



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

SINCE 1966

October 8, 2021

Department of Toxic Substances Control
1001 I Street Sacramento, CA 95812

Via electronic mail to permits_hwm@dtsc.ca.gov

Re: SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework

DTSC Staff,

El Pueblo Para el Aire y Agua Limpia de Kettleman (El Pueblo), signatory to the August 10, 2016 Civil Rights Settlement Agreement, provides these comments on the SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework (Framework) released in May 2021. The Framework provides for important actions that can help protect vulnerable communities from the adverse effects of living near a hazardous waste facility. The Framework however does not establish a clear process for permit denial, revocation, or reduction and can be more protective of community health.

I. The Focus Needs to be on Community Vulnerability and Impact

The Framework proposes a process for assessing a community's vulnerability and a facility's potential impact to then determine facility actions aimed at reducing community risks and improving community conditions. The focus is on the facility actions rather than on the community's vulnerability. The focus should be on whether to issue, deny, revoke, or modify a permit based on the community's vulnerability. The "conditions on permits to better protect public health and the environment"¹ should be the secondary focus. As written, the Framework devotes little more than a page to the decision DTSC must take on a permit application.

Comments have been made about a facility's impact in relation to a community's vulnerability and whether a facility should be required to address that vulnerability. These comments are a result of the focus the Framework places on the actions a facility must take and not on the community's vulnerability. The focus of SB 673 is not about the actions a facility will or will not be required to do, though they are important, but on whether given the vulnerability of a community, hazardous waste facilities should be allowed in the area and to what extent. Further, the vulnerability is cumulative, meaning there are a multitude of factors that affect it, whether or not directly created by a hazardous waste facility. Therefore, all factors that contribute to a community's vulnerability need to be considered and ultimately addressed.

¹ Health & Safety Code §25200.23(b)



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II. A Clear Process for Permit Denial Must be Developed

SB 673 states that DTSC shall “establish transparent standards and procedures for permitting decisions, including those that are applicable to permit revocation and denial.”² SB 673 also states that DTSC shall consider for inclusion as criteria the “number and types of past violations that will result in a denial.” The Framework does not attempt to meet these requirement but rather states that “the Department would amend regulations to include additional factors to be considered in revoking or denying all or some activities in a permit.”³ There is no substance in this comment. DTSC needs to establish a clear process for permit revocation or denial.

The Framework mentions DTSC’s right to require a facility to reduce its size, scope, or footprint, and an ability to deny some activities even when approving a permit. Such modifications could be a useful tool to further protect vulnerable communities. DTSC should develop a clear process for these permit modifications as well.

During one of the workshops put on by DTSC regarding the Framework, a statement was made about the use of Statements of Overriding Considerations to the effect that they could be used in permit decisions. El Pueblo is opposed to the use of Statements of Overriding Considerations. Using a Statement of Overriding Considerations negates the purpose of SB 673 to protect vulnerable communities that are already overburdened. Further, there is no clear, transparent standard for issuing a Statement of Overriding Considerations and this is in direct violation of SB 673’s requirement for the establishment of “transparent standards and procedures for permitting decisions.”⁴

III. DTSC Should Use the Most Protective Area of Analysis and Setback Distances

The framework proposes the use of up to a 6-mile radius to define the range of the Area of Analysis. This is encouraging and the greater range should be used given the studies cited in the Framework on the adverse health effects of being near a facility. This is something residents of Kettleman City have known and lived with for decades.

In evaluating the facility characteristics, DTSC should use a greater distance for scoring a facility’s proximity to a populated census block depending on the type of facility. An RCRA disposal facility within .6 miles of a populated census block poses a greater risk than a standardized permit facility within .6 miles of a populated census block.

Similarly, set back distances need to be increased given what is known about the health effects of living near a hazardous waste facility. The proposed .25-.5-mile setback distance for a new

² Health & Safety Code §25200.23(a)

³ Framework at 46

⁴ Health & Safety Code §25200.23(a)



facility or major modification to an existing facility is grossly inadequate. The studies cited by DTSC found evidence of adverse health effects associated with residences up to 6 miles from facilities and hazardous waste sites.⁵ And other studies found evidence of elevated risks of birth defects within 5 miles of a hazardous waste site.⁶ It is unreasonable to allow a new hazardous waste facility within .25-.5 miles of a sensitive receptor when the studies have shown there are adverse effects at much greater distances.

IV. CalEnviroScreen and Supplemental Data Should Not Burden Vulnerable Communities

The Framework proposes using CalEnviroScreen (CES) as a starting point in assessing a community's vulnerability. CES is an imperfect tool that looks at sometimes large census tracts. It can be especially problematic for rural communities and for assessing risk at the community level, and thus should be used with that in mind. Using CES to screen a community into a protective category is a good use of the tool, especially given the potential for conditions to be much worse on the ground if CES had data gaps for that community.

Using CES to screen communities out of a more protective category should be corroborated with supplemental data. Given the rural nature of some of the communities, and the lack of data in rural areas, it is likely that there are data gaps. These data gaps should be identified and systematically addressed for communities near hazardous waste facilities even before a permit application is pending. To do so, DTSC, in conjunction with OEHHA, should identify the data gaps and convene communities, funders, and data experts to facilitate partnerships to fill in the data gaps.

Supplemental data is proposed as a possible solution to address data gaps. Supplemental data should not pose a burden for vulnerable community residents. Gathering and submitting data is extremely difficult for community residents, and even more difficult for vulnerable community residents. Supplemental data should only be used when needed and technical assistance should be provided for communities to facilitate data gathering. This can be done in the form of technical assistance, facilitating partnerships with academia, or funding research with community input. If a community is already ranked in the top 10% by CES, supplemental data should not be accepted for the purpose of determining a facility's pathway. CES will often underreport a community's vulnerability, accepting supplemental data would only burden community residents.

⁵ Framework at 27

⁶ Id.



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V. Completion of SB 673 Should not be Delayed Further

These regulations were to be completed by January 1, 2018 in accordance with SB 673 and in compliance with the 2016 Civil Rights Settlement Agreement. After multiple delays and revised timelines, today the projected date for completion is sometime in 2023. It will have been eight years since SB 673 was signed into law in 2015. Eight years is an unreasonable amount of time to develop regulations. Hazardous waste facility permit decisions made before these regulations are completed will be decided without the protections envisioned and required by SB 673. The process should not be further delayed.

Thank you for the opportunity to comment on the draft Framework. We look forward to continuing to work with DTSC to finalize the regulations.

Sincerely,

Maricela Mares Alatorre
El Pueblo Para el Aire y Agua Limpia de Kettleman City

cc: Bradley Angel, Greenaction for Health and Environmental Justice
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