one of several different methods to keep track of received shipments including a log, invoice, manifest, bill of lading, or other shipping document. This requirement is necessary to ensure that each load shipped from the generator's facility ultimately is received by a treated wood waste facility. This information will also be used for treated wood waste facilities and treated wood waste approved landfills to make the semi annual reports required by subsection (c). This is necessary to gather information for the report required by Health and Safety Code section 25150.7(k) on the success of the program. The subordinate subsections establish the specific information that must be tracked.

**Section 67386.8(b)(1)**

This subsection requires that the name and address of the generator shipping the load to be kept in the record for each shipment received. This is necessary because an inspector needs this information to understand where treated wood waste shipments

originated and who is responsible both for the particular shipment and under joint and severable liability for any corrective action needed at the receiving facility.

**Section 67386.8(b)(2)**

This subsection requires the handler to put the estimated or actual weight of the treated wood waste received on the record of receipt. This is necessary to ensure that all of the treated wood waste arrives and to generate the report required by Health and Safety Code section 25150.7(k). Weight was chosen over volume because virtually all solid waste facilities have truck scales and use those scales to bill their customers. Thus, little or no physical change to solid waste landfills is needed to comply with this standard. If there is no scale available or weighing the load is impractical, the facility is allowed to estimate the weight of the load as long as the assumptions (density, volume, practical knowledge, etc.) are recorded in the shipment records. Again, this information is necessary to ensure that all the material shipped from the originating facility arrives at the receiving facility.

**Section 67386.8(b)(3)**

This subsection requires the receiving facility to record the date of receipt on the record of receipt. Note that putting the date on virtually all official papers is customary and normal for businesses so that this requirement is not a significant new burden.

**Section 67386.8(c)**

This section establishes the requirement for each treated wood waste facility or treated wood waste approved landfill to report, on a semi annual basis, specified information about treated wood waste received. This report, which meets the definition of a required "business report," is vital to assessing the success or failure of the streamlined management standards. Only by comparing the amounts of treated wood waste received by proper facilities with the expected generation rate can DTSC determine if the low regulatory burden approach is successful or take further regulatory action to strengthen the program if it is not successful. Further, this information is necessary to report as required by Health and Safety Code section 25150.7(k) on the success or failure of the treated wood waste regulatory program. Assessing the amount of treated wood waste received and the originating industries can reveal problems with the program allowing DTSC to take appropriate and graduated actions to improve the rate of proper disposal for treated wood waste. Such actions may include enforcement initiatives, further outreach and training, or additional regulatory changes as necessary.

To lessen the burden of making this report and the fiscal impact on DTSC for processing the data, this subsection requires that the report be submitted electronically. DTSC will develop a model reporting form on the DTSC website for quick and relatively painless reporting. Because that electronic form is not yet available, DTSC is specifying the information required on the form rather than placing the form itself or the form number and date into the regulation. The report covers defined periods corresponding to the calendar and the State fiscal year. The first reporting period would cover the first 6 months after the effective date of these regulations; that is, the report would cover the period between January 1, 2007, and June 30, 2007. Each report would have to be

submitted within 30 days of the end of the reporting program. This deadline is necessary to ensure that the reports are actually filed with DTSC. 30 days is sufficient time to compile and submit the report.

The subordinate subsections specify the information required on the report.

**Section 67386.8(c)(1)**

This subsection introduces the lists of information to be reported in the subordinate subsections.

**Section 67386.8(c)(1)(A)**

This subsection requires that the treated wood waste facility include specified facility information in the report. This information is necessary to accurately identify the facility. The information includes:

- The facility name, location address, contact person's name and telephone number, and
- Identification Number

**Section 67386.8(c)(1)(B)**

This subsection requires that the treated wood waste facility include specified information about larger handlers of treated wood waste. This information is necessary to allow DTSC to identify and assess compliance of the largest and highest priority handlers to treated wood waste to ensure that the protections of these regulations are realized. The information includes:

- Generator Identification Number, or the name, address, contact person's name, mailing address, and phone number, for each generator.
- Dates of shipments.
- The weight of treated wood waste per shipment.

**Section 67386.8(c)(1)(C)**

This section requires that treated wood waste facilities include specified information about household generated treated wood waste in their semi annual report. This information is necessary to allow DTSC to assess how successful the DTSC outreach and educational programs for treated wood waste are at getting household treated wood waste to treated wood waste approved landfills and other treated wood waste facilities.

This subsection requires, in subordinate subsection 1, that the total weight summary of all treated wood waste generated by households be included in the report.

**Section 67386.8(c)(1)(D)**

This subsection requires that treated wood waste facilities include specified information about treated wood waste removed from the solid waste stream by load check programs. This information is necessary for DTSC to understand how much treated wood waste is being illegally disposed in the solid waste stream. Understanding this quantity would allow DTSC to adjust education and outreach programs along with load

check requirements to reduce the level of illegal disposal. The information needed is set forth in subordinate subsection 1 and consists of a weight summary of all treated wood waste segregated from solid waste by load checking programs.

#### **Section 67386.8(c)(1)(E)**

This subsection requires that the treated wood waste facility include specified information about shipments received from other TWW facilities. This information is necessary to allow DTSC to identify and assess transfer of TWW between facilities and to ensure that the protections of these regulations are realized. The information includes:

- TWW facility Identification Number, or the name, address, contact person's name, mailing address, and phone number, for each TWW facility.
- Dates of shipments.
- The weight of treated wood waste per shipment.

#### **Section 67386.8(d)**

This subsection governs the manner in which information gathered in treated wood waste semi annual reports is made public and how it is protected as confidential business information. This subsection is necessary to clarify how DTSC will both make information publicly accessible and how DTSC will keep business relationships confidential. The relationship between specific treated wood waste facilities and specific treated wood waste generators is declared to be confidential business information.

#### **Section 67386.8(e)**

This subsection sets forth record retention requirements for all treated wood waste handlers. The specific information and retention times is found in the subordinate subsections.

#### **Section 67386.8(e)(1)**

This subsection requires treated wood waste handlers to retain the records described in subsection (a) for at least 3 years after the shipment leaves the facility. This record retention is necessary to ensure that all treated wood waste can be tracked from the generator facility to the ultimate disposal site both to assess compliance at each level of treated wood waste management and to apportion any liability for corrective action in the case of a release at any of the treated wood waste facilities.

#### **Section 67386.8(e)(2)**

This subsection requires treated wood waste facilities to retain the records described in subsection (a) for at least 3 years after a treated wood waste shipment arrives at the facility. This record retention is necessary to ensure that all treated wood waste can be tracked from the generator facility to the ultimate disposal site both to assess compliance at each level of treated wood waste management and to apportion any liability for corrective action in the case of a release at any of the treated wood waste facilities.

**Section 67386.8(f)**

This subsection exempts households from the recordkeeping requirements of this section. This exemption is necessary because households are neither set up to retain this type of record nor liable to be inspected for compliance. Additionally, householders, having no commercial interest in treated wood waste management, are unlikely to have sufficient knowledge of the regulatory requirements to know more than the fact that there are proper disposal sites for treated wood waste.

**Adopt new section 67386.9. Notification**

This section establishes requirements on large generators of treated wood waste.

**Section 67386.9(a)**

This subsection requires the TWW handlers that generate more than 10,000 lbs. of treated wood waste in any calendar to obtain or maintain an Identification Number within 30 days of meeting or exceeding the 10,000 lbs. The identification of the large TWW handlers is necessary to gather information for the report required by Health and Safety Code section 25150.7(k) on the success of the program. DTSC anticipates that the majority of Identification Numbers issued in response to this requirement will be California Temporary Numbers issued for one-time generation activities. DTSC will use the information to match the data in the semi-annual reports to measure quality of the data in the reports.

**Section 67386.9(b)**

This subsection requires the large TWW handlers to send a written notification to DTSC within 30 days of exceeding the 10,000 lbs. limit. The identification of the large TWW handlers is necessary to gather information for the report required by Health and Safety Code section 25150.7(k) on the success of the program. DTSC will use the information to match the data in the semi-annual reports to measure quality of the data in the reports.

**Section 67386.9(c)**

This subsection identifies the information that must be sent in the written notification under subsection (b). Subsections (c)(1) - (3) are contact information and are necessary if DTSC attempts to obtain input from knowledgeable TWW handlers on the implementation of these regulations in preparing the legislative mandated report in Health and Safety Code section 25150.7(k). DTSC recognizes contact information is provided when a business obtains an Identification Number, however DTSC has found that this contact is not necessarily knowledgeable of all the specific activities associated with that Identification Number.

Subsection (c)(4) is necessary to provide DTSC with information on the geographical aspects of treated wood waste management in California. DTSC plans to use this data to demonstrate how treated wood waste is being managed in California. Subsections (c)(5) and (6) are necessary to ensure that TWW handlers recognize that only large generators need to notify DTSC when they generate 10,000 lbs. of treated wood waste.

## **Adopt Section 67386.10 Treatment**

This section establishes the conditions under which TWW may be treated.

### **Section 67386.10(a)**

This section prohibits “treatment” of treated wood waste that is being managed in accordance with the alternative management standards. The term “treatment” refers to the treatment of a hazardous waste as defined in Health and Safety Code section 25123.5 and does not apply to the chemical and physical processes that produce treated wood products. This section is necessary to facilitate the handling of treated wood waste for reuse and the transport for land disposal. Treatment of a hazardous waste requires a hazardous waste facility permit. Because treated wood waste is a hazardous waste, this section conditionally authorizes resizing, sorting and segregation activities, thereby relieving handlers of permitting requirements.

### **Section 67386.10(b)**

This subsection authorizes “resizing” as a treatment option for treated wood waste and exempts “resizing” from the permitting requirements of the hazardous waste standards. This subsection further specifies that “resizing” may only be conducted in order to facilitate transport or reuse of the waste. This subsection restates a statutory requirement.

#### **Section 67386.10(b)(1)**

This subsection requires that treated wood waste being or having been resized must be managed so as to prevent the uncontrolled release of hazardous constituents. This subsection restates a statutory requirement.

#### **Section 67386.10(b)(2)**

This subsection requires that when resizing results in sawdust, particles, or other material smaller than one cubic inch, all such material must be captured, contained, and disposed of as TWW. This subsection clarifies a statutory requirement.

### **Section 67386.10(c)**

This subsection authorizes “sorting” and “segregating” as treatment options for treated wood waste and exempts both treatment activities from the permitting requirements of the hazardous waste standards. This subsection is necessary because sorting and segregating are considered treatment and may require authorization. This section allows sorting and segregating of TWW without prior authorization.

#### **Section 67386.10(c)(1)**

This subsection requires that treated wood waste being or having been sorted and/or segregated must be managed so as to prevent the uncontrolled release of hazardous constituents. This subsection clarifies a statutory requirement.

### **Section 67386.10(d)**

This subsection requires that any business resizing, sorting, or segregating treated wood waste provide training for all employees handling or potentially exposed to the

treated wood waste. This subsection further requires that the business maintain a record of the training for a minimum of three years and be able to present the record for review. This subsection also introduces a list of items that must be included in the treated wood waste training. This subsection restates a statutory requirement.

**Section 67386.10(d)(1)**

This subsection requires that treated wood waste training include all applicable requirements of the California Occupational Safety and Health Act, including all issues related to hazardous waste. This subsection restates a statutory requirement.

**Section 67386.10(d)(2)**

This subsection requires that treated wood waste training include procedures for identifying and segregating treated wood waste. This subsection restates a statutory requirement.

**Section 67386.10(d)(3)**

This subsection requires that treated wood waste training include procedures for the safe handling of treated wood waste. This subsection restates a statutory requirement.

**Section 67386.10(d)(4)**

This subsection requires that treated wood waste training include an overview of the requirements of the alternative management standards for treated wood waste. This subsection restates a statutory requirement.

**Section 67386.10(d)(5)**

This subsection requires that treated wood waste training include procedures for the proper disposal of treated wood waste. This subsection restates a statutory requirement.

**Adopt section 67386.11. Disposal**

This section establishes requirements for disposal of treated wood waste. It sets forth language for the types of landfills that are eligible to accept treated wood waste for disposal. In addition, it places the predisposal requirements on solid waste landfills that accept for disposal treated wood waste.

**Section 67386.11(a)**

This subsection establishes which landfills are eligible to accept for disposal treated wood waste. Health and Safety Code section 25150.7(g)(3)(B) prohibits these regulations from superseding the requirements concerning the disposal of treated wood waste established in Health and Safety Code section 25150.7(d). The regulatory language is consistent with the requirements in Health and Safety Code section 25150.7(d)(1).

**Section 67386.11(b)**

This subsection establishes predisposal requirements on solid waste landfills that accept treated wood waste for disposal. Health and Safety Code section

25150.7(g)(3)(B) prohibits these regulations from superseding the requirements concerning the disposal of treated wood waste established in Health and Safety Code section 25150.7(d). However, section 25150.7(d)(2)(B) requires the solid waste landfill accepting TWW to comply with the alternative management standards for TWW prior to disposal. Accordingly the subordinate subsections, sections 67386.11(b)(1)-(4), establish predisposal standards that the solid waste landfill must follow including:

- (1) Compliance with the handling prohibitions of activities that cannot be done for treated wood waste under these regulations. This is necessary because the streamlined and relatively simple management standards do not provide sufficient control over the precluded activities to ensure protection of public safety and the environment.
- (2) Compliance with the alternative management standards for TWW (these solid waste landfills are also TWW handlers). Most notably, the solid waste landfill must submit semi annual reports to DTSC and comply with the sorting and segregating requirement. This subsection restates a statutory requirement.
- (3) Monitoring of the composite-lined portion of the landfill where treated wood waste has been disposed. Discontinue disposal of TWW if a release is detected. This is consistent with the statutory alternative management standards in Health and Safety Code section 25150.7(d)(2)(C). The solid waste landfill must also notify DTSC that treated wood waste is no longer being discharged because of a release and when the release has ceased, re-notify DTSC that the solid waste facility is again accepting treated wood waste.
- (4) Compliance with applicable Cal/OSHA requirements for treated wood waste. This subsection restates a statutory requirement.

## **REVIEW PROVISIONS**

DTSC will periodically review its regulations to ensure they are consistent with the law and otherwise remain appropriate.