**CALIFORNIA CEMENT MANUFACTURERS ENVIRONMENTAL COALITION**

****UPDATED****

April 27, 2015

TO: Members, Senate Environmental Quality Committee

FROM: California Chamber of Commerce
Automotive Specialty Products Alliance
California Cement Manufacturers Environmental Coalition
California Business Properties Association
California Manufacturers and Technology Association
Chemical Industry Council of California
Clean Harbors Environmental Services, Inc.
Consumer Specialty Products Association
Industrial Environmental Association
Institute of Scrap Recycling Industries
Metals Finishing Association of Northern California
Metals Finishing Association of Southern California
Western Plant Health Association
Western States Petroleum Association

**SUBJECT: SB 654 (DE LEÓN) HAZARDOUS WASTE: FACILATIES PERMITTING HEARING SCHEDULED – APRIL 29, 2015**
**OPPOSE/JOB KILLER – AS AMENDED APRIL 21, 2015**

The California Chamber of Commerce and the above-listed organizations must **OPPOSE SB 654 (de León)**, which has been labeled by the California Chamber of Commerce as a **JOB KILLER**. **SB 654** would deem hazardous waste permit applicants in violation of the law *per se*—absent any due process protections—solely because the Department of Toxic Substances Control (DTSC) failed to act on a permit application within a specified timeframe. **SB 654** would impose an automatic legal violation on the permit applicant even if the permit applicant had acted diligently and in good faith throughout the entire permit application process. This type of public policy is legally unsupportable and discourages investment in upgrading and improving in-state hazardous waste facilities, where environmental and other treatment, storage, and disposal protocols are far more rigorous in comparison to those in other states.

**SB 654** imposes arbitrary and unworkable timing requirements with respect to hazardous waste permit processing. Specifically, **SB 654** requires the project applicant to submit a complete application two years prior to the expiration of the existing permit's fixed term, and further requires DTSC to act on a permit application within three years following the expiration of the permit's fixed term. If DTSC does not

act within the prescribed timeframe, the ***permit applicant is deemed to be in violation of the law***. **SB 654** fails to provide even a rational basis for imposing an automatic legal violation on an operator for an outcome that may be well beyond its control.

As a legal matter, we are unaware of any permitting regime on the federal, state, or local level that imposes a *per se* violation of the law on the permit applicant merely because the permitting agency has not acted within a specified timeframe. In fact, by way of contrast, permit applications in California's local land use context are rendered *automatically approved* if the permitting authority fails to act within a specified timeframe. Specifically, the Government Code requires a lead agency to approve or disapprove a project within certain timeframes (180 days from certification of an Environmental Impact Report, or 60 days if a Negative Declaration is prepared or project is exempt) (See Gov Code section 65950). The Government Code then states that "[i]n the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, ***the failure to act shall be deemed approval of the permit application for the development project***." (Gov Code section 65956 [emphasis added].) Further, the time limits can be extended once upon written mutual agreement of the project applicant and the lead agency, but the extension cannot exceed 90 days. (Gov Code section 65957.)

Although the 180 and 60 day timeframes do not apply to permits for hazardous waste facilities, the Health and Safety Code Section 25199.6 subdivision (d) states that "[i]f a lead agency or a responsible agency fails to act within those time limits [for a hazardous waste permit], the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to approve or disapprove the permit for the project within a reasonable time, as the court may determine." Accordingly, current law provides the applicant with a legal *remedy* to compel DTSC to make a permit decision within a reasonable timeframe, yet **SB 654** essentially says that applicants cannot seek such remedy without being in violation of the law.

In an utter departure from standard practice at the local level and in direct contradiction to the *relief* currently provided to hazardous waste permit applicants when DTSC fails to act within specified timeframes, **SB 654** actually penalizing the *permit applicant* without affording the applicant with any notice or opportunity to be heard with respect to the violation in question. Aside from amounting to a blatant due process violation, **SB 654** will make hazardous waste operators think twice before upgrading and improving their facilities once they are informed that they may be deemed in violation of the law merely by participating in a permitting process that exceeds the specified timeframes.

As a practical matter, the application deadline **SB 654** seeks to impose completely undermines the iterative nature of the permit application process. Specifically, **SB 654** requires the project applicant to submit a complete application two years prior to the expiration of the existing permit's fixed term. The Part A application is relatively simple because it merely defines the processes to be used for treatment, storage, and disposal of hazardous wastes, the design capacity of such processes, and the specific hazardous wastes to be handled at a facility. The Part B application, however, typically takes much longer because it contains detailed, site-specific information, and requires the completion of highly technical studies that can take many months if not years to complete. This iterative process, as with any permitting process for complex land use projects subject to a myriad of local, state and federal requirements, is necessary and critical because it allows the permit applicant to address any deficiencies in the application or conduct additional studies as may be required. By the end, the Part B application process equips DTSC with the relevant information so that it can make a well-informed and fact-based decision on the application. **SB 654** would completely undermine this process by imposing an arbitrary deadline by when this iterative process must take its course.

**SB 654**'s requirement that DTSC act on a permit application within three years following the expiration of the permit's fixed term is also impracticable. There are several factors beyond the permit applicant's control that can impact the timeliness of a permit issuance, including the complexity associated with the application and proposed use, the level of public input received regarding the permit, procedural setbacks related to the environmental review process, DTSC workload issues, and the time associated with data gathering and expert input. Further, permit applicants expend extraordinary time and resources

throughout the permit application process. Under **SB 654**, however, permit applicants would be punished if DTSC doesn't act within this timeframe, notwithstanding all of the time and resources expended and any good faith efforts on the part of the permit applicant to move the application process along expeditiously. We also note that the harsh timing requirements do not take into account the time associated with administrative appeals and judicial relief. Those processes, alone, can take several years, which would in turn make the five-year window for permit processing even more unfeasible. Perhaps more troublesomely, **SB 654** would actually encourage project opponents to seek administrative delay and judicial action solely to run out the five-year clock so that the permit applicant is deemed in violation of the law.

In sum, **SB 654** is substantially flawed both as a legal and policy matter. Imposing arbitrary timing requirements for permit applications and issuance—and further imposing unjustifiably legal violations on permit applicants through no fault of their own—does absolutely nothing to address the core deficiencies that currently exist in DTSC's permitting program. Indeed, these core deficiencies are currently being addressed by the Permitting Enhancement Work Plan (PEWP), which DTSC released last year and is in the process of implementing. Specifically, the PEWP is a "comprehensive roadmap to guide efforts to improve [DTSC's] ability to issue protective, timely and enforceable permits using more transparent standards and consistent procedures." DTSC notes that the PEWP "provides a critical link to help DTSC move forward and modernize its permitting process."

**SB 654** undermines the very purpose of the PEWP, which is to implement needed regulatory reforms to improve the efficacy of DTSC's hazardous waste permitting system. Indeed, as noted by DTSC in the PEWP, certain legislation may ultimately be needed in order to ensure that DTSC's stated goals can be achieved, but such legislation, in our opinion, would not be timely or appropriate, if ever, until after the PEWP is implemented.

For these reasons, we must **OPPOSE SB 654 (de León).**

cc: Martha Guzman-Aceves, Office of the Governor
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