Department of Toxic Substances Control

California Environmental Protection Agency

CalEPA
California Environmental Protection Agency

Department of Toxic Substances Control

TREATED WOOD WASTE
HANDLER AND TRANSPORTER VARIANCE

Applicant Names:

Applicant Organization:

Variance No.:

Effective Date:

Expiration Date:

Modification History:

Pursuant to Section 25143 of the California Health and Safety Code, the Department of Toxic Substances Control hereby issues the attached Variance consisting of X pages.

Branch Chief,
Permitting Division
Department of Toxic Substances Control

Date:

1. INTRODUCTION

a) Pursuant to Health and Safety Code, Section 25143, and California Code of Regulations, title 22, Section 66260.210, the California Department of Toxic Substances Control (DTSC) grants a variance to the applicant identified below for the management of treated wood waste (TWW).

b) DTSC hereby grants this variance only from the requirements specified herein and only in accordance with all terms and conditions specified herein.

2. APPLICANT IDENTIFYING INFORMATION

VARIANCE ID: [TWW VARIANCE ID]

ORGANIZATION: [ORGANIZATION NAME]

NAME: [APPLICANT NAME]

ADDRESS: [STREET ADDRESS]
[CITY, CA ZIP]

SITE LOCATION: [SITE LOCATION 1-10]

3. TYPE OF VARIANCE

This Variance authorizes the Applicant to manage and transport non-RCRA hazardous TWW in accordance with a set of alternative management standards in lieu of the requirements for hazardous waste pursuant to Health and Safety Code, division 20, chapter 6.5, articles 6, 6.5, and 9 and California Code of Regulations, title 22, division 4.5, chapters 12, 13, 14, 15, 16, 18, and 20.

4. ISSUANCE AND EXPIRATION DATES

DATE ISSUED: [MONTH] [DAY], [YEAR]

EXPIRATION DATE: [MONTH] [DAY], [YEAR]

5. APPLICABLE STATUTES AND REGULATIONS

Health and Safety Code division 20, chapter 6.5 (Health & Saf. Code, sec. 25100 et seq.) and California Code of Regulations, title 22, division 4.5 (Cal. Code Regs., tit. 22, sec. 66260.1 et seq.), except as specifically identified in section 8 of this variance.

6. DEFINITIONS

For the purposes of this variance, the definitions set forth in California Code of Regulations, title 22, Section 66260.10 shall apply unless otherwise defined. The following definitions shall apply to the terms used in this variance:

“Agent” means a person operating with a “TWW handler and transporter variance” or a “TWW transporter only variance” that is hired by a “TWW generator” for the removal, collection, or transportation of “TWW”.

“Applicant” means the entity that applied to DTSC for a variance.

“Class 1 hazardous waste landfill” means a landfill as defined in California Code of Regulations, title 22, Section 66260.10, which is also authorized as part of a permitted facility as defined in California Code of Regulations, title 22, Section 66260.10.

“Composting Facility” means a facility that produces compost as defined in Public Resources Code, Section 40116 and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

“Gasification Facility” means a facility that utilizes a gasification process as defined in Public Resources Code, Section 40117 and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

“Large Quantity Generator” means a “TWW generator” who generates 10,000 pounds (5 tons) or more of “TWW” per calendar year.

“Limited Volume Transfer Operation” means an operation that receives less than 60 cubic yards, or 15 tons of solid waste per operating day for the purpose of storing the waste prior to transferring the waste to another solid waste operation or facility and which does not conduct processing activities but may conduct limited salvaging activities and volume reduction by the operator and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

“Resizing” means the minimal cutting, breaking, or sawing, but does not include planing, grinding, chipping, sanding, shredding, mulching, or other mechanical handling or any other treatment.

“Small Volume Construction and Demolition/Inert (CDI) Debris Processing Operation” means a site that receives less than 25 tons of any combination of construction and demolition debris and Type A inert debris per operating day for the purposes of storage, handling, transfer, or processing that is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

“Small Quantity Generator” means a “TWW generator” who generates less than 10,000 pounds (5 tons) of “TWW” per calendar year.

“Solid Waste Landfill” means a facility as defined in Public Resources Code, Section 40195.1 that is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

“Transfer or Processing Station” means a facility as defined in Public Resources Code, Section 40200 that is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

“Transformation Facility” means a facility that utilizes a transformation process as defined in Public Resources Code, Section 40201 and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

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

“Treated Wood Waste” means a waste that meets the requirements of subsection (B) of Section 9.

“TWW” means “Treated Wood Waste.”

“TWW approved landfill” means either a Class 1 hazardous waste landfill, or a composite-lined portion of a solid waste landfill unit that is operating with a DTSC issued “TWW disposal facility variance” and meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to division 7 (commencing with § 13000) of the Water Code for discharges of designated waste, as defined in Section 13173 of the Water Code, or treated wood waste and that is in compliance with this variance.

“TWW disposal facility variance” means a DTSC issued “TWW variance” that allows a “TWW approved landfill” to dispose of TWW with an alternative set of management standards in lieu of the requirements for hazardous waste.

“TWW emergency responder” means a person operating with a DTSC issued “TWW emergency response variance” who generates, handles, collects, accumulates, stores, transports, treats, recycles, or disposes of TWW in response to a declared emergency.

“TWW emergency response variance” means a DTSC issued “TWW variance” that allows an “TWW emergency responder” to transport and generate TWW with an alternative set of management standards in lieu of the requirements for hazardous waste.

“TWW facility” means either:

a) a solid waste landfill, as defined in this Section, that is operating with a “TWW disposal facility variance”; or

b) a transfer or processing station, as defined in this Section, that is operating with a “TWW handler and transporter variance”; or

c) a TWW approved landfill, as defined in this Section, that is operating with a “TWW disposal facility variance”; or

d) a class 1 hazardous waste landfill; or

e) Small Volume Construction and Demolition/Inert (CDI) Debris Processing Operation, as defined in this Section, that is operating with a “TWW handler and transporter variance”; or

f) Limited Volume Transfer Operation, as defined in this Section, that is operating with a “TWW handler and transporter variance”.

TWW Facility shall not include composting facilities, gasification facilities, or transformation facilities.

“TWW generator” means a person operating with “TWW small quantity generator variance” or “TWW large quantity generator variance” who generates, handles, collects, accumulates, stores, transports, treats, recycles, or disposes of TWW.

“TWW handler” means a person operating with a DTSC issued “TWW handler and transporter variance” who handles, collects, processes, accumulates, stores, transfers, transports, or treats TWW.

“TWW handler and transporter variance” means a DTSC issued “TWW variance” that allows a “TWW handler” to handle and transport TWW with an alternative set of management standards in lieu of the requirements for hazardous waste.

“TWW large quantity generator variance” means a DTSC issued “TWW variance” that allows a “TWW generator” to transport and generate TWW with an alternative set of management standards in lieu of the requirements for hazardous waste.

“TWW small quantity generator variance” means a DTSC issued “TWW variance” that allows a “TWW generator” to transport and generate up to 10,000 pounds of TWW with an alternative set of management standards in lieu of the requirements for hazardous waste.

“TWW transporter” means a person operating with a DTSC “TWW transporter only variance” who collects, consolidates, and transports TWW.

“TWW transporter only variance” means a DTSC issued “TWW variance” that allow a “TWW transporter” to transport TWW with an alternative set of management standards in lieu of the requirements for hazardous waste.

“TWW variance” means a variance for the management of treated wood waste issued by DTSC on or after March 1, 2021.

“Unit” means a pile, stack, container, bundle, or other discernable aggregation of TWW for purposes of this variance.

“Wood waste” means all waste timber products and failed timber products including solid sawn lumber and engineered wood products, offcuts, shavings and sawdust that meet the definition of “waste” pursuant to Health and Safety Code Section 25124. “Wood Waste” does not mean forest residues, green waste, or garden waste materials such as branches, bushes and tree stumps.

7. FINDINGS/DETERMINATIONS

DTSC has determined that the variance Applicant has met the requirements set forth in Health and Safety Code, Section 25143, for the receipt of a waiver from specific regulatory requirements as outlined Section 8 of this Variance. The specific findings and determinations made by DTSC are as follows:

a) TWW is a hazardous waste and presents a threat to human health and the environment when improperly managed.

b) TWW is generated in relatively large quantities in California by a broad spectrum of generators that include households, small businesses, large business, and state and federal agencies.

c) As of January 2021, there is only one operating hazardous waste landfill in California, located in Kern County, that is authorized to receive non-exempt hazardous TWW for disposal. In order to utilize this facility, many generators in California would be required to ship their TWW a significant distance.

d) The sunset of Health and Safety Code, Section 25150.7, on December 31, 2020, and the associated repeal of the regulations in California Code of Regulations, title 22, division 4.5, Chapter 34, have caused concern among the generators of TWW about the availability of cost-effective disposal options for TWW.

e) The timely and safe disposal of waste, such as TWW, is critical to the state response to a declared emergency and is necessary to return impacted property to beneficial reuse as soon as possible.

f) DTSC finds that the temporary issuance of a variance for TWW management while a long-term solution to the management of this waste

stream is found is prudent and responsible and in furtherance of DTSC's mission to protect public health and the environment from toxic harm.

8. PROVISIONS WAIVED

DTSC hereby grants a variance, pursuant to Health and Safety Code, Section 25143, and California Code of Regulations, title 22, Section 66260.210, from the hazardous waste management provisions of law as they pertain to the management of TWW. The conditions of this Variance provide an alternative set of management standards in lieu of the requirements for hazardous waste pursuant to Health and Safety Code, division 20, chapter 6.5, articles 6, 6.5, and 9 and California Code of Regulations, title 22, division 4.5, chapters 12, 13, 14, 15, 16, 18, and 20 for a person managing TWW.

All Sections of this Variance, and California Code of Regulations, title 22, Section 66264.101, apply to persons managing TWW. This Variance is contingent upon compliance with all terms and conditions listed in Section 9 of this variance. The Applicant is subject to all requirements of California Code of Regulations, title 22, division 4.5 which are not specifically waived.

9. TERMS AND CONDITIONS

A. General

a) This Variance is valid only:

1. for a period of six months; or

2. until such time as additional statutory, and regulatory, requirements relating to the management of TWW become effective, whichever is sooner.

b) This Variance may be extended once for a period not to exceed six (6) months if the Applicant completes all of the following:

1. notifies DTSC prior to the expiration date of the Variance that the Applicant is requesting an extension, and the requested length of the extension (not to exceed six months); and

2. makes the notification by email or postal mail and includes the following language:

On _____, 2021, DTSC issued treated wood waste variance number _____ to _____ located at _____ in California. We are hereby requesting that DTSC extend the term of this variance for an additional _____ months. We agree to continue to abide by the conditions of the Variance.

Furthermore, a copy of this notification will be maintained along with the Variance and made available upon request.

c) The Applicant shall maintain a copy of this Variance at each location where TWW is managed and shall make the Variance available for review upon request.

d) The Applicant shall maintain a copy of this Variance in each vehicle used to transport TWW and shall make the Variance available for review upon request.

e) The Applicant shall only handle and transport TWW that is generated by TWW generator.

f) The Applicant shall keep records documenting each TWW generator that the applicant receives TWW from and the quantity of TWW managed, per shipment, pursuant to this variance.

g) The Applicant shall only manage TWW within the scope and manner described in the variance application submitted to DTSC.

B. Applicability

a) The alternative management standards of this Variance apply only to wood waste that meets all of the following:

1. is a hazardous waste pursuant to chapter 11, of division 4.5 of California Code of Regulations, title 22;

2. is a hazardous waste solely due to the presence of a preservative in or on the wood that is registered in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use as a wood preservative; and

3. is not subject to regulation as a hazardous waste under the federal Resource Conservation and Recovery Act (RCRA).

b) The alternative management standards of this Variance do not apply to wood waste exempted from hazardous waste management standards pursuant to Health and Safety Code Section 25143.1.5.

c) The following wood wastes are not eligible for the alternative management standards of this Variance:

1. wood waste that is hazardous due to the presence of coatings, paint, or other treatments that are not registered in accordance with FIFRA for use as a wood preservative; or

2. wood waste when designated to be burned.

C. Prohibited Activities

a) TWW managed in accordance with the alternative management standards of this variance shall not be:

1. burned;

2. scavenged;

3. commingled with other waste prior to disposal, if previously segregated;

4. stored in contact with the ground;

5. generated;

6. recycled;

7. treated except in compliance with subsection (H) of Section 9; or

8. disposed to land except in compliance with subsection (I) of Section 9.

b) Any label or mark that identifies the wood waste as TWW shall not be intentionally removed, obliterated, defaced, or destroyed prior to disposal in a landfill.

D. Labeling

a) TWW accumulated, stored, or transported within California shall be clearly marked and visible for inspection. The person managing the TWW shall ensure that each unit and/or area designated for accumulation of TWW is labeled. The area designated for accumulation of TWW shall be clearly identified and used solely for the accumulation of TWW.

b) In order to clearly identify the nature of the waste to the receiving party and/or any observer, the TWW shall be labeled or marked with the following:

TREATED WOOD WASTE -Do not burn or scavenge.

TWW Handler Name and Address: _____

_____

Accumulation Start Date: _____.

c) The TWW handler shall ensure that labels are maintained in compliance with the requirements of subsections (D)(a) and (D)(b) of Section 9 during transport.

E. Accumulation

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

1. Unauthorized access shall be prevented by means of visual control or a physical barrier when not under the direct control of the person responsible for the TWW.

2. The TWW shall be accumulated in a manner that is protected from run-on and run-off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and leaching to soil or water, which may be accomplished by one of the following:

i. Block and Tarp:

The TWW may be accumulated when all the following requirements are met:

1. TWW is elevated to prevent contact with the soil and to protect from reasonably foreseeable run-on;

2. TWW is covered to protect from precipitation; and

3. TWW is accumulated no longer than 90 days from the date the TWW is generated or received from another TWW handler.

ii. Containerize:

The TWW may be accumulated in containers no longer than one year from the date the TWW is generated or received from another TWW handler. The containers shall be:

1. designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incidental to handling, there will be no identifiable release of TWW materials or its constituents to the environment;

2. water-resistant if exposed to precipitation, run-on or run-off under reasonably foreseeable conditions; and

3. transported to another TWW facility within 90 days of being filled to capacity.

iii. Storage Building:

The TWW shall be accumulated no longer than one year from the date the TWW is generated or received from another TWW handler in a structurally sound building with a water-resistant floor designed to prevent the movement of water into or out of the building.

iv. Containment Pad:

The TWW may be accumulated no longer than 180 days from the date the TWW is generated or received from another TWW handler on a containment surface and all the following requirements are met:

1. TWW does not contact soil;

2. TWW is protected from reasonably foreseeable run-on;

3. TWW is covered to protect from precipitation; and

4. TWW managed in accordance with subsection (E)(a)(2)(iv) of Section 9 may be accumulated uncovered if the containment surface is designed and operated to contain all precipitation and the resulting water is managed in accordance with all applicable laws and regulations.

v. Other:

The TWW may be accumulated no longer than 90 days from the date the TWW is generated or received from another TWW handler in any other manner in which the TWW handler can clearly demonstrate that the TWW is protected from run-on and run-off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and leaching to soil or water.

b) Except as provided in subsection (E)(c) of Section 9, in no case shall TWW be accumulated for more than one year from the date of generation or the date received from another TWW handler.

c) A TWW handler may accumulate TWW for longer than one year from the date the TWW is generated or received from another TWW handler, if the accumulation is solely for the purpose of accumulation of quantities of TWW necessary to facilitate disposal pursuant to subsection (I) of Section 9. However, the TWW handler bears the burden of proving that the accumulation was solely for the purpose of accumulation of quantities of TWW necessary to facilitate proper disposal.

d) A person who accumulates TWW shall be able to demonstrate the length of time the TWW has been accumulated from the date it becomes a waste or is received.

F. Offsite Shipments

a) A TWW handler is prohibited from sending or taking TWW to a place other than a TWW facility.

b) Prior to sending a shipment of TWW to a TWW facility, the originating TWW handler shall ensure that the receiving TWW facility agrees to receive the shipment.

c) TWW shall be shipped and/or transported in a manner that prevents unauthorized access; protects the TWW from precipitation; and prevents loss, dispersion, and leaching of TWW constituents.

G. Tracking Shipments

a) Shipments off-site. A TWW handler shall keep a record of each shipment of TWW sent from the TWW handler to a TWW facility. The record may take the form of a log, invoice, manifest, bill of lading, shipping document, or receipt from a TWW facility. The record for each shipment of TWW shall include the following information:

1. name and address of the TWW facility to which the TWW was sent;

2. weight of TWW, the estimated weight of TWW, or the weight of the TWW as measured by the receiving TWW facility (An estimated weight may be used when a scale is unavailable, or weighing is impractical. Assumptions required for weight estimates shall be recorded in the shipment records.);

3. date the shipment of TWW left the TWW handler; and

4. the TWW variance number of the TWW handler and receiving TWW facility.

b) Receipt of shipments. A TWW handler shall keep a record of each shipment of TWW received at the TWW facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of TWW received shall include the following information:

1. name and address of the originating TWW generator from whom the TWW was sent;

2. weight of TWW or the estimated weight of TWW (An estimated weight may be used when a scale is unavailable or weighing is impractical. Assumptions required for weight estimates shall be recorded in the shipment records.);

3. date of receipt of the shipment of TWW; and

4. the TWW variance number of the TWW generator, receiving TWW facility, and if applicable the TWW transporter.

c) Record retention.

1. a TWW handler shall retain the records described in subsection (G)(a) of Section 9 for at least three years from the date the shipment left the TWW handler; and

2. a TWW handler shall retain the records described in subsection (G)(b) of Section 9 for at least three years from the date of receipt of a shipment.

H. Treatment

a) Treatment, as defined in Health and Safety Code Section 25123.5, of treated wood waste managed in accordance with the alternative management standards of this variance is prohibited except as provided in subsections (H)(b) and (H)(c) of section 9.

b) Resizing is authorized under the terms of this Variance when resized to facilitate transport or reuse and the following requirements are met;

1. TWW shall be handled in a manner that prevents the uncontrolled release of hazardous constituents to the environment; and

2. if size reduction of the TWW results in sawdust, particles, or other material smaller than one cubic inch, the material shall be captured and managed as TWW.

c) Sorting and segregating are both exempt from the permitting requirements of division 4.5 of California Code of Regulations, title 22. The TWW shall be handled in a manner that prevents the uncontrolled release of hazardous constituents to the environment.

d) An employer resizing, sorting, or segregating TWW shall provide training for all employees handling TWW and all employees that may reasonably be expected to contact TWW. A record of the training shall be maintained for a period of three years and available for review. The training shall include:

1. all applicable requirements of the California Occupational Safety and Health Act of 1973 (ch. 1, part 1, div. 5 (commencing with § 6300) of the Labor Code), including all rules, regulations, and orders relating to hazardous waste;

2. procedures for identifying and segregating TWW;

3. safe handling practices;

4. requirements of this variance; and

5. proper disposal methods.

I. Disposal

a) When disposed to land, TWW shall be disposed in either a Class I hazardous waste landfill, or in a TWW approved landfill.

J. Training

a) An employer managing TWW shall provide training for all employees handling TWW and all employees that may reasonably be expected to contact TWW. A record of the training shall be maintained for a period of three years and available for review. The training shall include:

1. all applicable requirements of the California Occupational Safety and Health Act of 1973 (ch. 1, part 1, div. 5 (commencing with § 6300) of the Labor Code), including all rules, regulations, and orders relating to hazardous waste;

2. procedures for identifying and segregating TWW;

3. safe handling practices;

4. requirements of this Variance; and

5. proper disposal methods.

10. DISCLAIMER

The issuance of this Variance does not relieve the Applicant of the responsibility for compliance with Health and Safety Code division 20, chapter 6.5 (sec. 25100, et seq.), or the regulations adopted thereunder, and any other laws and regulations other than those specifically identified in Section 8 of this Variance. The granting of this variance confers no relief from compliance with any federal, state, or local requirements other than those specifically provided herein.

This issuance of this variance does not release the Applicant from any liability associated with the handling of hazardous waste, except as specifically provided herein and subject to all terms and conditions of this variance.

11. VARIANCE MODIFICATION OR REVOCATION

This Variance is subject to review at the discretion of DTSC and may be modified or revoked by DTSC upon change of ownership and at any other time pursuant to Health and Safety Code, Section 25143.

12. NOTIFICATION

Notice of the issuance of this Variance will be placed in the California Regulatory Register within 30-days of issuance in accordance with Health and Safety Code Section 25143(f).

13. CEQA DETERMINATION

DTSC has prepared a [ENTER APPROPRIATE CEQA DOCUMENT HERE] for this Variance, pursuant to California Code of Regulations, title 14, Section 15061(b)(3). The Notice of Exemption will be filed with the Governor's Office of Planning and Research.