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Via Email

Ms. Evelia Rodriguez
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: Comments on Senate Bill (SB) 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework

Dear Ms. Rodriguez:

This letter is submitted on behalf of Clean Harbors, Inc. and its affiliated companies, including Clean Harbors Buttonwillow, LLC, Safety-Kleen Systems, Inc., Safety-Kleen of California, Inc., Industrial Service Oil Company, Inc., and other companies within the Clean Harbors' family (collectively, "Clean Harbors"), which own and operate permitted hazardous waste management facilities in the state of California. These facilities are major providers of commercial hazardous waste management services to California businesses and other generators of hazardous waste, including the collection and management of used motor oil and spent industrial solvents, treatment and landfilling of restricted hazardous wastes, and collection and trans-shipment of containerized hazardous wastes. These facilities also provide critical support services to emergency response activities conducted by Clean Harbors, including those related to spills and releases of hazardous substances, the COVID-19 pandemic, the wildfire crisis, and others. Clean Harbors appreciates the opportunity to comment on the California Department of Toxic Substances Control's (DTSC's) revised May 2021 draft "SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework ("draft Framework")".

Permitted hazardous waste management facilities, such as those owned and operated by Clean Harbors, are essential to the State's ability to treat and manage its own generated hazardous wastes. The maintenance of adequate in-state treatment, storage and disposal capacity for the thousands of waste streams generated by the commercial/industrial activities that contribute to our collective well-being is vital to the Department's achievement of its core mission and vision: "to protect California's people, communities, and environment from toxic substances" so that "all of California [is] thriving in a healthy environment." We believe that all of the Department's programs—including those that seek to achieve social justice—must be designed and implemented in a manner that remains true to these core values and fairly balances all of the competing factors that should inform sound public policy. Clean Harbors is very concerned that if the program outlined in the draft Framework were implemented as currently described, many permitted

facilities face a severe risk of permit denial or revocation for no reason other than their geographic location. This outcome would be contrary to DTSC's fundamental obligation to ensure that California's hazardous wastes are safely managed in-state, as this mandate cannot be accomplished without the very facilities that the draft Framework targets.

Clean Harbors acknowledges the importance of the Department's obligation under SB 673 to implement its hazardous waste permitting program in a manner that takes into consideration the circumstances of communities that are located near permitted facilities, particularly those communities that are classified in state statute as disadvantaged or vulnerable in some way. As a matter of corporate policy and environmental ethic, Clean Harbors adheres strictly to all terms and conditions of its hazardous waste permits and has implemented extensive internal procedures to ensure that its operations do not pose a risk to human health, public safety or the environment, regardless of the socio-economic status of the individuals in the surrounding community. Many of our facilities were acquired from entities that struggled to comply with DTSC's regulations, and we have a long and well-documented history of making major improvements to these newly-acquired facilities by upgrading equipment and infrastructure, implementing more rigorous monitoring and testing procedures, developing and establishing standard operating procedures and best industry practices, improving the frequency and quality of employee training, conducting self-audits and ensuring timely follow-up to identified concerns, and the like. As a result of these and many other efforts, Clean Harbors is confident that its facilities do not pose a threat to any of the communities in which we operate. Yet the existence of many of these facilities will be threatened if DTSC's suggested approach as envisioned by the draft Framework comes to fruition.

With this perspective in mind, we offer the following comments on the Department's draft Framework.

I. General Comments

A. Retroactive Application of New Standards to Existing Facilities is Inherently Unfair.

While Clean Harbors does not object to application of new standards for new facilities, the application of such standards to *existing* facilities is inherently unfair. A hazardous waste facility, particularly a large and complex site with substantial existing infrastructure, is not able to rebuild or reconfigure operations, or relocate altogether, to comply with new standards that are applied retroactively. In all cases, Clean Harbors' facilities were acquired through acquisition of existing facilities, which had operated for many years prior to the acquisition. These facilities are also located in areas that are zoned for heavy industrial activity and, in some cases, expressly identify hazardous waste management as a permitted land use. The gradual transition of these industrialized areas to include a higher percentage of residential and other sensitive uses is not, by itself, sufficient justification for adoption of policies that either directly or indirectly place pressure on lawful industrial operations to relocate to other areas or significantly scale back their operations. The retroactive application of new criteria to existing facilities was raised by the business community as a significant concern during the legislative hearings on SB 673, highlighting the risk that requirements of this nature could result in facility closures, running counter to the state's goals of treating and managing its own generated hazardous wastes.

As the Department moves forward to carry out the legislative intent behind this statute, it must do so in a manner that is fair and balanced and does not result in the effective "taking" of duly permitted, lawful businesses. In this regard, the statute required DTSC to adopt regulations establishing or updating criteria that it uses to determine whether to issue or renew a hazardous waste permit, including the vulnerability and existing health risks to nearby populations. As such we did not understand that to be a directive to DTSC to revamp its permitting program in a manner that seeks to place the burden of correcting societal inequities on permitted hazardous waste facilities merely because they happen to be located in or near those communities. Fundamental notions of fairness and due process require, at the very least, that there be a nexus between the facility's operations and the vulnerability sought to be addressed.

B. Use of CalEnviroScreen as a Screening Tool for Permitting Decisions is Not Appropriate.

Under Element 2, the Department intends to use CalEnviroScreen to conduct an initial screening of permitted facilities, with all facilities located in census tracts with a maximum score higher than the 60th percentile being subject to a secondary screening process and placement on a particular "pathway." This pathway is similar to the compliance tier assigned to facilities under the VSP component of the Department's SB 673 program in that it triggers a set of non-regulatory, but nevertheless mandatory, "actions" that will need to be taken by the facility. Clean Harbors believes that the use of CalEnviroScreen for this purpose is inappropriate as it immediately and unfairly selects facilities for disparate treatment based solely on their geographic location. For example, the CalEnviroScreen 3.0 Pollution Burden Indicators are based on circular logic in that the presence of a hazardous waste facility is a factor that increases a community's score, thereby making it more likely that the resulting map shows that hazardous waste facilities are located in census tracts with higher scores.

As introduced, SB 673 would have specifically referenced the use of CalEnviroScreen as an "available tool" for assessing community vulnerability. However, in response to concerns expressed during the legislative process about the use of CalEnviroScreen for this purpose, the bill was amended to refer generally to the use of "available tools," without specific reference to CalEnviroScreen. Nevertheless, the Office of Environmental Health Hazard Assessment (OEHHA) – the agency that developed CalEnviroScreen – expressed concern in its Enrolled Bill Report (EBR) on SB 673, which the department submitted to the Governor for his consideration, that DTSC might still misuse this tool in trying to carry out its obligations under SB 673:

> Because the bill says that "vulnerability . . . shall be assessed" using "indicators of community vulnerability [and] cumulative impact, the Office interprets the bill as enabling the Department's use of CalEnviroScreen in its permitting decisions, since "vulnerability," "cumulative impacts," and "indicators" are critical concepts upon which CalEnviroScreen is based. While components and underlying data in CalEnviroScreen may be suitable for use for this purpose, the final scores provided by the current version of CalEnviroScreen are not, and adapting the tool so its final scores could be used would require significant resources. The underlying data gathered in the tool, rather than the final scores it generates, could be useful for examining existing vulnerabilities and pollution sources in an area.

. . . .The final score generated by the CalEnviroScreen tool was not designed to support decisions on whether to issue or renew permits. Instead, it provides a relative ranking of communities for purposes of prioritizing resources. The CalEnviroScreen score generated for each census tract is not an expression of health risk. The tool provides a broad environmental snapshot of a given community, ranking the state's communities relative to each other based on indicators of pollution burden and vulnerability.

In other words, CalEnviroScreen can identify California communities with the highest estimated relative pollution burdens and vulnerabilities, but it cannot currently show whether those absolute burdens and vulnerabilities in a specific community are high enough to justify denial of a permit request or, conversely, are low enough to ensure that issuance or renewal of a permit is appropriate.

OEHHA, Enrolled Bill Report, September 16, 2015. This report was signed by Matthew Rodriguez, then Secretary of the California Environmental Protection Agency (CalEPA).

While CalEnviroScreeen has been updated to Version 3.0 since 2015, and a further update is in process (draft Version 4.0), the changes that OEHHA indicated in its EBR of SB 673 that would have to be made for the tool to be used in the manner proposed by DTSC have not been made.[i] At this juncture, the use of CalEnviroScreen should be limited to identifying geographic areas around permitted facilities that warrant further evaluation. CalEnviroScreen was not designed for, nor is it capable of, characterizing individual facility contributions to cumulative impacts.

C. The Framework's Definition of "Cumulative Impacts" is Inconsistent with CEQA and California Caselaw.

We also do not believe the Legislature intended or expected the Department to disregard the very substantial body of law that has developed under the California Environmental Quality Act ("CEQA") pertaining to the assessment and mitigation of cumulative impacts. The Department's permitting program is already subject to the requirements of CEQA, including those relating to cumulative impacts that have a nexus with the proposed project. However, the draft Framework appears to assume that CEQA analysis and mitigation of cumulative impacts is insufficient for purposes of SB 673 and, therefore, proposes to "incorporate new criteria addressing cumulative impacts and community vulnerability for all future applications or major permit modifications for full permits or standardized permits." Framework, at 9. The definition of "cumulative impacts" proposed in the SB 673 Framework is taken nearly verbatim from the "working definition" of cumulative impacts developed by OEHHA under CalEnviroScreen and, according to DTSC, is intended to "align with CalEPA's approach on cumulative impacts and community vulnerability and support the use of CalEnviroScreen." Framework, at 12.[ii] This definition is unduly broad as a criterion for permit decision-making and inconsistent with the extensive body of case law under CEQA on how "cumulative impacts" should be addressed and mitigated.

Specifically, under Element 2 of the draft Framework, the Department would assign facilities located in "vulnerable communities" (identified as communities with a CalEnviroScreen aggregate score higher than the 60th percentile) to one of three "tiered pathways" in the permitting process

to address combined or cumulative impacts and vulnerabilities in the community. Depending on the facility's "pathway" assignment, the facility would be required to undertake various actions to mitigate socio-economic, health or environmental conditions in those communities that have no connection to the facility's operations. These actions would have to be taken even if there is no evidence that the facility is contributing to any of these impacts in any way.

This expansive conception of cumulative impacts is inconsistent with existing California law and would unfairly burden hazardous waste facilities that operate in full compliance with their permits and have no history of adversely affecting the local community. A well-established body of caselaw interpreting CEQA and the State's CEQA Guidelines[iii] recognizes the fundamental, common-sense principle that a facility need not mitigate cumulative impacts that are entirely unrelated to the facility, and to which the facility does not contribute. Guidelines § 15130(b)(5) (an agency's CEQA analysis must include reasonable, feasible options for "mitigating or avoiding *the project's contribution* to any significant cumulative effects"). "[A] cumulative impact of a project is an impact to which that project contributes and to which other projects contribute as well…The project must make some contribution to the impact; otherwise, it cannot be characterized as a cumulative impact of that project."[iv]

Further, the scope of an agency's obligation to evaluate and mitigate cumulative impacts under CEQA is reasonably limited by location and type of impact. First, an agency is only required to analyze and mitigate the impacts of projects that are "closely related" to the project under consideration. Guidelines § 15355.[v] Additionally, an agency must provide "a reasonable explanation" for the geographic limitation used in evaluating cumulative impacts. Guidelines § 15130(b)(3). Factors considered in determining whether projects are "related" for purposes of the cumulative impacts analysis include "the nature of each environmental resource being examined, the location of the project and its type." An agency has no obligation to include an expansive geographic area in its cumulative impacts analysis where the agency has reasonably determined that a more limited geographic scope is appropriate.[vi] Overall, the agency's discussion of cumulative impacts under CEQA is guided by the "standards of practicality and reasonableness."[vii] Guidelines § 15130(b). Therefore, the concept of "cumulative impacts" as defined in CEQA and interpreted by the California courts reflects a fundamental principle of fairness: *i.e.*, that a project should not be expected to mitigate or analyze cumulative impacts to which it does not contribute, which are entirely unrelated to the facility's impacts, or which are geographically remote from the facility.

The SB 673 Framework's definition of "cumulative impacts" does not contain these reasonable limitations. Instead, the draft Framework extends the concept of "cumulative impacts" far beyond accepted principles established under existing law. Under the Framework, facilities located in "vulnerable communities" will be required to address a broad range of cumulative impacts to such communities, even where the facility did not cause or contribute to such impacts. To use DTSC's example, a hazardous waste facility would potentially be responsible for addressing a wide range of cumulative impacts entirely unrelated to its operations, including "air pollution or water discharges," as well as vaguely defined "public health factors that cause the community to be more vulnerable to pollution impacts." Framework, at 13. Presumably, this could include such factors as high blood pressure, obesity, poor nutrition, substance abuse, COPD and other illnesses related

to use of tobacco products, various chronic diseases with documented elevated incidence in communities of color, and others.

While we recognize that the Legislature, in enacting SB 673, envisioned that DTSC could consider impacts beyond those that are already required to be addressed and mitigated under CEQA, we do not see any clear direction in the legislative history that empowers DTSC to impose upon permitted hazardous waste facilities the obligation to ameliorate "cumulative impacts" that are unrelated to facility operations and that in most, if not all, instances, are beyond the control of the facility. Pursuant to Health and Safety Code § 25200.21, DTSC is directed "to consider for inclusion as criteria" the vulnerability of, and existing health risks to, nearby populations. This was not a mandate to create, out of whole cloth, a complex ranking system that purports to be based on scientific principles, but in fact yields outcomes that have no rational basis. Staff has devoted immeasurable hours to this effort and has turned to academia to lend scientific rigor to the process, but the result remains one that is likely to spawn years of litigation by permitted facilities that are burdened with mitigating societal problems not of their making.

The draft Framework's novel and far-reaching treatment of "cumulative impacts" will result in the imposition of unfair burdens on permitted hazardous waste facilities and raises serious questions of law. DTSC briefly acknowledges this inconsistency, noting that the Framework imposes a "new" and "different" definition of cumulative impacts that differs dramatically from that under CEQA. *Id.* at 14. However, the draft Framework fails to address the fundamentally unfair consequences that would result from this deviation from the traditional concept of cumulative impacts or why it is appropriate to place the burden of rectifying these impacts on permitted facilities, which comprise an extremely small subset of the industrial facilities operating in the state, many of which may actually have a direct adverse impact on the surrounding community.

Taking into account these considerations, DTSC should revise the proposed definition of cumulative impacts to specify that a facility located in a "vulnerable community" will not be required to take action addressing cumulative impacts unless there is substantial evidence that the facility contributes to those impacts. In fact, the problems inherent in this extremely broad approach were implicitly recognized by DTSC during the September 8 technical workshop on Element 2 of the Framework—during the workshop DTSC stated that the purpose of this initiative is to mitigate the impact of permitted hazardous waste facilities on surrounding communities, not to require those facilities to mitigate other impacts or baseline conditions in the community that are unrelated to their operations. The Framework document should be revised to reflect this intent.

D. DTSC Should Build on Other Statutes and Programs that Are Designed to Address Community Vulnerabilities.

California is to be applauded as a national leader in the cause of achieving environmental justice for disadvantaged and vulnerable communities. Numerous laws have been enacted over the years toward this goal, ranging from the Tanner Act enacted in 1986 (providing for increased local control over siting of new and expanded hazardous waste management facilities) to the more recent enactment in 2017 of Assembly Bill (AB) 617, which requires the California Air Resources Board and local air districts to develop comprehensive emissions monitoring and reduction plans to reduce air pollution exposure in disadvantaged communities. The draft Framework briefly

discusses AB 617 and other recent state and federal Environmental Justice (EJ) initiatives and notes that these programs are informing the Department's work under SB 673.

However, Clean Harbors remains concerned that DTSC views SB 673 as a mandate to develop an entirely new program to address EJ issues within the context of the hazardous waste permitting program, notwithstanding the fact that the permitted facility requirements under state law are already extremely stringent and are specifically designed to assure that operations at these facilities do not impact the local community. Even *de minimis* releases of hazardous waste or hazardous waste constituents are not tolerated and are subject to regular enforcement by DTSC. The approach outlined in the draft Framework is based on the premise that EJ concerns are exacerbated by operations at permitted hazardous waste facilities and that those concerns can only effectively be addressed through a ranking system that utilizes a vast array of criteria, many of which have little relevance to the facility's actual operations. We believe this premise is flawed and is manifestly inaccurate with respect to Clean Harbors' operations. Given the additional resources that will be required to revise the draft Framework to resolve the serious (but contradictory) concerns raised by all stakeholders, we suggest that DTSC conduct a more comprehensive review of the many EJ programs already in place that the State is implementing, and build on those programs to develop a more streamlined and qualitative approach to SB 673.

II. Specific Comments on Framework Elements.

A. Element 1: Community and Facility Screening.

Clean Harbors questions why under Table 1, Evaluation of Facility Characteristics, landfilling is considered the highest impact facility activity. Reference is made to the size of landfill facilities and truck traffic. These factors are not unique to landfills and the conclusion that landfills have the highest impact on their surrounding community appears unsupported in the draft Framework. For example, the Buttonwillow facility operated by Clean Harbors is in a remote location, approximately eight miles from the town of Buttonwillow. Trucks that travel to and from the facility are required to use designated routes that go around the town, and we are unaware of any adverse impact the facility's operations has on these communities. To the contrary, Clean Harbors is an active member of the local community, providing opportunities for employment, vocational training, funding for local civic events and other community programs. The town of Buttonwillow is also located in an active oil-producing area that generates significant truck traffic on city streets, yet none of these operations are subject to SB 673.

B. Element 2: Facility Tiered Pathway and Designation.

This element would require the Department, in the case of all facilities located with a census tract with a CalEnviroScreen aggregate score higher than the 60th percentile, to proceed to a "second screening" where it proposes differentiating facilities into groupings for assigning a draft facility tiered pathway. Significantly, all Clean Harbors facilities (with one possible exception) are in census tracts with a CalEnviroScreen score above the 60th percentile, thereby placing all our facilities at significant risk of business curtailment, mandated actions or expenditures that are unrelated to facility operations and other unknowns. As discussed above, the screening references consideration of "community vulnerability" and combined or cumulative impacts in communities

near facilities, using CalEnviroScreen and, in some cases, "supplemental information." It is completely unclear how these community vulnerabilities and cumulative impacts would be assessed and what "supplemental information" the Department refers to. At one point, the draft Framework suggests that "low voter turnout" or the presence of gas & oil wells would qualify as relevant information. Consideration of factors such as these that could readily be attributed to a huge range of circumstances appears arbitrary.

Under Element 2, a facility assigned to the Tier 1 pathway will require the "highest level of facility upgrades, monitoring, environmental improvements, and community outreach to address community impacts and burdens." It is not clear what baseline the required upgrades will be compared to, and many prior facility improvements, implemented at great expense and for the betterment of the local community, may be deemed insufficient. If a facility is assigned to the Tier 1 pathway based on its size, operation and proximity to sensitive communities, but is already using protective technologies, then what upgrades would be required and what justification could exist for requiring them to be implemented? The draft Framework notes that credit for proactive measures that have been undertaken by a facility prior to a facility permit application could be considered, but it is unclear whether this credit would apply solely to the calculation of a total facility score or would also be considered when reviewing required upgrades. Given the difficulties DTSC has encountered in implementing the Violation Scoring Procedure (VSP) adopted pursuant to SB 673, it is surprising that the agency is embracing another scoring procedure that is even more complicated and, in many respects, arbitrary.

We also understand that the Department only last week made available to the public a spreadsheet that it has developed for use in assigning permitted facilities to a particular Pathway. We have not had an adequate opportunity to review this worksheet but have heard from industry representatives who attended the September 28 workshop that the spreadsheet is extremely unwieldy and identifies numerous "data indicators" that have little, if any, relevance to the facility's operations. Given the significant implications a "Pathway" assignment will have for a facility, it is essential that the criteria used for this purpose are scientifically valid, peer reviewed and appropriate for use in this manner. We understand that staff who developed the spreadsheet are themselves highly dissatisfied with the work product and are considering an entirely different approach. Clean Harbors is therefore reserving the right to submit at a later date comments on any later iteration of the spreadsheet.

Additionally, given the scientific, data-driven nature of the methodology that DTSC has attempted to develop, and that will form the basis for the forthcoming regulations, we believe DTSC must comply with the external scientific peer review requirements set forth in Government Code § 57004. This section requires the peer reviewer to prepare a written report that contains an evaluation of the scientific basis for the proposed rule. This review is necessary to ensure that "the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices." Gov't. Code, § 57004(d)(2). At this juncture, we have little confidence that any proposed regulations based on the draft Framework will survive external scientific peer review.

C. Elements 3 and 4: Facility Action and Facility Action Workplan.

This element requires facilities designated to Pathway 1, 2 or 3 to submit a Workplan outlining the actions they propose to take to reduce community impacts and vulnerabilities, ranging from public engagement and outreach (for Pathway 3 facilities) to major facility upgrades and operations improvements (for Pathway 1 facilities). There is no requirement for any nexus between the facility's operations and these assumed vulnerabilities. This approach violates basic principles of fairness and places companies that provide necessary hazardous waste management services, including treatment capacity for restricted wastes, under an obligation to address societal inequities that are not of their doing. At the very minimum, DTSC must demonstrate that there exists some connection between the facility's operations and the alleged vulnerability.

These elements also note the potential for new setback requirements to be included in the forthcoming regulations, applicable to both new and existing facilities. Setback requirements should be applied only to new facilities as application of such requirement to an existing facility could require major reconfiguration of the facility layout, including relocation of structures, equipment, ingress and egress routes, and many other changes. Even if these changes were physically possible, facility modifications of this magnitude would be extremely expensive, require DTSC and local zoning approval, and in many cases necessitate suspension of operations while the changes were implemented. It is anticipated that in many cases, facilities facing these new hurdles would simply choose to shut their doors rather than bear the operational disruption, financial burden and political uncertainties associated with trying to comply with this approach.

Setback requirements could also result in a facility's inability to expand/modify its operations to modernize and improve the site. This could have the unintended consequence of preventing a facility from making improvements that would actually benefit the surrounding community.

The draft Framework also references Good Neighbor Policies or Agreements but hastens to note these actions would be "voluntary and outside the scope of the proposed framework." We question why the framework document nevertheless suggests a variety of "community or environmental improvements" for such agreements. We fail to see any meaningful distinction between the types of actions the Department believes it can require a facility to undertake as a result of its Pathway assignment, and the payments or actions that might be undertaken pursuant to a community benefits agreement. It is unclear why the Department has excluded these agreements from the program, while requiring facilities to underwrite and implement a wide range of other actions, many of which lie outside the Department's authority under the Hazardous Waste Control Law.

D. Element 5: Decision to Revoke or Deny a Permit.

This element appears to contemplate the Department's right to deny, suspend or revoke a facility's hazardous waste facility permit – that the facility may have spent millions of dollars to obtain – simply because the facility happens to be located in an area where nearby populations are considered vulnerable and may be suffering health risks that have nothing to do with the facility's operations. Under the "weight of evidence" standard suggested by the Department, the facility's location could be the deciding factor leading to denial or revocation of a permit. It seems inevitable that such an approach could not withstand legal review.

Under this element, the Department also declares that it "reserves the right to require a facility to reduce its size, scope, or footprint through the permit process to protect community and environmental health." This position is equally untenable as it intrudes upon the economics of the facility's operations, disrupts long-range business planning and market development efforts, impairs the facility's ability to deliver services its customers, and leaves owners and operators of facilities subject to enormous uncertainties going forward, all of which threaten the economic viability of the operation. While it remains to be seen what standards and criteria would have to be met before the Department could invoke such an extraordinary remedy, we believe this approach is fundamentally misguided and should be eliminated from the framework.

At an absolute minimum, it would be necessary for DTSC to demonstrate that the facility is causing documented harm in the community and that the proposed reduction in size, scope or footprint will remedy that harm. Anything short of that validation would constitute an unlawful taking of property without just compensation. Moreover, the Department already has the authority to order a facility to cease and desist operations and to initiate permit revocation proceedings in the event of a persistent unaddressed risk of imminent and substantial harm to human health and the environment. This existing authority has been further bolstered through the Department's adoption of its flawed VSP process, which superimposes a numeric scoring system on facilities that can lead to permit revocation. However, the VSP program currently faces a number of court challenges due to its many inherent flaws; the "right" claimed by DTSC under this element would represent an even more egregious violation of property rights.

As such, under no circumstances should the Department be able to require a facility to reduce its previously authorized size, scope or footprint solely due to a site's location.

E. Element 6: Inspection Scoring Adjustment for Vulnerable Areas.

This element refers to an automatic upward adjustment of VSP scores solely based on a site's location within an "environmental justice area" (census tracts with a CalEnviroScreen score in the 75th percentile or higher) and proximity to sensitive receptors. At least six of Clean Harbors' facilities are located in census tracts that meet this criterion. This adjustment would double the score when the vulnerable community is located within one-quarter mile of the facility, thereby greatly increasing the risk of permit denial or revocation. Several of Clean Harbors' facilities are located in these highly ranked census tracts and are thus placed at higher risk of facility closure based on escalated VSP scores. Changes to the VSP program currently contemplated by the Department would only exacerbate this situation as it is inherently unfair and creates an unlevel playing field where an otherwise acceptable facility could face additional permit conditions or even permit revocation simply based on its location while, at the same time, another site with a higher VSP score and more problematic compliance record could continue to operate. Moreover, the imposition of more severe punishment on one category of facilities, based solely on their location in or near vulnerable communities, is discriminatory and violates these facilities' right to equal protection under the law.

Clean Harbors believes the proposal for automatic upward adjustment of VSP scores is arbitrary and should be eliminated from the framework. And under no circumstance should this upward adjustment be applied retroactively.

III. Conclusion.

Clean Harbors recognizes that the Department is obligated to adopt regulations that outline additional criteria related to issuing or renewing permits for hazardous waste facilities, including the vulnerability and existing health risk as assessed by "available tools." However, SB 673 was not a mandate to develop permitting criteria that are divorced from basic constitutional principles of fairness, due process and equal protection, which will likely lead to the unwarranted closure of some permitted facilities and significantly impact the ability of California to manage its own generated hazardous waste safely and effectively. Therefore, we urge the Department to reconsider the approach outlined in the draft Framework and, instead, work with stakeholders to develop an alternate methodology that (i) uses relevant and verifiable data to assess a facility's actual impact on the surrounding community, and (ii) takes into consideration the risks and potential harm that would inevitably result from a loss of hazardous waste management capacity in the state. The economic-, health-, and public safety well-being of Californians is dependent the State's ability to safely and effectively manage its own generated hazardous wastes. Towards that end, Clean Harbors stands ready to work with the Department and other stakeholders to achieve that important goal.

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Thank you for the opportunity to submit these comments. We look forward to learning how the Department intends to resolve these significant concerns.

Very truly yours,

Eric Gerstenberg
Chief Operating Officer

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cc: Christine Hironaka, Deputy Cabinet Secretary, Governor's Office
Angela Pontes, Deputy Legislative Secretary, Governor's Office
Jared Blumenfeld, Secretary, Cal-EPA
Caroline Godkin, Deputy Secretary for Environmental Policy and Emergency Response, Cal-EPA
Meredith Williams, Director, DTSC
Rizgar Ghazi, Deputy Director Hazardous Waste Management Program, DTSC

[i] CalEnviroScreen 3.0 was released in January 2017 and reflected a number of updates to the screening tool but did not alter its fundamental purpose of assessing relative risk among communities. One of the primary purposes of CalEnviroScreen 3.0 was to target communities for potential investment of state cap-and-trade funds. See also, OEHHA, February 2021 Summary of Proposed Changes in Cal EnviroScreen Version 4.0 ("[t]he model and method used to calculate CalEnviroScreen scores remain the same as those used in the previous version).

[ii] The Framework defines "cumulative impacts" as follows:

> "*Cumulative impact* refers to exposures, public health or environmental effects from the combined emissions and discharges, in a geographic area, including environmental pollution from all sources, whether single or multi-media, routinely, accidentally, or otherwise released. Impacts will take into account sensitive populations and socio-economic factors, where applicable and to the extent data are available…
>
> 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 would also include other indicators of vulnerability including public health factors that cause the community to be more vulnerable to pollution impacts." *Id.* at 13.

[iii] 14 Cal. Code Regs. §§ 15000 *et. seq.*

[iv] *Sierra Club v. West Side Irr. Dist.* (2005) 128 Cal.App.4th 690, 700 (citation omitted).

[v] *See, e.g., Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 528; *Friends of the Eel River v. Sonoma Water Agency* (2003) 108 Cal.App.4th 859, 869-871 (cumulative impacts analysis for water diversion project required to evaluate other pending proposals that would curtail water diversions); *Kings County Farm Bureau v. City of Hanford* (1990) 331 Cal.App.3d 692, 721 (Environmental Impact Report for energy project required to include in cumulative impacts analysis other energy projects located in the same air basin).

[vi] *See South of Market Community Action Network v, City & County of San Francisco* (2019) 33 Cal.App.5th 321, 338.

[vii] *Environmental Protection Info. Ctr. v. Department of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 525.