



California Council for Environmental and Economic Balance

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Evelia Rodriguez
Senior Hazardous Substances Engineer
Department of Toxic Substances Control
1001 I Street
Sacramento CA 95814

**RE: DTSC's SB 673 Track II Cumulative Impacts and Community Vulnerability Draft
Regulatory Framework**

Dear Ms. Rodriguez:

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we appreciate the opportunity to submit comments on the SB 673 draft regulatory framework. CCEEB has been an active stakeholder in SB 673 (Lara, 2015) since it was first introduced and passed by the legislature, and CCEEB members have a direct interest in the success of the program as both permitted hazardous waste facilities as well as generators of hazardous materials. CCEEB also recognizes the historical and systemic injustices that have led to the colocation of facilities and communities, and we value the expertise of community leaders and their partners who have long pressed for more equitable siting of hazardous waste facilities in California. CCEEB takes seriously our commitment to work with communities to design policy that results in more equitable outcomes while maintaining a pathway for safe, sustainable management of hazardous waste in California. We see the task given to the Department of Toxic Substances Control (DTSC) by the legislature as equally challenging as it is important for all involved.

Unfortunately, based on discussions at the recent technical workshops held on September 8 and 28, CCEEB feels the draft framework misses the mark for all parties involved. Rather than a lengthy detailing of the shortcomings of the draft or the process to date, which we know others are providing, CCEEB would like to offer suggestions on how DTSC might move forward.

Form Follows Function

First, DTSC should work with CalEPA to make clear its interpretation of SB 673 and what the department seeks to accomplish with its framework, as well as where its statutory authority

sits. Although relatively brief in words, most questions arise over the first section of the bill: (emphasis and highlights added)

“On or before January 1, 2018, the department shall adopt regulations establishing or updating criteria used for the issuance of a new or modified permit or renewal of a permit, which may include criteria for the denial or suspension of a permit. In addition to any other criteria the department may establish or update in these regulations, the department shall consider for inclusion as criteria all of the following:

(a) Number and types of past violations that will result in a denial.

(b) The vulnerability of, and existing health risks to, nearby populations. Vulnerability and existing health risks shall be assessed using available tools, local and regional health risk assessments, the region’s federal Clean Air Act attainment status, and other indicators of community vulnerability, cumulative impact, and potential risks to health and well-being.

(c) Minimum setback distances from sensitive receptors, such as schools, child care facilities, residences, hospitals, elder care facilities, and other sensitive locations.

(d) Evidence of financial responsibility and qualifications of ownership.

(e) Provision of financial assurances pursuant to Section 25200.1.

(f) Training of personnel in the safety culture and plans, emergency plans, and maintenance of operations.

(g) Completion of a health risk assessment.”¹

By the first sentence, we understand this to mean that DTSC *may* develop criteria by which it can deny or suspend a hazardous waste facility permit. However, in the following subsections, the legislature does not explicitly clarify under what circumstances or by which criteria this would be warranted other than to say that the number and type of violations matters.

The real question is how DTSC is meant to apply subsection (b) to permitting decisions. In discussions with staff and other stakeholders, it is clear to CCEEB that there is a wide range of conflicting and inconsistent interpretations that must be reconciled before DTSC can proceed. Community leaders appear to read that DTSC can and should deny or suspend permits in vulnerable communities already overburdened by cumulative impacts, regardless of the contribution of the facility itself. That is, permit denials can be premised on community conditions beyond the control of the facility. New facilities, as rare and unlikely as these may be, should be sited elsewhere. Existing facilities, regardless of the level of environmental control, mitigation of impacts, or compliance history, should be relocated or closed, with the waste stored or treated somewhere outside of the community.

DTSC staff, on the other hand, seem to interpret this subsection as meaning that a procedural overlay should be imposed on facilities in high priority communities, with additional public oversight and negotiations over community benefits until such time as the community signs off on permit conditions. During discussions with staff, it was unclear whether the department believes it can deny a permit based solely on community conditions, or even if it can require a

¹ Health & Safety Code Section 25200.21

facility to mitigate external impacts for conditions it did not create and does not add to. Community stakeholders, however, expressed concern and frustration over the proposed process during the September 28 workshop, saying it was a “mitigation approach” that stopped short of permit denials, or at least that the framework did not show a pathway to denying permits. Paraphrasing one participant, if the community doesn’t want the facility, it shouldn’t go there—you shouldn’t try to mitigate away community opposition.

For industry, the question is one about proportional contribution and nexus, that is, what part of the community burden is the responsibility of the permitted facility, and what impacts can it rightfully be asked to mitigate. CCEEB has commented repeatedly that the draft framework must set guidelines for how this nexus between the facility and the community will be made. As currently drafted, the framework instead looks at the community and facility in silos and doesn’t touch the nexus question, imagining perhaps that this tension in expectations and outcomes will somehow be resolved later in the process during lengthy permit negotiations. CCEEB instead urges DTSC to address this issue upfront at the policy level in order prevent frustration from all parties later during permitting as each attempts to negotiate towards uncertain ends.

Streamline and Simplify the Screening

Second, DTSC should work on a qualitative approach with stakeholders to understand which communities and facilities are the highest priority, and then design a process suitable to those locations. The current draft proposal seeks to take a quasi-quantitative approach to screen all seventy-odd hazardous waste facilities through a multi-year and multi-step process that doesn’t end even after a permit application has been submitted for final review. CCEEB believes this vastly overcomplicates the screening step (i.e., where should the framework should apply) without ever answering the most important question: what does this ultimately mean for the facility and for the community.

Narrowing the field at the outset would help DTSC and its partners focus on the meaningful part of the policy and provide real-world context to the permitting criteria. This could be done through a public advisory group, such as the one formed by CalEPA to help guide development of CalEnviroScreen, or the AB 617 Consultation Group and Community Steering Committees convened by the Air Resources Board and regional air districts. One key difference between those processes and the ad hoc approach taken by DTSC to date is that the former provided consistency in participation and transparency in process and outcomes. However, CCEEB cautions DTSC staff in its approach to facilitation, noting that most of the meetings held on SB 673 to date have been about general background on environmental justice or process planning (i.e., talking about what we are going to talk about), with very little time spent on dialogue between staff and stakeholders on actual substantive matters.

Regarding the use of CalEnviroScreen (CES), CCEEB shares concerns with other stakeholders that this tool was not designed as a substitute for project or facility-level impact analysis, nor is it an analysis of whether or not a community is experiencing unacceptably high levels of

pollution or what to do about those impacts. As background, we have attached as an addendum our comments on CES version 4.0, which we submitted to the Office of Environmental Health Hazard Assessment (OEHHA). We also support by reference the industry coalition letter, which elaborates on specific technical issues regarding the proposed screening process. Should DTSC decide to continue with its proposed screening process, either in part or in whole, then CCEEB may provide additional technical comments as to the appropriateness, sequencing, and weighting of different datasets, including CES scores and supplemental data.

Reframe the Framework

At the September 28 workshop, stakeholders seemed to make some progress, if only by recognizing the framework does not address the objectives or questions of any stakeholder group. CCEEB is grateful to staff for having the mettle to road test the framework and put it up for criticism; this led to some of the most valuable insights from the informal group to date, which we feel should be capitalized upon as they could be the building blocks of consensus moving forward.

First, there was uniform recognition that hazardous waste is generated by all Californians, and that there is a shared responsibility to reduce and manage waste in-state; we cannot solve our problems by shipping hazardous waste over state lines to communities in jurisdictions that have even less environmental protections. Both industry and community stakeholders noted past work done by DTSC and its public partners on a holistic plan to improve management of hazardous waste. This should be refreshed and brought forward as part of the SB 673 discussions.

Second, there seemed to be tacit agreement that some communities are overburdened and deserve much greater attention and resources, and that facility permitting is only one piece of the puzzle. This is why CCEEB has shied away from past approaches that try to resolve cumulative impact problems solely through the filter of permit programs; they often are too narrow in scope to deal with the more pervasive factors driving community vulnerability. Here again, a more holistic approach should be considered, as is being done with AB 617. In that program, all sources and causes of air pollution are addressed together at the community level, and resources are made available to reduce emissions and improve community resiliency to air pollution. Moreover, funding for community-based actions comes from a wider pool of entities via the Greenhouse Gas Reduction Fund, in a way recognizing that more than a single permitted facility bears responsibility. Similarly, DTSC, CalEPA and the legislature may wish to consider funding sources that include generators of hazardous waste, not just those that transfer, store, and treat it.

Additionally, we believe all parties are seeking transparent, consistent, and timely permit decisions that provide certainty to both the permit applicant and community. The draft framework, while detailed in its construct and flexible in terms of what supplemental information could be used, is not at all clear about how DTSC would evaluate information provided by the community or how it would be weighted vis a vis facility information and


CalEnviroScreen scores. DTSC seems to have a high degree of discretion in case-by-case permit decisions, which runs contrary to the second section of SB 673 and H&SC § 25200.23.

Finally, there was general agreement that the draft framework “missed the boat.” While this is surely frustrating to all involved (including DTSC staff, who have put a tremendous amount of effort into the framework), this recognition allows all parties to regroup and rethink discussions at the workgroup so as to keep from “going down the same path” without real progress. After five long years, CCEEB is frustrated too, but we hope this can be an opportunity and we commit ourselves to continuing engagement with DTSC, community leaders, and other industry representatives to work towards solutions. In the meantime, if you would like to discuss further, please contact Dawn Koepke, Project Manager for CCEEB’s Water Chemistry & Waste (WCW) Project, at (916) 606-5309 or dkoepke@mchughgr.com. Thank you.

Sincerely,



Bill Quinn
President



Janet Whittick
Vice President

cc: Mr. Jared Blumenfeld, Secretary, CalEPA
Dr. Meredith Williams, Director, DTSC
Mr. Rizgar Ghazi, Deputy Director of the Hazardous Waste Management Branch, DTSC
Ms. Christine Hironaka, Deputy Cabinet Secretary, Office of the Governor
Members, CCEEB WCW Project