
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 332
Author: Committee on Environmental Safety and Toxic Materials
Version: 5/20/2021 **Hearing Date:** 6/14/2021
Urgency: Yes **Fiscal:** Yes
Consultant: Gabrielle Meindl

SUBJECT: Hazardous waste: treated wood waste: management standards

DIGEST: Authorizes treated wood waste (TWW) to be managed under alternative management standards (AMS) instead of as a hazardous waste.

ANALYSIS:

Existing law:

- 1) Creates the Hazardous Waste Control Law (HWCL), which authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous waste in California. (Health & Safety Code (HSC) § 25100 et. seq.)
- 2) Prohibits the disposal of any hazardous waste when the disposal is at a facility that does not have a permit from DTSC. (HSC § 25189.5)
- 3) Prohibits the owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site from accepting, treating, storing, or disposing of hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facility permit or other grant of authorization from DTSC. (HSC § 25201)

This bill:

- 1) Requires a person managing TWW to comply with the hazardous waste control laws or the management standards established in the bill, including standards for the reuse, storage, treatment, transportation, tracking, identification, and disposal of treated wood waste, as provided.
- 2) Limits those standards to TWW that is hazardous only because of a preservative present in or on the wood, and that is not subject to the existing exemption for certain wood waste or to regulation as a hazardous waste under

federal law.

- 3) Requires DTSC to update the Legislature, upon request, regarding those management standards and changes to the TWW program.
- 4) Makes inoperative all variances granted by DTSC before the enactment of the bill.
- 5) Requires the wood preserving industry to update DTSC, upon request, on trends within the wood preserving industry regarding the use of treated wood preservatives and the generation of TWW and maintain an internet website and prepare fact sheets and other outreach materials on the appropriate handling, disposal, and other management of TWW for generators of TWW and for facilities that may receive or handle treated wood waste.
- 6) Requires the wood preserving industry to annually update and renew the outreach materials, disseminate the outreach materials, and provide a specified update to DTSC relating to that dissemination, as provided.

Background

- 1) *What is Treated Wood and Why is it Hazardous Waste?* Wood treated with a chemical preservative for protection against pests and environmental conditions is called treated wood. Typically, treated wood is used where ground or water contact is likely. Examples include fence posts, sill plates, landscape timbers, pilings, guardrails and decking. The intended use of a particular treated wood product is a key factor in determining the type of chemical preservatives to be used for wood treatment. The preservative can include one or more of the following constituents known to be toxic or carcinogenic: arsenic, chromium, copper, pentachlorophenol, or creosote. Harmful exposure to these chemicals may result from touching, inhaling or ingesting TWW particulate (e.g., sawdust and smoke).

When the treated wood has reached the end of its usefulness, it is regarded as treated wood waste or TWW. If TWW is not properly disposed of, the chemicals it contains can contaminate surface water and groundwater. This poses a risk to human health and the environment.

- 2) *California's Recently Repealed TWW Program.* In 2004, statute was enacted (Matthews, Chapter 597, Statutes of 2004) that modified the regulation of treated wood waste. The law was intended to resolve a longstanding concern

with the management of treated wood waste. Up to that time, most treated wood waste was unregulated, largely due to a variety of prior decisions made by DTSC that had granted variances from hazardous waste management requirements to allow its disposal in solid waste landfills.

The statute included a set of interim management standards that governed the management and disposal of treated wood waste. DTSC was required to adopt regulations to establish an alternative regulatory structure for the management and disposal of treated wood waste that replaced the statutory requirements. DTSC adopted regulations for the management of treated wood waste on July 1, 2007. These regulations were structured very similarly to the universal waste (i.e., hazardous wastes that are widely produced by households and many different types of businesses) regulations, except that the treated wood waste standards contained additional tracking and reporting requirements which are not included in the universal waste requirements.

In 2015, SB 162 (Galgiani, Chapter 351, Statutes of 2015) required DTSC to conduct a comprehensive evaluation of treated wood waste handlers, their compliance with the requirements, and the effectiveness of the standards. The Department received \$370,000 in the 2016-17 Budget for the study, which was due to the Legislature on July 1, 2018.

DTSC released the resultant report, *Treated Wood Waste—Implementation of Senate Bill 162 (2015)*, in March 2019. To meet the requirements imposed by SB 162, DTSC conducted 126 compliance inspections of TWW generators and disposal facilities in California. In addition, responses to TWW surveys from household hazardous waste collection facilities, certified unified program agencies (CUPAs), solid waste transfer stations, and load check program facilities were evaluated. The report's "Conclusions" section includes the following:

"From May 2017 to February 2018, 126 inspections of TWW facilities and generators conducted throughout the state indicate a high noncompliance rate with the alternative management standard (AMS) for TWW. Approximately 60 percent of the inspections conducted resulted in citations of one or more violations (seven class I, 68 class II, and 69 minor).

"The most frequently cited violations were: lack of personnel training specific to TWW handling, inadequate accumulation area labeling, failure to submit generator notifications, providing incomplete or incorrect

information in semiannual reports, and allowing TWW to come in contact with the ground....

“Based on discussions with TWW handlers during inspections, most noncompliance issues appear to be due to the lack of regular inspections, enforcement, and training or outreach.”

- 3) *No recommendations.* Though required by statute, DTSC’s resultant report did not include, "recommendations for changes to the handling of [TWW] to ensure the protection of public health and the environment." However, the report did note that, "Based on discussions with TWW handlers during inspections, most noncompliance issues appear to be due to the lack of regular inspections, enforcement, and training or outreach." With additional resources, DTSC could carry out regular inspection, enforcement, training, and outreach programs that would likely result in higher rates of compliance.
- 4) *Sunset of statute authorizing AMS for TWW.* SB 68 (Galgiani, 2019-2020) was introduced to make various changes to the TWW program, however, the biggest change is that the bill proposed to eliminate the sunset for the AMS, which would have made the authority for the AMS permanent. Without SB 68 the AMS statute and regulations would sunset on December 31, 2020. Governor Gavin Newsom vetoed SB 68, which ultimately eliminated the statutory authority for the AMS and eliminated the authority for the AMS regulations.

Comments

- 1) *Purpose of Bill.* According to the author, "The alternative management standards for TWW, expired on December 31, 2020, as the result of the veto of SB 68 (Galgiani). This has created great uncertainty with how TWW shall be managed. Without clear guidance I am greatly concerned that TWW will be mismanaged and ultimately discarded by the side of the road, or disposed of in a manner that could increase the risk of exposure to chemicals from TWW. AB 322 will solve this problem by re-authorizing the alternative management standards that have been in place in regulation since July 2008. I expect there to be further discussions on how to best manage TWW with the Administration, however, the first step is to ensure that TWW is safely managed while those discussions continue."
- 2) *Urgent need to find a path forward.* With the veto of SB 68, the statute authorizing AMS for TWW expired on December 31, 2020. Thus, as of

January, 2021, there are very few options for disposal of hazardous treated wood waste in California. Furthermore, the limited options that do exist involve managing the treated wood waste as a fully regulated hazardous waste which is procedurally more difficult and costly. For many generators, temporarily accumulating the treated wood waste is an available option. The accumulation of hazardous waste for up to 90-days is generally authorized regardless of generator status.

The change in status of TWW and the sunset of the AMS has been disruptive and has caused frustration to many. DTSC is aware of the urgency in resolving this problem. To facilitate the management of TWW in the interim, DTSC is offering interested parties a variance to allow the variance recipient's TWW to be managed according to variance conditions that are similar to the existing AMS. DTSC began issuing the first disposal facility variances to landfills on March 2, 2021. DTSC plans to post the names of the landfills on its website.

It is important to note that unless and until a variance is obtained, any TWW generator, handler, transporter or disposal facility must comply with the applicable hazardous waste management requirements for the TWW they handle. Illegal management of hazardous waste can result in significant penalties for noncompliance.

The variances are intended to be short term in nature, providing time for the Legislature, DTSC, and impacted stakeholders to develop a longer-term strategy to effectively and safely manage TWW.

- 3) *Re-authorizing AMS for TWW.* AB 332 authorizes TWW to be managed under AMS instead of managed as hazardous waste. AB 332 effectively takes the AMS that DTSC had adopted via regulation and places the AMS into statute. The AMS being proposed in this bill are the same management standards for TWW that have been in place in regulation since July 2008. Given that the statutory authority for the AMS expired on December 31, 2020, and the variances that DTSC is issuing are for a six month period, AB 332 additionally contains an urgency clause so that the AMS will take effect immediately.

To ensure the protection of public health and safety and the environment, prevent illegal disposal of TWW, and to ensure that consumers, business, and local governments have clear and adequate pathways to manage TWW, the Committee may wish to pass this legislation.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

Related/Prior Legislation

SB 557 (Wieckowski, 2021) would have reinstated the TWW program at DTSC, with additional requirements, including requiring the wood preserving industry to prepare training materials on how to best handle, dispose of, and otherwise manage TWW and requiring the Department to perform regular inspections of representative TWW generator sites and TWW disposal facilities. This bill was held in the Senate Appropriations Committee.

AB 684 (Fong, 2021) would require TWW to be disposed of in either a class I hazardous waste landfill or in a composite-lined portion of a solid waste landfill unit that meets specified requirements. This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee.

SB 68 (Galgiani, 2020) would have deleted the December 31, 2020, sunset on TWW statute; required the wood preserving industry to prepare training materials on how to best handle, dispose of, and otherwise manage TWW; and, required DTSC to perform regular inspections of representative TWW generator sites and TWW disposal facilities. This bill was vetoed by the Governor.

SB 162 (Galgiani, Chapter 351, Statutes of 2015). Extended the sunset date on TWW statute from June 1, 2017 to December 31, 2020, and required DTSC to, on or before January 1, 2018, prepare, post on its website, and provide to the Legislature a comprehensive report on the implementation of TWW law.

SB 909 (La Malfa, Chapter 601, Statutes of 2011). Modified code relating to TWW disposal, including: extended the sunset of statute related to TWW disposal requirements from 2012 to 2017; deleted obsolete sections of code, including a reference to a required TWW report; and, specified the website and phone number that wholesalers and retailers of treated wood and treated wood-like products are required to post on warning signs so that consumers can access information about treated wood.

AB 1353 (Matthews, Chapter 597, Statutes of 2004). Required TWW to be disposed of in a class I hazardous waste landfill or a composite-lined portion of a

solid waste landfill unit (class II or class III); required DTSC to establish management standards for TWW; and, required DTSC, by June 1, 2011, to prepare and post on its website a report that makes a determination regarding the implementation and compliance rate.

SOURCE: Committee on Environmental Safety and Toxic Materials

SUPPORT:

Agricultural Council of California
Aiken-ford Lumber Co.
Allweather Wood, LLC
Amador County Board of Supervisors
American Chemistry Council
American Forest & Paper Association
American Wood Council
Auto Care Association
Bay Planning Coalition
Bb&s Treated Lumber of New England
Bnsf Railway
Brooks Manufacturing Co.
CA Waste & Recycling Association (CWRA)
Calchamber
Calcima
California Association of Harbor Masters and Port Captains
California Association of Winegrape Growers
California Automotive Wholesalers' Association
California Biomass Energy Alliance
California Builders Alliance
California Building Industry Association
California Building Industry Association (CBIA)
California Cascade
California Cattlemen's Association
California Farm Bureau
California Farm Bureau Federation
California Forestry Association
California Fresh Fruit Association
California Landscape Contractors Association
California Manufacturers & Technology Association
California Product Stewardship Council
California Retailers Association
California Short Line Railroad Association

California Waste Haulers Council
Chemical Industry Council of California
City of Oroville
City of Roseville
City of Santa Clara
City of Watsonville
Conrad Forest Products
Construction & Demolition Recycling Association
Contra Costa County
Contractors Association of Truckee Tahoe
County of Lake
County of Sacramento
Creosote Council Iii, INC.
Csac
Del Norte Solid Waste Management Authority
Edco
Exterior Wood / Taiga Building Products
Fontana Wholesale Lumber, INC.
Gemini Forest Products
Hexion INC.
Humboldt Redwood Company LLC
Humboldt Waste Management Authority
Humboldt Sawmill Company
Industrial Environmental Association
Jh Baxter
Kern; County of
Koppers INC.
League of California Cities
Lonza Wood Protection
Los Angeles County Sanitation Districts
Lp Building Solutions
Manke Lumber Company
Marine Recreation Association
Mcfarland Cascade Holdings, INC.
Mendo Recycle
Mendocino Forest Products
Mendocino Redwood Company
Nadra
National Marine Manufacturers Association
Nevada County Contractors Association
Nisus Corporation
North American Wood Pole Council
North Coast Builders Exchange

Northern California Engineering Contractors Association
Osmose Utilities Services, INC.
Pacific States Treating
Pacific Wood Services
Premier Recycle Company
Princeton Wood Preservers Ltd.
Railway Tie Association
Rain Carbon INC. - Ruetgers Canada
Recology Waste Zero
Recyclesmart
Republic Services INC.
Resource Recovery Coalition of California
Rethinkwaste
Rural County Representatives of California
Rural County Representatives of California (RCRC)
Sacramento Regional Builders Exchange (SRBX)
Salinas Valley Solid Waste Authority
Santa Barbara Contractors Association
Santa Barbara County Resource Recovery & Waste Management Authority
Santa Barbara County Solid Waste Local Task Force
Sierra Pacific Industries
South Bayside Waste Management Authority (SBWMA) DbA Rethinkwaste
Southeastern Lumber Manufacturers Association
Southern Pressure Treaters Association
Stopwaste
Swana California Chapters Legislative Task Force
Tehama County Solid Waste Management Agency
Thunderbolt Wood Treating
Treated Wood Council
Union Pacific Railroad
United Contractors
Viance, LLC
Waste Management
West Coast Lumber & Building Material Association
West Contra Costa Integrated Waste Management Authority
Western Placer Waste Management Authority (WPWMA)
Western Wood Preservers Institute
Wheeler Lumber L.l.c
Wine Institute
Wood Preservation Canada
Zanker Recycling
Zero Waste Sonoma

OPPOSITION:

None received

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