



Sustainability in Action

August 10, 2023

The Honorable Ben Allen - Chair
Senate Environmental Quality Committee
1021 O Street, Suite 6610
Sacramento, CA 95814

The Honorable Alex Lee - Chair
Assembly Environmental Safety and
Toxic Materials Committee
1021 O Street, Suite 6330
Sacramento, CA 95814

RE: Joint Legislative Oversight Committee Hearing – DTSC Draft Hazardous Waste Mgmt. Report

Dear Chairs Allen and Lee:

Republic Services is providing comments relative to the upcoming August 23, 2023 Joint Hearing of the Senate Environmental Quality Committee and the Assembly Environmental Safety and Toxic Materials Committee related to the DTSC Draft Hazardous Waste Management Report (Report). As the owner of four of the five out of state landfills receiving California Hazardous Waste, we believe it is important for committee members to understand the complexity of the issues related to this topic. The view that this material should be managed entirely in-state is not plausible for many reasons. We have outlined the basis for this position below.

In State Capacity – The Report notes that California has two permitted hazardous waste landfills. At the current rate of land disposal in-state and out-of-state, there is a combined 20 years of permitted capacity remaining. If all RCRA and non-RCRA waste that is destined for land disposal were to remain in California, **these two hazardous waste landfills would reach their permitted capacity in 9.5 years.**

As noted in the Report the prospects of permitting a new facility, let alone expanding the existing facilities, are minimal given the concerns that have surrounded both operations. Environmental Justice advocates have been highly critical of the manner that both operations have been managed as well as the impacts the surrounding communities are subject to. Essentially doubling the throughput at both facilities to accommodate all the material generated within CA will only exacerbate those concerns.

Lastly, if only two facilities with diminishing capacity are available to manage a constant supply of hazardous waste, further consideration must be given to the effects on the price of managing this material. **The market today for management of this material is competitive and provides several options to generators** needing a location to manage their material. That will most likely not be the case if only two disposal options are available.

Selective Material Acceptance at In-State Facilities – It is worth noting that there have been several instances of in-state facilities being selective about which types of Cal Haz waste they are willing to receive. These decisions have been made due to annual capacity limitations as well as material density/airspace usage represented by certain material types. For example, there have been instances where treated auto shredder waste (shredder fluff) was not allowed to be accepted under former variance protocols at Northern California municipal landfills. The two in-state hazardous waste facilities chose not to accept the material during this time. Our in-state operations were able to provide rail/ transportation logistics near the point of generation



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along with capacity at our out-of-state landfills while the issue was deliberated with DTSC. As a result, **a diversified set of out-of-state options kept a critical essential service in continuous operation.**

CERCLA Remediation Funding – The Report notes that Federal funding for remediation of Superfund sites in the state is dependent upon the state meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires states to provide assurance that they have capacity to treat, destroy, or securely dispose of the waste that is generated within their borders for 20 years in order to maintain funding for CERCLA projects. This requirement allows for the inclusion of out of state capacity in the assessment. **Without the inclusion of out of state disposal capacity, California cannot meet this requirement and therefore would be in jeopardy of losing federal funding for the cleanup of sites such as Exide and Hunters Point Naval Shipyard.**

Environmental Controls at Out-of-State Landfills – There has been concern over the inability of California’s regulatory community to ensure that the out-of-state facilities are constructed and operated in a manner that is comparable to the California facilities. The environmental controls at Republic Services out of state landfills are more than sufficient to receive and maintain the security of the material placed within them. All of these facilities are located in arid regions where depth to ground water is extensive (i.e. hundreds of feet). At a minimum, each landfill unit receiving this material is constructed in compliance with Federal Subtitle D requirements (i.e., composite lined base and side slopes with liquids containment). Ground and surface water monitoring systems are in place along with landfill gas control systems. **Much of the material delivered to our facilities is used for daily cover or protective operating layer over the liner system. In essence it is being recycled or beneficially reused.**

The compliance record at each of the facilities is exemplary and **partnerships with the communities we serve are cohesive and mutually beneficial** in terms of employment and reciprocal support for general funds and public services. Using criteria established in the Report, **none of our facilities are located within a mile of sensitive receptors** and all of them rank very low on the Federal EJ Screen Tool Proximity Criteria. The Report uses this tool to assess out of state facilities and **none of the Republic facilities rank higher than the 17th percentile (with 100% being the worst).** In fact, our Utah facility is the highest ranked with a score of zero.

Evaluation of Waste Criteria – The Report raises the potential for future adjustments to the management practices associated with California Hazardous Waste. In addition to source reduction and on-site treatment, the concept of adjusting long established waste criteria has been put forth. While this may appear to be a relatively simple means of addressing the issue, the existing criteria were based upon extensive health risk assessments that were performed at the time the criteria were established (1970’s). Revised health risk assessments as well as CEQA analysis would need to be performed to assess the impacts associated with potential movement of this material to a new set of in-state landfills that had previously accepted only municipal solid waste that is not California Hazardous. **Traffic, air quality, surface and ground water impacts, among many other factors, would need to be evaluated to ensure the material and associated impacts aren’t simply being shifted to other communities** in order to satisfy the concerns of selected stakeholders. As with every environmental review, a Needs Assessment is required to be included in the analysis. Given that suitable options exist currently, a shift of this material to in-state municipal landfills may very well be considered a matter of preference and not necessity.



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Commerce Clause Considerations – Without going into extensive detail, case law relative to inhibiting the movement of material across state lines or preferential taxation by a government entity to achieve the same goal has been deemed unlawful. The waste criteria established by California have been in existence since the 1970's before federal hazardous waste criteria were established. Significant investments have been made by our company, as well as many others, to assist the state with a regulatory framework and a permitting environment that is more restrictive. **While use of these assets may not represent the optimal choice of many stakeholders, they do represent a stable and tested solution to the issue at hand.** Any adjustments to the current approach for management of this material need to be carefully evaluated and address many of the issues noted herein (i.e., health risk, environmental review, logistics, capacity, cost, legal, etc.).

SB158 Requirements – The DTSC and Board of Environmental Safety have completed many of the requirements outlined by SB 158. As noted in the Report, the DTSC is now required to complete a Hazardous Waste Management Plan by 2025 that will address many of the issues raised by the Report. **Our suggestion would be to allow DTSC the time to thoughtfully prepare the Plan** so that the items noted herein, as well as in the Report, can be vetted with stakeholders and carefully assessed prior to pivoting from a system that has served the state well for close to 50 years. That is the most prudent means of evaluating a modification to a long-standing practice and one that protects the state, and more importantly, the multitude of stakeholders that it serves.

We appreciate the opportunity to provide comments on this matter and understand it is complex. **Given the information presented herein, we are hopeful that out of state assets that are responsibly managed will be viewed as an asset to the state versus a negative.** While the positions noted herein may lean towards one viewpoint on the matter, Republic wishes to acknowledge the sentiments of the various stakeholders and note that we are willing to continue dialogue on the topic. Please contact me with any follow on questions or input that may be required.

Very Best Regards,

A handwritten signature in blue ink that reads "Michael Caprio".

Michael Caprio
Director of Government Affairs – CA

cc: Members, Senate Environmental Quality Committee
Members, Assembly Environmental Safety and Toxic Materials Committee
Gabrielle Meindl, Chief Consultant, Senate Environmental Quality Committee
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