April 30, 2019

Ms. Meredith Williams, Acting Director
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95812

Subject: Comments on "SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework Concepts."

Dear Acting Director Williams:

The undersigned organizations appreciate the opportunity to comment on the Department of Toxic Substances Control's (DTSC) "SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework Concepts," dated October 2018. We appreciate DTSC's willingness to engage the regulated community in further development of this Draft Concept Paper (DCP). Our organizations represent businesses that operate in-state hazardous waste treatment, storage and disposal facilities and a much larger universe of manufacturing and processing facilities that depend on those facilities to manage the waste they generate.

We appreciate the concerns of communities surrounding permitted hazardous waste facilities. We are also aware that other regulatory agencies are taking steps to characterize and mitigate cumulative public health and environmental impacts from multiple sources in those communities. We offer the following comments in the interest of helping DTSC define a policy path that achieves the intent of the statute without further undermining a highly regulated network of facilities that all Californians depend on.

1. **DTSC's SB 673 Hazardous Waste Facility Permitting Criteria Regulations already address the statutory directive to consider "the vulnerability of, and existing health risks to, nearby populations"[1] in facility permitting decisions.** The new regulations require facilities to submit a health risk assessment (HRA) which will determine the extent to which facility operations pose a risk to the surrounding community. They also require identification of "vulnerable populations

[1] Health and Safety Code §25200.21(b).

around or adjacent to hazardous waste facilities to address potential environmental justice issues and increase public participation opportunities."[2] The DCP opens the door to additional restrictions on facility operations based on impacts from unrelated sources or socio-economic stressors that contribute to overall community vulnerability. These factors are beyond the control of the facility and the scope of DTSC's statutory directive.

2. **A facility classification scheme that depends on qualitative screening-level information, such as composite scores generated by CalEnviroScreen, should not be used as a trigger for new permit conditions.** CalEnviroScreen was not designed for this purpose. Imposition of new permit conditions must be based on a scientific analysis of facility-specific information and a determination that the facility is causing or significantly contributing to actual public health or environmental impacts in the community. The proposed screening level assessment is likely to mislead the public about the extent of a facility's contribution to cumulative impacts and create expectations for new permit conditions or other actions that may not be supported by the most relevant information.

3. **DTSC should clarify how information in a petition from a community or local government official would be integrated into a process establishing an "action pathway" for a facility.** The DCP does not address how such information would be validated or how would be it be weighed relative to information from published, peer-reviewed literature. The absence of this detail suggests that regulatory decisions could be predicated on incomplete, inaccurate or biased information.

4. **DTSC should not offer expedited permit review for facilities that choose to enter into a "good neighbor" agreement.** The scope and terms for this concept are undefined and agreements may evolve in directions unrelated to actual impacts from facility operations. DTSC has a statutory responsibility to hazardous waste permittees, generators and the public to process permit applications in a timely manner. Responsible operators should not have to expose themselves to unreasonable demands just to obtain such assurances.

5. **Mitigation measures should be targeted to actual health and environmental impacts from facility operations.** Some of the example measures for DTSC's proposed "Mitigation Measures Clearinghouse" could be entirely unrelated to facility operations. Examples include lead abatement in homes, unspecified "community investments", "additional community monitoring of air, water and environmental pollution concentrations" and community "healthy homes" assessments. The need for additional mitigation measures should be a function of the health risk the facility poses to the surrounding community, not a cursory assessment of potential hazards and a CalEnviroScreen score driven by community vulnerability factors unrelated to facility operations.

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[2] DTSC Fact Sheet: Hazardous Waste Facility Permitting Criteria Regulations Effective January 1, 2019, December 2018; https://www.dtsc.ca.gov/HazardousWaste/upload/SB-673-Regulations-Overview-Fact-Sheet-12-13-2018.pdf.

In addition to these and other issues discussed more fully in the attached April 15 comments, DTSC must reconcile any additional burdens on hazardous waste facilities with the decline in permit renewal applications and the emerging trend toward exporting hazardous waste outside of California. The current trend shifts environmental justice concerns from one geographic area to another. It also increases transportation safety hazards and emissions and results in management of California hazardous waste at facilities that do not meet California's stringent environmental protection standards. Any new policies that reinforce or accelerate these trends are contrary to the interests of all stakeholders and should be avoided.

We appreciate your consideration of our comments and recommendations, and we look forward to future engagement on DTSC's SB 673 implementation efforts.

Sincerely,

Lance Hastings, President
California Manufacturers & Technology Association

cc: Rizgar Ghazi – DTSC
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