



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

September 14, 2018

Sent via electronic mail to: Barbara.Lee@dtsc.ca.gov

Barbara Lee, Director
Department of Toxic Substances Control
Executive Office, 25th Floor
1001 I Street
Sacramento, CA 95814

Re: Comments on draft SB 673 regulatory framework concepts

Dear Director Lee:

Representatives for El Pueblo Para el Aire y Agua Limpia (El Pueblo) and Greenaction for Health and Environmental Justice (Greenaction) met with staff from California's Department of Toxic Substance Control (DTSC), Environmental Protection Agency (CalEPA), Air Resources Board (CARB), and Office of Environmental Health Hazard Assessment (OEHHA) on August 20, 2018 to discuss DTSC's draft regulatory framework concepts for Senate Bill 673 implementation. The meeting was part of our ongoing signatory meetings to discuss implementation of the Kettleman City Title VI Settlement Agreement.

We appreciate the opportunity to discuss the draft regulatory framework concepts with staff and will continue to provide feedback as SB 673 implementation progresses. This letter memorializes feedback given during the August 20 meeting and provides additional comments.

I. Importance of Community Inclusion and Language Access for all Stages of Classification

Community inclusion and language are necessary to comply with civil rights and environmental justice laws and policies. We reiterate the importance of community inclusion for all stages of the cumulative impacts analysis, including during the initial classification of facilities. The current draft regulatory framework concepts propose an initial classification based on preliminary data, with public comment and additional data analysis conducted only after the initial classification, during the permit application phase. The preliminary concepts suggest that then it might lead to re-classification. That appears to be unnecessarily cumbersome for community residents and unlikely to lead to re-classification because there will be significant momentum already leading in one direction.

It is key to meaningful community inclusion that the implementation plan for SB 673 involves residents in the process as early as possible. An initial classification determination that occurs absent community involvement, shifts the burden to the community to understand in advance the initial classification process, locate the preliminary classification determinations, understand them and, if they seek re-

classification, provide alternative information and data and make a convincing argument for re-classification. Meaningful community involvement reduces or eliminates circumstances in which residents must make a case against a decision that has already been made rather than being involved in making the initial decision. That is an overwhelming burden for any community, especially any largely low-income, limited English speaking community and essentially ignores the need for education and outreach and meaningful involvement in critical initial stages of facility classification.

Effective community education and language access are fundamental in the earliest stages of classification and must be available throughout the process and especially during the initial categorization, opportunities for re-classification, community outreach, and mitigation development. Documents notifying the public throughout the process must be available in the major languages spoken in a community and must be in plain language and readily comprehensible.

II. Expanding CalEnviroScreen-based Tier Qualifying Criteria

The draft framework concepts propose classifying facilities as Tier 1 if they have an impact on communities ranked in the 90th percentile or higher on CalEnviroScreen, Tier 2 if they have an impact on communities ranked in the 65th percentile or higher, and Tier 3 if they have an impact on communities ranked below the 65th percentile. DTSC should expand these categories to be more protective of human health and more reflective of other statewide classifications based on CalEnviroScreen by ranking a facility in Tier 1 if it has an impact on a community ranked in the 75th percentile or higher on CalEnviroScreen because that is the state definition of disadvantaged community. The other tiered ranking should be adjusted to reflect this modification, by using percentiles 50-75th for Tier 2, and 50th and below for Tier 3.

III. Re-classification Based on Sensitive Uses

The draft framework contemplates re-classification of a facility based on proximity to schools or care facilities. Reclassification to a higher tier is appropriate if sensitive locations are in proximity to a project. A facility should not be downgraded based on lack of sensitive uses in proximity to the facility because sensitive groups such as children, elderly, and the disabled will be located within residential communities even if schools and care facilities are not present.

IV. Additional Comments and Areas for Clarification

Additional brief comments are provided below. There are several subjects that need additional attention within the draft framework to facilitate community understanding and improve the public comment process.

- Appropriate mitigation measures must be community-specific and should be developed in close coordination with the affected community. A clearinghouse of mitigation measures should be developed, but its general development should include a public process and DTSC should take comment on and use appropriate additional mitigation measures that are not included on the list.
- Limiting publication of the initial categorization list to the internet creates an obstacle to meaningful access for low-income, rural, or marginalized residents with limited internet service and those who require language access.
- The community engagement plans should be developed and implemented in coordination with local community groups, community-based organizations, faith communities, social service providers, housing authorities, schools, legal services offices, shelters, and others that serve and work directly with residents. Each community is distinct and an individualized approach to outreach is necessary; a strategy that works well in one community well might not be ineffective in another and communities are not monolithic, they require multi-layered education, outreach in multiple languages, readily accessible and comprehensible.
- Community engagement plans and mitigation measures should not be developed by the hazardous waste facility, but should be developed by DTSC and the community. The facility should not control the process. It should have the opportunity to comment and make proposals as should the public and significant participants in the process. DTSC should propose and publish for comment draft criteria that it will use for review and approval of these community engagement plans. DTSC also should allow for meaningful community review and comment on every specific community plan.
- Additional clarification is needed provided on the use of .5 miles as a measure for initial classification of a facility. As currently written in the draft regulatory framework concepts it is unclear whether the facility will be initially ranked by the CalEnviro Screen score of the census tract where the facility is located, or whether the initial ranking includes the score of any census tract within .5 miles of the facility, or whether both measures will be used. An example of how the approach would work would be helpful. We are concerned that a system might exclude

communities like Kettleman City, Buttonwillow, and Westmorland that are affected by these facilities.

- Additional information should be provided about the facility characteristics that could lead to tier re-classification. We understand that this relates to the size of a facility and the types of waste it is processing, but further clarification and clear criteria should be provided for public review.

DTSC is required under SB 673 to establish standards and procedures for permitting decisions, including standards and procedures that are applicable to permit revocation and denial. Cumulative impact assessments should be included in the standards and procedures for permit revocation and denial and the draft regulatory framework concepts should discuss how this will be done. We look forward to continuing to work with you and your staff to ensure successful implementation of SB 673. Thank you for the opportunity to provide feedback on the draft regulatory framework concepts in the preliminary stages.

Sincerely,

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