

Management of Used Treated Wood Products

Addendum for the Western United States

Management of Used Treated Wood Products in the Western United States

In addition to the federal regulations, disposal may also be subject to state and local authorities. This addendum addresses state regulations in the western United States (Rocky Mountains to the Pacific Coast).

To WWPI's knowledge all states, except as noted, administer the classification and disposal of treated wood utilizing the federal regulations and requirements without additional state requirements. Three states -- Washington, Oregon and California have separate rules addressing the designation and disposal of treated wood. Fortunately these states, through statute and/or regulation, have requirements which differ little from the federal rules and allow materials considered nonhazardous under federal guidelines to be dealt with as nonhazardous under state rules.

Parties needing to dispose of treated wood material are cautioned to be sure they are aware of any state or local requirements which may exceed the federal standards. The Western Wood Preservers Institute urges reuse of materials whenever practical and strongly supports responsible disposal. WWPI believes it is appropriate and fortunate that all western states have adopted rules which facilitate disposal in a manner generally consistent with the federal standards.



STATE OF WASHINGTON

In Washington, the classification and handling of wastes falls under the Department of Ecology's Dangerous Waste Regulations (Chapter 173-303 WAC). In January 1994, the regulations were revised to exclude treated wood waste and wood products from the Dangerous Waste Rules [WAC 173-303-071 (3) (g)].

Under the state's rule, arsenical treated wood is exempt from state "dangerous" waste designation provided it meets the provisions of the federal arsenical exemption. That is, even if it fails the criteria for waste numbers D004 through D017 or "any state criteria," it is exempt if the waste is generated by persons who utilize the material for its intended end use.

Other types of treated wood materials are also exempt provided they are not a federal hazardous waste and they are: disposed of at a modern landfill; sent to a facility that will "legitimately treat or recycle the treated wood waste;" sent to a permitted Treatment, Storage and Disposal Facility. Creosote materials are further specifically exempt if burned for energy recovery in an appropriately permitted facility.

State of Washington Regulations

Chapter 173-303 WAC - Dangerous Waste Regulations
WAC 173-303-071 - Excluded Categories of Waste

(3) Exclusions. The following categories of waste are excluded from the requirements of Chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-3-3-960.

(g) Treated wood waste and wood products including:

- (i) Arsenical-treated wood that fails the test for toxicity characteristic of WAC 173-303-090(8) (dangerous waste number D004 through D017 only), or which fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use.
- (ii) Wood treated with other preservatives provide such treated wood is, within 180 days after becoming Waste:
 - (A) Disposed of at a landfill that is permitted in accordance with WAC 173-304-460, minimum functional standards for solid waste handling, or Chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-090(8); or
 - (B) Sent to facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or
 - (C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through WAC 173-303-845. In addition, creosote treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to bum creosote treated wood.



STATE OF OREGON

Under Oregon State law, all materials containing a pesticide residue including treated wood are automatically considered a hazardous material unless excluded or it passes the state Aquatic Toxicity Test. In March 1994, the Oregon Environmental Commission completed a two step effort to revise the Oregon Administrative Rules (OAR) with the practical effect of exempting treated wood from state hazardous waste designation and management requirements.

- Rule 340-101-033 [Additional Hazardous Wastes (5)(a) - provides that materials subjected to the federal TCLP are exempted from testing under the states Aquatic Toxicity Procedures. Thus, creosote and penta materials passing the federal TCLP are not a state hazardous waste.
- Rule 340-101-034 [Waste Requiring Special Management (2)] provides for the other preservatives that:
 - Spent treated wood that is reused is exempt from special management and from state designation as a hazardous waste.
 - Treated wood construction waste and material removed from service that are not a federal listed waste or exempted by the updated federal arsenical exclusion, but which fail the state aquatic test are excluded from hazardous waste rules provided they are not speculatively accumulated and are disposed of at a modern landfill or other facility authorized to receive such waste.

State of Oregon Regulations

Rule 340-101-033 Additional Hazardous Waste

(5) (a) Pursuant to "Department of Environmental Quality Hazardous Waste Aquatic Toxicity Testing Procedures." a pesticide residue or pesticide manufacturing residue is a toxic hazardous waste if a representative sample of the residue exhibits a 96-hour aquatic LC₅₀ equal to or less than 250 mg/l, except for residues listed in Table 1 of 40 CFR 261.24 which pass the evaluation requirement of 40 CFR 261.24(a).

Rule 340-101-034 Waste Requiring Special Management

(2) Pesticide Treated Wood. Spent treated wood that is used or reused for a purpose for which the material would be treated is exempt from this part and from OAR 340-101-03(5)(a). Waste resulting from the use of newly treated pesticide wood, including scrap lumber, shavings and sawdust; waste resulting from shaping pesticide treated wood, such as sawdust, shavings and chips; and treated wood removed from service that do not meet the criteria specified in 40 CFR Part 261, Subpart C, and are not a federal hazardous waste for any other reason; and, are not otherwise excluded by 40 CFR 261.4(b)(9), but meet the criteria identified in 340-101-033(5)(a); are not subject to Divisions 100 to 108, provided:

(a) the waste is not stored for more than six months unless the generator demonstrates that a longer storage time is necessary to meet the management standards in OAR 340-101-034(2)(b); and,

(b) the waste is recycled, disposed of according to OAR 340-93-190(1)(g), or disposed of at a hazardous waste facility or other facility authorized to receive such waste



STATE OF CALIFORNIA

California has its own rules for evaluation of solid waste as hazardous which go beyond the federal rules. In 1995, legislation passed regarding utility industry materials; and in 2004 legislation passed for all other treated wood materials. With passage of the 2004 legislation, all variances previously issued by the California Environmental Protection Agency covering the disposal of treated wood became inoperative on January 1, 2005.

- Utility Materials - In 1995, legislation was passed and signed by the governor which exempts treated wood removed from utility service from state only hazardous waste designation. Specifically the law provides:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOW- SECTION. Section 25143.1.5 is added to the Health and Safety Code to read:

25143.1.5. Any wood waste previously treated with a preservative that has been removed from public or private utility service, is exempt from the requirements of this chapter if all of the following conditions are met:

- 1. The wood is not subject to regulation under the federal act.*
- 2. The wood waste is disposed of in a solid waste landfill that meets the leachate collection system and liner requirements of Subpart (D) of Part 258 of Title 40 of the Code of Federal Regulations*
- 3. The solid waste landfill used for disposal is authorized to accept the wood waste under waste discharge requirements issued by the California regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the water code.*

- Other Materials - In order to address the unique circumstances associated with the generation and management of non-utility treated wood waste, legislation was passed and signed by Governor Schwarzenegger in September 2004 that authorized the disposal of treated wood waste in Class II and III composite-lined landfills meeting specified requirements.

The enacted legislation sets forth the following key requirements:

1. Section 25150.7 is added to the Health and Safety Code, relating to hazardous waste.
2. Section 25150.7 applies only to treated wood waste that is hazardous waste, solely due to the presence of a preservative in the wood, and to which the waste is not subject to regulation as a hazardous waste under the federal act.
3. Notwithstanding Sections 25157.8, 25189.5, and 25201, treated wood waste is authorized to be disposed of in either a class I hazardous waste landfill, or in a composite-line portion of a solid waste (class II and III) landfill unit that 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 of the Water Code for discharges of designated waste or treated wood waste.
4. A solid waste landfill that accepts treated wood waste is required to (1) prevent scavenging;(2) stop the discharge of treated wood waste when a chemical release is detected until corrective action stops the release; and (3) ensure that any management of the treated wood waste prior to disposal, or in lieu of disposal, complies with the other applicable requirements of the law, except as otherwise provided in subdivision (e) of the law (*see item 6 below*) or regulations adopted by the Department of Toxic Substance Control.
5. Pursuant to the law, the Department of Toxic Substances Control is required to adopt regulations establishing management standards for treated wood waste as an alternative to the requirements specified in the hazardous waste control laws and as a replacement for requirements provided in subdivision (e) of the law.
6. Until replaced by regulations, treated wood waste is exempt by the law provided all the following requirements are met: (1)The treated wood waste is managed so as to prevent scavenging; (2) The treated wood waste is not disposed of, except as allowed pursuant to subdivision (d) of the law (*see item 3 above*); (3)The treated wood waste is not burned, recycled, reclaimed, or reused, except in accordance with the law; (4)The treated wood waste is not stored for more than 90 days, beginning on July 1, 2005, and when stored is protected from run-on and run-off, and placed on an impervious surface to prevent, to the extent practical, contact with any leaching to soil and water; (5)The treated wood waste is not mixed with other treated wood prior to disposal; and (6) The treated wood waste is handled in accordance with California Occupational Safety and Health Act of 1973 (Chapter 1 (commencing with Section 6300) of Part 1 of Division 5 of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.
7. All variances granted by the department before January 1, 2005, governing the management of treated wood waste will be inoperative and have no further effect.
8. Section 25150.7 will become inoperative on June 1, 2012 and as of January 1, 2013 will be repealed unless a later enacted statute extends the date. Regulations adopted pursuant to the law on or before June 1, 2012 will continue in force and effect, until repealed or revised by the Department of Toxic Substance Control.

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