
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 557
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Urgency: No
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Hearing Date: 4/12/2021
Fiscal: Yes

SUBJECT: Hazardous waste: treated wood waste

DIGEST: This bill reinstates the Treated Wood Waste (TWW) program at the Department of Toxic Substances Control (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.

ANALYSIS:

Existing law:

- 1) Prohibits the disposal of any hazardous waste when the disposal is at a facility that does not have a permit from DTSC. (Health & Safety Code (HSC) § 25189.5)
- 2) 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)
- 3) Exempts from the hazardous waste control laws, wood waste that is exempt from regulation under the federal Resource Conservation and Recovery Act of 1976, as amended, if the wood waste is disposed of in a municipal landfill that meets certain requirements imposed pursuant to the Porter-Cologne Water Quality Control Act for the classification of disposal sites, and the landfill meets other specified requirements.
- 4) Specifies that a violation of the state's hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill:

- 1) Defines "treated wood" as wood that has been treated with a chemical preservative for the 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 (FIFRA).
- 2) Requires treated wood waste, as defined, 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.
- 3) Requires any solid waste landfill accepting treated wood waste to meet certain requirements specified in the bill and to manage the treated wood waste in a specified manner.
- 4) Authorizes treated wood waste to be reused only if certain conditions apply, including, among other conditions, that the reuse occurs onsite at the facility at which the treated wood waste was generated.
- 5) Requires each wholesaler and retailer of treated wood and treated wood-like products to conspicuously post information that contains a specified message, including a certain internet website address at which more information can be found, at or near the point of display, sale, or customer selection of treated wood and treated wood-like products, as provided.
- 6) Requires the wood preserving industry, as defined, to, in consultation with the department, maintain an internet website and prepare factsheets and other outreach materials on the appropriate handling, disposal, and other management of treated wood waste for generators of treated wood waste and for facilities that may receive or handle treated wood waste.
- 7) Requires the wood preserving industry to annually update and renew the outreach materials, disseminate the outreach materials, and provide a specified update to the department relating to that dissemination, as provided.
- 8) Requires the Department of Toxic Substances Control to adopt regulations establishing management standards for treated wood waste as an alternative to the requirements specified in the hazardous waste control laws.
- 9) Requires a person subject to the hazardous waste control laws to comply with the alternative standard, specified in the regulations adopted by the department or with the requirements of the hazardous waste control laws.

- 10) Provides that all variances granted by the department before January 1, 2005, governing the management of treated wood waste are inoperative and have no further effect.
- 11) Requires DTSC, on or before March 31 of each year, to produce a list that includes the generators that generated more than 10,000 pounds of treated wood waste in the previous calendar year.
- 12) Requires DTSC to provide the list to a unified program agency that has in its jurisdiction a generator that is on the list.
- 13) Requires the department, on or before July 1, 2024, and on or before July 1 annually thereafter, to post on its internet website specified information on the generation, management, and disposal of treated wood waste in the state for the previous calendar year.
- 14) Requires the department to perform regular inspections of representative treated wood waste generator sites and treated wood waste disposal facilities.
- 15) Requires the department, no later than March 1, 2023, to develop, and submit to specified legislative committees, an inspection and compliance plan.

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.”

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.

SB 557 is substantially similar to SB 68 (Galgiani, 2020), which was vetoed by Governor Newsom. In his veto message of SB 68, Governor Newsom stated,

“This bill would eliminate the sunset on the Treated Wood Waste (TWW) program at the Department of Toxic Substance Control (DTSC) and would make various changes to that program. SB 68 creates a significant additional mandate for DTSC to perform regular inspections of generators and disposal sites for treated wood waste. The Hazardous Waste Control Account (HWCA) currently has a structural deficit and this unfunded new mandate will cost the department millions of dollars to implement, exacerbating this deficit. Moreover, it is not appropriate to eliminate the sunset date for the Treated Wood Waste program authorization, essentially exempting this hazardous waste from hazardous waste law and regulation. While the generation of this waste may have justified the allowance for alternative management standards, this waste is hazardous and poses a risk to both human health and the environment and necessitates periodic review of its statutory authorization.”

Comments

Purpose of Bill. According to the author, “Treated wood is a commonly used material in construction, infrastructure, agriculture, transportation, and aquatic applications where exposure to moisture, insects, or other elements compromise the wood’s strength. Wood products are treated with preservatives reviewed and registered by the U.S. Environmental Protection Agency (EPA), and therefore disposing of treated wood waste correctly is an essential part of

preserving California's environment. The wood preserving industry has consistently been a leader in promoting the proper handling and disposal of treated wood waste, and removing the sunset language to the treated wood waste program will allow generators to work more closely with the Department of Toxic Substances Control and provide a greater level of continuity and stability in wood waste disposal.”

- 1) *Urgent need to find a path forward.* With the veto of SB 68, the statute authorizing AMS for TTW 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 TTW 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. SB 557 would reinstate the TTW program at DTSC, with important improvements 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.

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.

Related/Prior Legislation

AB 332 (Committee on Environmental Safety and Toxic Materials) would require the AMS regulation that was adopted before January 1, 2008, exempting a hazardous waste management activity from one or more of the requirements of the hazardous waste control laws to remain valid unless repealed. This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee.

AB 684 (Fong) 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 that allows treated wood waste (TWW) to be disposed of in a Class II or III landfill so long as alternative management standards, established by the Department of Toxic Substances Control (DTSC) are maintained to January 1, 2020. The bill also required DTSC to submit a report to the Legislature on the compliance and implementation of the TWW law.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received