



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D., Director
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Gavin Newsom
Governor

December 16, 2020

Ms. Kathy Lynch
Lynch and Associates
1127 11th Street, Suite 610
Sacramento, CA 95814

Subject: Management of Hazardous Treated Wood Waste in California

Dear Ms. Lynch:

This letter is in response to your December 2, 2020, letter to the Secretary of the California Environmental Protection Agency regarding the management of treated wood waste in California. Secretary Blumenfeld has asked me to respond.

Your letter was prompted by Governor Newsom's September 29, 2020 veto of Senate Bill 68 (Galgiani, 2020). As a result, the section of statute that authorizes the alternative management standards for treated wood waste (Section 25150.7 of the Health and Safety Code) will sunset as of December 31, 2020. As you note in your letter, DTSC's alternative management standards for treated wood waste, found in California Code of Regulations, title 22, Div. 4.5, Chapter 34, will also become inoperative as of December 31, 2020. This means that as of January 1, 2021, treated wood waste will no longer be eligible to be managed according to the alternative management standards, and instead will be subject to the full set of hazardous waste regulations. This includes the requirement that treated wood must be disposed in Class 1 hazardous waste landfills (or in landfills in other states that do not regulate treated wood waste as hazardous wastes).

While the alternative management standards adopted for this waste may have been warranted and protective of public health and the environment at the time the statute was enacted, the waste is and continues to be hazardous. It contains hazardous chemicals, such as arsenic, chromium, copper, creosote, and pentachlorophenol, which are known to be toxic or carcinogenic and poses a risk to both human health and the environment, especially when mismanaged or disposed improperly.

As noted in the reports on the management of treated wood waste that DTSC issued in both 2011 and in 2018, there continues to be significant noncompliance with the alternative management standards. The risks posed by this waste if mismanaged, and

the continuing noncompliance with the standards speak to the very real need to provide adequate resources to DTSC to continue to monitor the management of treated wood waste and compliance with any applicable regulatory requirements. Absent adequate resources to allow DTSC to conduct routine inspections and take necessary enforcement, as was observed by DTSC in its reports, the safeguards intended by the alternative management standards become illusory, and the relaxed standards afforded by the statute and regulations for management of treated wood waste effectively become de facto exemption from regulation.

DTSC is aware that the pending sunset of the statute and repeal of the alternative management standards for treated wood waste will significantly impact the management of treated wood waste, imposing significant additional regulatory requirements on treated wood waste which have not been required for many years. DTSC understands that this significant change of status has created uncertainty and will result in many questions from generators and other handlers of treated wood waste. We have appreciated the cooperative relationship we have shared with you and your organizations and the department remains committed to maintaining an open dialogue on any efforts moving forward.

To avoid the potential mismanagement and illegal disposal of treated wood waste that the additional requirements and disposal costs are expected to cause, DTSC intends to issue temporary variances to allow treated wood waste to continue to be managed pursuant to the alternative management standards and disposed in composite lined landfills. The resources required to issue temporary variances, as you suggest, are not insignificant and will require DTSC to redirect resources from other critical projects, priorities and commitments. DTSC plans to communicate details of this temporary solution to the broad spectrum of treated wood waste handlers to ensure they understand what is expected of them now and in the future.

The temporary variance will allow the Legislature to not only put in place a short-term solution to replace the variances, but also to explore and consider options for the management of treated wood waste. We hope that more protective, longer term solutions can be found to replace the continuation of the alternative management standards and disposal in solid waste landfills. It's important to recognize that the hazards associated with treated wood not only affect the waste management system. They also impact consumers and users of treated wood, and the environment in which it is used in its many applications. Alternatives to hazardous wood treatment chemicals, and opportunities to reduce the amount of those chemicals used and hazardous waste generated, need to be considered and explored, rather than continuing to accept that the system put in place in 2004 is the best and only solution.

We look forward in partnering up with you and your organizations as to identify a path forward in developing a long-term solution that will maintain the safe and successful disposal of treated wood waste in California, but also to move away from the use of toxic

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wood treating chemicals and develop safer alternatives. In addition, we would also appreciate your assistance in disseminating this information quickly to your members and users of treated wood.

Please do not hesitate to contact, Rizgar Ghazi, Acting Deputy Director, Hazardous Waste Management Program, at (916) 825-3078, or at Rizgar.Ghazi@dtsc.ca.gov, if you have any questions or additional information about DTSC's ongoing efforts. In addition, questions regarding regulatory requirements applicable to treated wood waste can also be sent to tww_help@dtsc.ca.gov.

Sincerely,



Meredith Williams
Director
Department of Toxic Substances Control

cc: Jared Blumenfeld, Secretary
California Environmental Protection Agency

Caroline Godkin,
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California Environmental Protection Agency

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