



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

September 16, 2023

Meredith Williams
Director, Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814

RE: Comments on Draft Hazardous Waste Management Report

Dear Director Williams:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to provide comments on your Draft Hazardous Waste Management Report.

RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties. County governments are integrally involved in the state's waste management and disposal framework. Local governments also operate a network of household hazardous waste (HHW) collection facilities to provide households and small businesses with a convenient opportunity to properly dispose of hazardous wastes. Local governments are also often responsible for the collection and proper disposal of improperly discarded and abandoned hazardous wastes abandoned both along public roadways and at solid waste facilities. In addition, our members operate vehicle maintenance facilities and other operations that generate hazardous wastes.

RCRC appreciates the Department of Toxic Substances Control's (DTSC) comprehensive and holistic examination of hazardous waste management in California. We believe this report is an important first step to improving hazardous waste management and disposal, ensuring there is adequate capacity to handle California's hazardous waste, and breaking down barriers to the in-state treatment and recycling of hazardous wastes. We appreciate DTSC's acknowledgement that there are some hazardous wastes that cannot be reduced, including those coming into local HHW collection facilities and contaminated soils. While it is important to reduce hazardous waste generation, we must ensure that there are realistic, feasible, and convenient management and disposal opportunities to reduce the risk of illegally dumped and orphaned hazardous waste.

As DTSC explores how to manage hazardous wastes resulting from discarded consumer goods, it should consider the role that manufacturers can and should play in

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the end-of-life management of the goods they introduce into the stream of commerce. Electronic waste, solar panels, batteries, and gas cylinders can be very expensive for local HHW programs to manage and are likely well-suited for manufacturer-focused product stewardship and producer responsibility programs. Recent price increases for management of HHW – on the order of 50% to 100% for some waste streams – have strained local government HHW budgets. This is even more concerning as HHW facilities have no control over their generation and any increase in gate fees will spur a similar increase in the risk that the local government will have to clean up illegally disposed hazardous waste.

According to the Draft Report, “California’s policy objective has been to responsibly manage its hazardous waste within its own borders rather than depending on out-of-state facilities.” While the amount of hazardous waste generated has increased over time (most of which is not considered hazardous by U.S. EPA or other states), the number of facilities permitted to treat and dispose of those waste streams have significantly decreased. We appreciate DTSC’s acknowledgement that having an adequate number of facilities and capacity to handle hazardous waste is crucial. The extremely limited disposal opportunities to properly manage hazardous wastes that are sometimes as innocuous as unsold soaps, lotions, and shampoos have posed significant logistical and economic problems for generators looking to properly dispose of their wastes.

While we believe that in-state capacity expansion is important, we cannot ignore the role that out-of-state facilities can and must play in managing our hazardous wastes. This is especially important considering the number and nature of many of the state’s border counties and the simple reality that their residents are often reliant on out-of-state communities for normal goods and services. Out-of-state disposal of hazardous wastes by these communities is not intended to avoid California’s regulatory obligations so much as it is a practical necessity dictated by geographic and seasonal realities. Forcing the use of in-state management options would impose a disproportionate (and potentially unconstitutional) burden on those residents. Finally, we appreciate DTSC’s acknowledgement that Nevada and Oregon (which make up the vast majority of California’s border) require wastes considered hazardous in California to be managed as hazardous wastes if transported to those states for disposal.

We support DTSC’s efforts to explore what is needed to increase in-state hazardous waste treatment and disposal. California only has two hazardous waste landfills and they are often hundreds of miles away from where hazardous wastes are generated. Worse yet, those facilities only have 20 years of capacity remaining (less than ten years if all of the state’s hazardous waste was sent to them). We acknowledge that recent legislative efforts have focused on increasing the stringency of regulating permitting hazardous waste facilities; however, many of these efforts have attempted to remedy legacy problems involving inadequate regulatory oversight and enforcement. DTSC has made great strides to remedy these problems, but many challenges still remain to siting new hazardous waste treatment and disposal facilities. Some of those challenges raise legitimate concerns about the location of those facilities near sensitive or disadvantaged communities. Increasingly, it seems that the state should focus on

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where facilities can be located and what activities can or could be performed without triggering excessive permits from the state.

California must create a regulatory environment in which hazardous wastes can be effectively managed, treated, and disposed in the state; however, we cannot and should not prohibit the use of out-of-state facilities for those purposes. We do not dispute California's historic efforts to reduce the amount of hazardous waste generated and promote recycling; however, the regulatory environment that has evolved in California makes it incredibly difficult to perform even basic treatment activities. There has been a sharp decline in the number of in-state facilities that can manage, treat, or dispose of hazardous waste. This, combined with the difficulty of permitting new facilities, poses a significant barrier to developing the capacity to treat and recycle increasing volumes of emerging hazardous wastes like batteries, solar panels, and even contaminated soil.

We encourage DTSC to carefully evaluate what kinds of "treatment" and recycling may be done on-site or off-site to improve the management and decrease the generation of hazardous wastes. The Universal Waste Rule provides some relief for limited treatment activities, but more flexibility is needed to allow additional treatment options - especially for electronics and photovoltaic modules. Currently, treatment is limited to breakage into smaller components. Allowing heat or water treatment methods without extensive permitting but with environmental controls would provide significant incentive for these increasing waste streams to be processed within California rather than exporting to other states for treatment. Similarly, reducing regulatory burdens for management of certain types of "empty" containers will significantly reduce the complexity and costs of managing these wastes that are functionally empty, but which pose challenges for businesses and local HHW facilities.

In light of these challenges, California's first approach should be reconsidering what is considered "hazardous." It is important to ensure that wastes are managed in accordance with the risks they pose to public health, safety, and the environment. As the report points out, 81% of all the hazardous waste generated in California is not considered hazardous by the U.S. Environmental Protection Agency (U.S. EPA). We recognize California's prerogative to establish more rigorous standards for what constitutes hazardous waste; however, California's expansive classifications have imposed unnecessarily burdensome management and disposal requirements for many common consumer goods and for wastes which can be safely managed and contained in modern solid waste landfills. The Retail Waste Working Group (convened by the Department pursuant to SB 423 (Bates, Chapter 771, Statutes of 2016)) and others have called into question the suitability of DTSC's current hazardous waste classification criteria. We agree with DTSC that we should reevaluate California's hazardous waste determination criteria in order to ensure that we are focusing our resources on truly hazardous wastes and to take into account the stringent environmental protection measures that have been implemented at waste management facilities since those criteria were first adopted.

Similarly, DTSC notes that California has chosen not to adopt three dozen federal hazardous waste exclusions and exemptions. We strongly support DTSC's suggestion

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to fully explore whether those exclusions and exemptions should now be adopted, especially in light of modern solid waste landfill construction standards, diminishing capacity at in-state hazardous waste landfills, and considering the extreme difficulty that would accompany expanding existing or constructing new hazardous waste disposal facilities in California.

While not the subject of the Draft Report, it is vital to ensure that hazardous waste facilities are adequately overseen by state and local regulators to protect public health, safety, and the environment from the risks posed by improper handling and disposal of (and contamination by) hazardous wastes. We recognize that DTSC and other regulatory agencies have significantly improved compliance monitoring and enforcement practices over the last several years. California cannot afford any backsliding in this respect lest we put even more financial burdens on taxpayers for cleanup actions because responsible parties were ultimately able to walk away from the messes they created.

Finally, we note that California's hazardous waste classifications must be grounded in reasonableness. It is difficult to understand and justify a determination that unused consumer products must be disposed of as hazardous waste when they are ubiquitous and widely marketed/used for internal and external human consumption. Similarly, it is difficult to understand the imposition of management standards that prohibit treated wood waste from coming into contact with the ground when the item itself was designed for and often used directly in contact with the ground over a period of several decades. Additionally, "contaminated soils" should not have to be removed and managed as hazardous waste when the "contamination" is solely due to the natural occurrence of metals in the soil.

With this Draft Report, DTSC is embarking on a difficult but vital journey to determine how the state can best manage the generation, treatment, and disposal of its hazardous wastes and evaluate whether the existing approach for identifying and regulating wastes as hazardous can be improved. We look forward to continuing to work with you on ensuring the proper and appropriate management and disposal of hazardous wastes and increasing the convenience of their collection and disposal.

RCRC appreciates your consideration of these comments. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,



JOHN KENNEDY
Senior Policy Advocate