



October 15, 2021

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

Dear Ms. Rodriguez:

The undersigned organizations appreciate this opportunity to comment on the California Department of Toxic Substances Control's (DTSC) revised draft SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework. Our organizations represent hazardous waste treatment, storage and disposal facility operators and the many businesses that rely on these facilities to manage materials that cannot be source reduced or recycled at the point of generation. We believe that maintaining a viable hazardous waste industry in California is essential for responsible management of in-state-generated hazardous waste and should be prioritized over policies that encourage exportation of California waste to less regulated jurisdictions.

During DTSC's September 8 technical workshop on Element 2 of the revised draft framework, DTSC leadership 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. We support that purpose and believe it should be explicitly stated in the framework document to set stakeholder expectations for SB 673 implementation. We also believe it can be achieved without a tiered facility pathway scheme or many other features in the revised draft framework that would add complexity and cause further delays in an already dysfunctional permitting process without advancing the statutory objective of protecting disproportionately burdened communities.

The following comments identify some of the features in the revised draft framework that DTSC should reconsider consistent with the above statement of purpose. These comments should not be viewed as a comprehensive list of regulated community concerns, but rather as a starting point for the current round of informal discussions.

### **CalEnviroScreen and Facility Applicability Threshold**

The CalEnviroScreen (CES) composite score DTSC proposes to use as the threshold for determining facility applicability (60<sup>th</sup> percentile) is too low to differentiate disproportionately burdened communities from other communities. In addition, given the screening-level data and functionality of CES, and Cal-EPA-acknowledged design limitations<sup>1</sup>, use of CES to support SB 673 implementation should be limited to identifying geographic areas around permitted facilities that warrant further evaluation. CES is not capable of characterizing individual facility contributions to cumulative impacts. CES was designed to identify census tracts that bear disproportionate environmental and socio-economic burdens for purposes of prioritizing investment of state grant funding (e.g., expenditure of Greenhouse Gas Reduction Funds) to supplement public health and environmental protections provided under existing laws and regulations. It was not designed to support development or expansion of enforceable regulatory standards and should not be used for such purposes.

The current tiered pathway approach also biases facility designations toward the highest tier by anchoring DTSC's initial designation to the highest CES score within any census tract that touches the "Area of Analysis" around the facility. This internal bias sets the facility on a path to increasingly stringent permit conditions that may not be justified based on an evaluation of facility-specific information. It also sets community expectations that will serve as a barrier to data-driven adjustments to initial facility pathway designations.

### **Additional Community Vulnerability Metrics**

Some of the additional community vulnerability metrics proposed in the DTSC/California Air Resources Board (CARB)-sponsored research recently completed by the University of California<sup>2</sup> either are not relevant to permitted hazardous waste facilities or are duplicative of

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<sup>1</sup> CES Version 3.0 Message From The Secretary, pages iv-vi:  
<https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>

<sup>2</sup> Morello-Frosch et. al., Integrating a Community Cumulative Impacts Framework in the implementation Of AB 617 and SB 673, Final Report; Contract CARB No. 17RD035/DTSC No.17-T4471; University of California, Berkeley.

indicators already included in CES. For example, there is very little analysis of the data cited in support of a new “voter turnout” metric, and no explanation of the relevance of this metric to hazardous waste facility permitting. In this case, the brief discussion in the UC Study report identifies a large number of variables that may influence voter turnout but may also be entirely unrelated to the existence of a hazardous waste facility in the community. Similarly, there are no discernable patterns of oil and gas wells being co-located with hazardous waste facilities, and the environmental impacts associated with oil and gas sources are already characterized and “counted” through existing environmental impact indicators included in CES Version 3.0.

All of the additional indicators identified in the UC Study should be carefully evaluated and determined to be fit for purpose before being used as supplemental information or in any other manner that influences hazardous waste facility permitting decisions.

### **Use of Other Supplemental Information**

We support DTSC’s interest in establishing procedures to ensure that any information used to inform permitting decisions is fit for purpose. We agree that information used for regulatory purposes must meet applicable scientific standards and must be verifiable by multiple sources. In this regard, the draft criteria for data quality assurance – publication in a peer reviewed journal or by international, federal, state or local regulatory agencies – are a step in the right direction. However, these sources are used for different purposes and do not employ uniform standards for evaluating data quality. Absent a more defined set of criteria, DTSC would be flooded with information that may not be relevant to the impact of a given facility on the surrounding community and would need to justify on a case-by-case basis why such information should not be used to support permitting decisions. As noted below, this is one of the features in the draft framework that is likely to invite routine challenges of DTSC permit decisions.

DTSC must also explain how supplemental information would be weighted relative to CES scores in determining facility action pathways and in making final permit decisions.

### **Relative Source Contribution and Proportionality**

There is no defined mechanism in the revised draft framework for identifying, much less quantifying, other contributors to community vulnerability and cumulative environmental impacts. Thus, it is likely to promote a community perception that the permitted hazardous waste facility is the primary or only cause, regardless of what facility-specific information would indicate. To protect public health and preserve a viable in-state hazardous waste management industry, DTSC will need to recast its current approach to prevent misperceptions from driving overreaching permit conditions. In particular, the framework will need to define pathways to permit conditions that are proportional to the actual impact of the permitted facility on the surrounding community.

### **Minimum Setback Distances**

The use of minimum setback distances in the revised draft framework is not scientifically justified. The proposed setback distances are screening-level benchmarks adapted from the Areas of Analysis concept, which appears to be based on studies reporting associations

between proximity to industrial sources and various adverse health outcomes. For new and modified facilities, these defaults would serve as thresholds for permit approval or denial. For existing facilities, they would be used as a supplemental weighting factor for scoring Class 1 violations, which could lead to the same outcomes for some facilities and to more stringent permit conditions for others. Neither the DTSC document nor the UC Study report evaluate the suitability of the referenced research for this purpose, and neither application is justified in the absence of evidence that a given facility poses a significant risk to human health or the environment in the surrounding community.

The state already routinely applies highly conservative multi-pathway methods to assess the risk that specific facilities present to human and environmental receptors. These methods are periodically updated to incorporate new data for emerging chemicals and new methods to evaluate exposure to sensitive populations. Depending on the environmental medium, risk can be quantified as a function of distance from the facility (e.g., risk from air toxics emissions depends on local meteorology and distance between the source and the point of exposure). These methods are established in federal and state environmental laws as the foundation for regulatory decision making and cannot be supplanted by default decision criteria based on research that may not be relevant to the actual impact of hazardous waste facilities on surrounding communities.

### **Authority to Implement Mitigation Measures**

DTSC's draft menu of mitigation measures raises questions about the extent of the agency's regulatory authority and its responsibility to prevent duplication of measures already being implemented or under development by the appropriate regulatory authorities. DTSC acknowledges that some of the elements on the current draft menu, such as fence line air quality and groundwater monitoring, will require "coordination" with the "applicable jurisdiction." However, coordination does not necessarily recognize agency primacy, and this caveat does not appear to apply to other measures on DTSC's draft mitigation menu, such as measures to reduce diesel particulate emissions from mobile sources that are already included in air quality plans and regulations implemented by CARB and local air quality management districts. DTSC should confine its menu to mitigation measures that fall within the scope of its regulatory authority.

### **Discretionary Permitting Decisions**

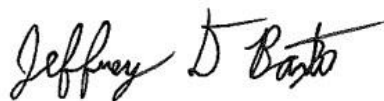
The lack of a structured, transparent and predictable decision-making framework has been a long-standing problem with the existing hazardous waste permitting process. Today, DTSC can arrive at very different decisions for the same facility based on the same set of facts. Expanding the existing process in ways that increase reliance on discretionary agency decisions, as the current draft framework would do, would magnify this pre-existing problem and undermine regulatory certainty for all stakeholders. It would also increase the probability that future permitting decisions will be challenged by the aggrieved parties.

## External Scientific Peer Review

Any scientific information incorporated by reference in a future DTSC permitting regulation must be subject to external scientific peer review pursuant to Health and Safety Code Section 57004. The revised framework document is non-committal about the need for external peer review, but the range and scientific content of the information DTSC envisions considering in the SB 673 permit evaluation process would undoubtedly trigger this statutory requirement. External peer review of data and other technical information used by DTSC is necessary to ensure that facility permitting decisions are grounded in scientifically valid information.

Thank you for considering our comments. We look forward to working with DTSC to improve the approach contemplated in the revised draft SB 673 framework in a manner that achieves our shared objective of mitigating community impacts resulting from hazardous waste facility operations.

Sincerely,



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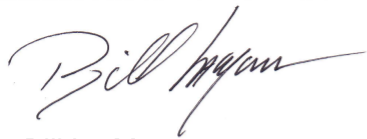
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