



December 1, 2020

The Honorable Jared Blumenfeld
Secretary for Environmental Protection
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95811

Subject: Solid Waste Industry and Local Government Concerns Regarding the Veto of SB 68 (Galgiani)

Secretary Blumenfeld,

On September 29, 2020 Governor Newsom vetoed SB 68 (Galgiani), which would have repealed the sunset date for management and disposal of Treated Wood Waste (TWW) in a composite-lined portion of a solid waste landfill - standards that have been in place since 2004. The solid waste industry and local governments are largely responsible for managing the handling and disposal of TWW. Together, we face significant management challenges and **an exponentially increased risk of illegal TWW disposal** when Health and Safety Code Section 25150.7 expires on December 31, 2020. We are concerned that the veto of SB 68 leaves us with no effective management standards or guidance for TWW, no practical alternatives for managing the handling and disposal of this waste, and very little time to adapt current practices without immediate guidance from CalEPA.

A recent posting by the Department of Toxic Substances Control (DTSC) indicates that as of January 1, 2021, "... all hazardous treated wood waste managed in California will have to be stored and manifested as hazardous waste and transported to class I hazardous waste landfills for disposal." As a result, any treated wood that is generated by a business or household (or left on site from 2020) is subject to the full range of standards for management and disposal of hazardous waste. These include a limit that the material cannot remain on the generator's site longer than 90 days, cumbersome storage and labeling requirements, required shipment on a hazardous waste manifest, and disposal at a full hazardous waste facility.

Data provided by DTSC to the preserved wood industry indicate that 1.3 billion pounds of TWW has been safely disposed in the composite-lined portions of solid waste (Class II or Class III) landfills. Reports over the years have identified no significant environmental issues with current disposal practices.

If TWW is required to be disposed in a hazardous waste Class I landfill, it will create significant disruptions to local waste handling operations and significantly increase illegal disposal. Transportation costs and impacts will also increase. These impacts include traffic and toxic air contaminants and GHG emissions that will fall on the low-income

communities located near the Class I facilities. For 16 years, homeowners and businesses have become accustomed to managing TWW through our facilities and pursuant to the alternative management standards (AMS). The DTSC posting warns that TWW will be considered hazardous starting next year. This leaves residential and commercial customers with no practical disposal options because of the significantly greater costs and complexities of managing and transporting these materials as hazardous wastes to a Class I hazardous waste disposal facility.

According to the Treated Wood Waste Management in California AB 1353 (Matthews, Chapter 597, Statutes of 2004) Implementation Report, June 2018, "California's hazardous waste facilities lack the capacity to accommodate the volume of TWW generated in the state each year." **The average cost to dispose TWW in a hazardous waste Class I landfill is over eight times the cost of disposal in a Class II or Class III landfill.**

Transportation costs are also prohibitive, given that there are no more than three Class I landfills, and all are located in remote areas that are considerable distances from where TWW is generated. These costs and challenges greatly increase the potential for illegal dumping and burning, as traditional transportation and disposal pathways must turn away those wastes and customers may be unable or unwilling to adhere to the proper management and disposal requirements. Any increase in illegal disposal will result in additional cost pressures on already strained state and local governments that will have to clean up those illegal hazardous waste disposal sites. It is also important to note that these additional requirements and costs will occur at a time when the solid waste industry and local governments are struggling with the increased costs and administrative burdens caused by COVID-19.

These costs, when applied to the available estimated amount of TWW generated at 45,000 tons, will result in a statewide increase in disposal costs of at least, **\$22,500,000 per year**. However, the CalRecycle 2018 Disposal Characterization Study reflects a statewide Treated/Painted/Stained Wood Waste estimate of 1,740,699 tons that went into California landfills in 2018. Based on this estimate, we believe that our current estimated generation number of 45,000 tons is likely significantly low and therefore the actual annual costs starting in January 2021 will be significantly higher. The significant additional costs associated with handling TWW as hazardous waste will likely be borne by the local governments in the form of illegal dumping or at Household Hazardous Waste (HHW) facilities.

A recent study required by SB 162 (Galgiani, Chapter 351, Statutes of 2015), Treated Wood Waste Implementation of Senate Bill 162, found a 93% compliance rate with the Alternative Management Standards (AMS), ensuring the protection of the environment and public health. Furthermore, the AMS decreased illegal dumping of TWW to "no reported instances." Administrative type violations were noted in the review and were primarily addressed in SB 68 with improved data collection, outreach, and reporting.

The existing alternative management standards effectively result in proper management of TWW and a curtailment of illegal dumping, illegal burning, and illegal storage. Local governments are particularly concerned with illegal management of TWW should the existing management standards expire. **Without the current management standards, illegal dumping and burning will increase dramatically as homeowners, farmers, wineries, and businesses come to realize the increased costs and complex procedures that will be in place on January 1, 2021.**

To avoid these outcomes, we strongly recommend that CalEPA, DTSC, and the Governor's Office consider alternatives that will allow the current management standards to stand until remedial legislation can be passed and signed by the Governor. We strongly urge consideration of the following:

- ***Issuance of variances pursuant to Health and Safety Code Section 25143.*** Issuance of variances should allow TWW to be managed under the current AMS both for collection and disposal. This will provide time for adoption of a legislative solution or, in the absence of such an outcome, to provide for an off-ramp for a reasonable transition to managing the material as a hazardous waste.¹

HSC Section 25143 authorizes DTSC to issue variances from one or more hazardous waste control requirements under certain circumstances. This process could be used to provide the public with relief from having to manage the TWW as a hazardous waste after January 1, 2021. Given our optimism that a legislative solution can be crafted, we believe that temporary variances could be issued – perhaps for a period of six months. This would give our broad coalition time to develop either (1) legislation that can be supported, quickly passed, and signed into law, or (2) in the event legislation is not feasible or successful, to develop plans and a procedure to manage TWW as hazardous waste with all the necessary requirements by July 1, 2021.

We believe that the primary condition of all variances should be managing TWW in accordance with current AMS regulations set forth in 22 CCR § 67386.1 et seq. The AMS have been in place since 2008, are familiar to all concerned, and provide for the safe management and disposal of TWW. This approach will allow stakeholders and DTSC to manage TWW within a universally understood and effective framework until a feasible transition plan is in place, thereby avoiding unnecessary illegal dumping, burning, and other negative outcomes.

- ***Development of a standard template for issuance of TWW-related variances.*** Recognizing that DTSC is now limited to issuing variances to specific individuals or business concerns, we suggest that DTSC create a standard template for TWW-

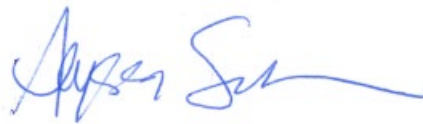
¹ It should be noted that many years ago, DTSC regulated TWW through the use of variances issued to various companies. The practice of issuing variances was not consistent, and the many variances issued by DTSC to different companies had varying time frames and conditions and did not reflect a cohesive regulatory strategy. DTSC ultimately abandoned this approach, with legislation replacing the variance patchwork to provide consistent standards for management of TWW.

related variance applications. Creation of a standard TWW variance template will significantly reduce the workload for both DTSC's review of those applications and the burden placed upon each individual applicant. Those entities currently involved in the management and collection of TWW are extremely diverse. Some entities may have little trouble applying for a variance to cover the numerous facilities that they operate. Other operators, especially those serving rural areas, may have far fewer resources to successfully navigate the variance application process and yet may be the only pathway for collection and management of TWW in the areas they serve. Given the successful management of TWW by those existing entities and the high risk of illegal dumping and burning without adequate transportation and management opportunities, we believe that there would be significant environmental and resource benefits from developing and using a standard template for issuance of TWW-related variances.

We stand ready to discuss these concerns, our recommendations, **and any other options that would provide a similar level of continuity to our jurisdictions and our management practices.** Thank you for your attention to this matter of statewide concern.



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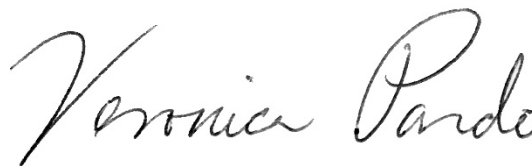
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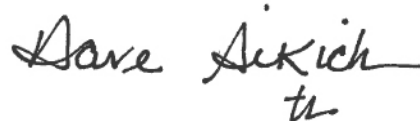
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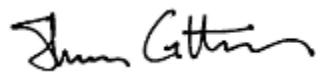
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