

Webinar Presentation 4/8/19

Permit Protections for Vulnerable Communities Near Hazardous Waste Facilities (SB 673)

Introduction

Hello, I'm Bonnie Holmes-Gen, Senior Environmental Scientist with DTSC. I will be providing an overview of the draft regulatory concepts we've developed at the Department to incorporate environmental justice into our hazardous waste permitting regulations. The proposed revisions to the permitting process drafted in fall 2018 address the needs of vulnerable communities living near hazardous waste facilities in California.

Many of these communities are burdened by a disproportionate share of environmental pollution from hazardous waste, air pollutants and other contaminants. The combined environmental exposures faced by communities as well as the socioeconomic and health stressors increase community vulnerability and worsen health outcomes.

2→ The vulnerable communities permitting concepts I am about to describe are the Department's initial proposal that will form the basis for a draft regulation. These concepts are still evolving as we go through a public process of discussion and debate on the ideas and language. → After public review of these concepts, we hope to release another pre-regulatory version of the → concepts before developing → regulatory language for release in fall, 2019. We are reaching out to the public in a variety of ways, including this webinar, to get further input and ideas before we move forward in the regulatory process.

3→ SB 673 program areas

Senate Bill 673 (Ricardo Lara) signed by Governor Brown in 2015, provides an important opportunity for the department to address a long-standing environmental justice concern - the location, operation, and expansion of facilities handling hazardous waste. Multiple research studies have documented patterns of racial and socioeconomic disparities in the distribution of environmental hazards in the U.S., including hazardous waste facilities.

4→ In California, almost half of permitted hazardous waste facilities are located in or within one-half mile of areas that are considered “disadvantaged” according to state law, specifically (SB 535).

5→ The department has been taking important steps to strengthen the permitting process to provide greater protections to all communities near operating hazardous waste facilities. → The department has already adopted regulations (approved in October 2018) to strengthen several key elements of the permitting process, including consideration of facility violation history. We are now developing regulations to address two additional areas: 1) community vulnerability including cumulative impacts and 2) minimum setback distances to protect sensitive sites, including schools, daycare center and hospitals.

→ Taken together, this stronger package of permitting requirements will make sure that community issues and concerns are considered very carefully before permit decisions are made and will ensure more transparency and certainty for all stakeholders in the permitting process.

6→ At the same time that the department is developing a regulation to analyze community vulnerability and cumulative impacts near permitted facilities,

→ the department’s Office of Environmental Justice and Tribal Affairs is working on developing a process and tools for conducting environmental justice analyses for hazardous waste sites and facilities. → Both of these efforts are complementary and will strengthen the department’s ability to protect vulnerable communities using the best available scientific methods and data compiled from federal, state and local sources.

7→ Here are five areas of the law addressed in the department’s permitting regulation finalized in October 2018:

- 1) Consideration of permit violation history (Violation Scoring Procedure or VSP)
- 2) Provision of financial assurances and evidence of financial responsibility
- 3) Community Involvement Profile
- 4) Training of facility personnel
- 5) Requirement for health risk assessment

→ Here are the remaining two areas of the law we are discussing for this presentation:

- 1) Community vulnerability and cumulative impacts near hazardous waste facilities
- 2) Minimum setback distances from sensitive receptors

Definitions: *Before we move any further along, I will be defining key terms that will be used throughout the presentation.*

8→ *The first is Community vulnerability:* This refers to the characteristics and circumstances of a community that make it susceptible to the damaging effects of toxic substances. Community vulnerability includes the combined physical, social, economic, environmental and health factors that increase the potential for residents to experience impacts from pollution sources. These factors can include: lack of access to health care, language barriers or high rates of chronic illness.

9→ *Cumulative Impacts includes the combined impacts of environmental pollution from multiple sources in a community. (10)* For example, a community may have industries that produce air pollution or water discharges combined with hazardous waste cleanup sites and high levels of freight traffic.

Cumulative impacts in a community would include the effects of all these combined pollution sources, and would also include other indicators of vulnerability including public health factors that cause the community to be more vulnerable to pollution impacts.

11→ This slide shows a comprehensive look at the many types of indicators that should be included in cumulative impacts, including 20 indicators of pollution burden and community vulnerability used in CalEnviroScreen 3.0. Cumulative impacts refer to the combined impact of all these factors.

12→ *Setback distance:* refers to the need to ensure a buffer exists between a new or modified hazardous waste facility and vulnerable communities. Vulnerable communities include sensitive sites, or locations where schools, hospitals or daycares are located. Children and adults at these kinds of locations tend to be affected more by pollution in their community.

13→ *Area of analysis:* refers to the area around the permitted hazardous waste facility that will be analyzed for cumulative impacts and community vulnerability.

14→ New protections beyond existing law:

The goal of the department's work on vulnerable communities is to consider new information and →add new protections that go beyond existing law for communities experiencing multiple environmental threats. The department's proposal would add to the work being done to protect communities →through the California Environmental Quality Act, the laws that govern permitting of hazardous waste facilities, and the permit protections added by local agencies such as air quality agencies.

15→ Universe of facilities in regulatory concepts:

Let's zero in on the universe of facilities that would be covered under this proposed SB 673 regulatory process. →There are over 50,000 entities that *generate* hazardous waste in California, including large and small businesses such as gas stations, dry cleaners, metal finishers and auto body shops. →There are also over 1,000 transporters of hazardous waste.

However, this proposal is focused on the facilities that are permitted by the Department to *treat, store, transfer, or dispose* of the hazardous waste, including a number of facilities that receive waste from generators around the state and others that manage waste generated onsite. Local government agencies called CUPAs regulate the hazardous waste generators while the department regulates the permitted facilities that manage hazardous waste.

→There are over 75 operating permitted hazardous waste facilities across California that treat, store, transfer or dispose of hazardous waste (about 2 dozen in L.A region, a dozen in Bay Area region and 10 in the San Joaquin Valley). The facilities range from large, complex operations to small ones, but all have to get authorization, or a permit, from the Department. Here are a few examples of these facilities:

16→ Treatment facilities process one or more streams of hazardous waste to reduce toxicity or separate chemicals for different uses. Facilities that extract usable products from waste, for example, precious metal recycling, are in this category.

17→ Storage Facilities range widely in size. For example there are large facilities that store waste generated onsite for more than 90 days like oil refineries as well as small facilities such as transfer stations that may have a couple of drums of used oil received from offsite sources.

18→ Transfer facilities are mainly used to consolidate hazardous waste shipments of liquid waste, such as used oil and antifreeze.

19→ Disposal Facilities are the last category : There are 3 operating hazardous waste landfills in California that accept a large number of waste streams.

20→ How will the vulnerable communities' criteria affect permit decisions?

SB 673 would enhance the protectiveness of the department's permitting program by ensuring that community vulnerability factors and cumulative impacts experienced by the nearby community are factored into permit decisions. → Once the department's new permit criteria for vulnerable communities are adopted into regulation, the new information collected, analyses of facilities and community indicators and thresholds for decision making under the criteria will become part of the total record of information considered by the department under Title 22 of the Health and Safety Code. → The criteria will help the department to make decisions on permit applications to protect human health and the environment, including decisions to approve, approve with conditions or potentially to deny a permit.

21→ Proposal would cover all facilities:

Under this proposal, the department would evaluate facility characteristics, activities and cumulative impacts in two phases. → The department would initially assess all hazardous waste facilities with operating permits and review nearby community vulnerabilities and cumulative impacts. → After conducting the assessments and considering public input, the department would place every operating hazardous waste facility on an appropriate "facility action pathway."

22→ When a facility applies for an operating permit, permit renewal or major permit modification, the department would conduct a more detailed review and consider the facility activities, community vulnerability factors and potential permit conditions to address the identified community vulnerabilities and impacts

→ Permit conditions developed in accordance with SB 673 could include a wide range of actions taken by facilities ranging from pollution reduction and monitoring measures to community outreach and engagement. → In the case of a permit for a new facility or for the expansion of an existing facility, the proposal could include a required setback distance to protect vulnerable communities.

23→ **Proposed pathway approach:**

Now we will look at a graphic representation of the proposed regulatory concept. The department would evaluate two key components in determining a facility action pathway and they are: → 1) the facility characteristics, activities, operating history and other factors that indicate the potential impact on the community and → 2) community vulnerability factors around the facility, including population characteristics and cumulative impacts that are experienced by the community. Based on a review of both of these factors, → the department would designate an initial action pathway.

24→

1) Permitted Facilities As mentioned, the department will consider all operating facility characteristics and activities in selecting a facility action pathway. → For example, the department will consider the size of the facility, the activities at the facility that generate a source of impact to the surrounding community including hazardous waste activities, the facility generated truck trips that affect the community and contamination present at the facility. In addition, DTSC would look at other permits that the facility holds for air pollution or wastewater discharges as these could be an indicator of other types of releases of concern. All of these factors that indicate potential community impacts will be reviewed.

25→

2) Affected Communities The department will be evaluating the vulnerability of and cumulative impacts to communities around hazardous waste facilities using a number of tools. → CalEnviroScreen, developed over the last 10 years by OEHHA and Cal-EPA and used by many state agencies will be an initial tool used to make decisions about facility pathways.

26→ CalEnviroScreen 3.0 is a fundamental tool:

CES 3.0 uses 20 indicators of pollution burden and population characteristics including: pollution exposure, environmental effects, sensitive populations and socioeconomic factors to assess impacts to communities. → The department can use individual population and pollution indicators in CalEnviroScreen as well as the aggregate scores to better understand the communities around hazardous waste facilities and to → compare communities with regards to combined pollution impacts and vulnerabilities. Our initial proposal requires more actions by facilities located in or near communities with the highest CalEnviroScreen scores and percentiles compared to other communities around the state.

Again, here are the 20 indicators of cumulative impacts that are used in CES 3.0.

27→

28→ To show you how the CalEnviroScreen scores map out, here's a hazardous waste facility map that shows CES 3.0 scores overlaid with hazardous waste facility locations across the state. The red shaded areas are areas that rank highest for pollution burden and community vulnerability compared to other areas of the state.

29→ The department is also considering the use of other tools and data to supplement CalEnviroScreen including tools like the Healthy Places Index (HPI) and local data on air, water, land or other community impacts provided through the public process. Qualitative or quantitative data could be considered.

30→ We have just talked about how the department could use facility information and tools to measure community vulnerability and cumulative impacts, and to put facilities on action pathways. What is the goal of these pathways? The goal is to take action to protect communities. The department would consider facility actions or mitigations to reduce impacts in the community around hazardous waste facilities. I'll give you examples of facility actions later in the presentation.

31→ Key steps in SB 673 regulatory concepts:

Now let's discuss briefly the key steps in the draft regulatory concepts to strengthen protections for community vulnerability:

→ **Step 1:** First the department would recommend a facility action pathway for each of the 75+ hazardous waste facilities based on both (1) facility characteristics and activities and (2) CalEnviroScreen 3.0 information for communities around permitted facilities.

→ **Step 2** DTSC would share the “initial pathway recommendation” for all the facilities for public review and comment. In this step, the public is invited to provide input into the development of an initial list of facility action pathways. Public workshops would be held, and other tools and information could be submitted by the public, businesses and local agencies in this phase. The result of this step would be an updated list of Draft Action Pathways for all 79 operating Hazardous Waste Facilities

→ **Step 3:** At the time a facility applies for a permit for new facility, a major modification or a renewal of an existing permit, there would be another process of review and public input to finalize the facility pathway. This review might include consideration of local air quality or water quality information. Facilities would need to be in a tier of “acceptable” or “conditionally acceptable” for the facility Violation Scoring Procedure (VSP) score before proceeding with the next steps.

32→ Step 4: After the review is completed, DTSC would finalize the facility pathway and the department would work with the facility to develop public engagement and mitigation plans to respond to pathway requirements, in coordination with local agencies and community representatives. The department would work with the community to ensure the appropriate type and level of public engagement and outreach requirements are set in place for each facility.

→ **Step 5:** For mitigation, the department would work with the facility, local and state agencies and interested members of the public to determine appropriate community mitigation and monitoring projects that address vulnerability factors and cumulative impacts identified in the community assessment. In the case of a permit for a new facility or a permit modification to expand a facility, the

conditions would include a required setback distance to protect sensitive populations.

→ **Step 6:** The last step is to finalize the permit and track progress.

33→ As a result of this new process, consideration of community vulnerability and cumulative impacts would be integrated into the permit decision making process. The permit would be considered for approval, denial or approval with additional conditions to address vulnerability factors identified in the community.

34→ Pathways provide a range of options for facilities:

The department is planning for different levels of community mitigation actions and outreach that go beyond what is required today to address vulnerability factors for each of the three facility pathways. More detail for each of the steps including the determination of appropriate mitigation and monitoring will be provided in the next version of the regulatory framework. The department also plans to develop a guidance document on mitigation and monitoring..

35→ Pathway 1 would have the most requirements for facility actions and pathway 3 would have the least. Pathway 1 requirements would include: mitigation, monitoring, and public engagement. → Pathway 2 would include mitigation OR monitoring and public engagement and → Pathway 3, envisioned for the lowest impact facilities, would include public outreach. Pathway requirements are intended to address community vulnerabilities and improve health and the environment near hazardous waste facilities. Any actions proposed to meet the facility's pathway requirements would become part of the total record of information the department considers when a permit application is reviewed and do not guarantee any specific permit decision.

36→ What actions might be required of facilities?

DTSC is exploring the range of community mitigation projects that could lessen impacts in communities near hazardous waste facilities.

37→ Here is a list of community mitigation projects that could be used in the permitting process depending on the facility pathway. Projects could address several different types of pollution impacts and could be on-site or off-site from a facility depending on the needs that are prioritized by the community. Projects

could range from cleaning up polluting truck traffic to pollution prevention practices or reducing the danger of lead-based paint in homes or daycare centers. We are interested in public input to expand and refine this list.

38→ What types of outreach and engagement could be required of facilities?

39→ (Add two arrows) The department is considering expanded public outreach and engagement options that could be included as permit conditions, ranging from additional public notices and meetings to preparation of enhanced community engagement plans and formation of advisory groups.

40→ In closing: This proposed regulation, in combination with the regulation enacted in October 2018, represents the most significant change to the department's permitting of hazardous waste facilities in the last 20 years. →The department is looking at the permitting process from the perspective of community needs and is taking the initiative to integrate science-based tools like CalEnviroScreen 3.0 that evaluate multiple pollution sources and vulnerability factors as well as →other community data into the permitting process. The department is also collaborating with a →University of California research team for policy guidance and to ensure the department is using the best available science in developing the regulations.

→The goal of our process is to promote stronger hazardous waste facility permits that do a better job of protecting vulnerable communities and reducing environmental pollution.

The department is planning several opportunities for public input as these concepts are further developed and eventually written into regulatory language. Public input and ideas early in the process will help shape this important regulation. Here are some questions to consider as you are drafting comments.

41→ Key questions for discussion:

- 1) What additional facility or community information should be considered in making decisions on facility pathways?
- 2) →How should CalEnviroScreen 3.0 aggregate scores and pollution and vulnerability indicators be used in determining facility action pathways?
- 3) →What types of mitigation projects should be included to address community vulnerabilities?

- 4) → What are appropriate standards for community involvement and responsiveness to community needs?
- 5) 42 → What types of incentives could encourage early action to address community vulnerabilities?
- 6) → What distance around facilities should be evaluated for vulnerability factors?
- 7) → What existing examples of community outreach and local improvements initiated by facilities can contribute to the discussion around facility pathways?

43 → Please send any comments on the draft regulatory concepts to Bonnie Holmes-Gen at: permits_hwm@dtsc.ca.gov.

Finally, here are some key contacts in the Department that you can reach out to with any questions.

44 → Thank you for your time and attention.