



# Environmental Technology Council

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October 8, 2021

Ms. Evelia Rodriguez  
Senior Hazardous Substances Engineer  
Hazardous Waste Management Program  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

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

Dear Ms. Rodriguez,

The Environmental Technology Council (ETC) submits these comments on California's Environmental Protection Agency's SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework.

## **Statement of Interest**

The ETC is the national trade association for the commercial hazardous waste management industry. ETC member companies provide technologies and services to customers for the safe and effective recycling, treatment, and secure disposal of hazardous wastes through high-temperature incineration and other advanced technologies. Our member companies must comply with the safety, security and environmental regulations of the Resource Conservation and Recovery Act (RCRA), the Department of Transportation, the Chemical Facilities Anti-Terrorism Standards program and the Risk Management Program, just to name a few. As part of their business practices ETC member companies are continuously engaging with the communities in which they operate to ensure that their facilities are operating in a responsible, safe and secure manner to protect against environmental injustices. Regular community outreach also allows our member companies the opportunity to have meaningful dialogue with the community and allows the community to share information and their viewpoints regarding our operations.

While ETC and its member companies understand and appreciate the importance of protecting communities of color, indigenous communities and low-income communities from environmental injustices we believe some of the elements set forth in

the SB 673 regulatory framework would limit, and in some cases would completely eliminate, the ability of our member companies to safely and securely treat and dispose of RCRA hazardous waste that has the potential, if not properly managed, to negatively impact low-income and communities of color and cause great harm to human health and the environment. The Department of Toxic Substances Control (DTSC) should rely on data gathered from the technical environmental analyses performed as part of the permit review process rather than establishing new policies and procedures that could lead to process redundancies, lack of coordination, less effective and efficient regulatory reviews and conflicts with California's goal of safely managing hazardous waste.

### **Back Ground**

SB 673 was signed into law in 2015 by California former Governor Jerry Brown and it directed California's Environmental Protection Agency's DTSC to update its criteria to consider the vulnerability of, and existing health risks to, nearby populations when deciding whether to issue a new or modified permit or permit renewals of hazardous waste facilities. The bill also authorized the Department to consider the use of minimum setback distances from sensitive receptors in making a permitting decision. DTSC chose to implement SB 673 by dividing the legislation into two tracks. The first track established new regulations that would:

- Consider a hazardous waste facility's past violations in DTSC's hazardous waste facility permitting decisions;
- Expand worker training;
- Impose stronger financial assurance requirements;
- Promote community involvement;
- Require assessments to identify health risks from facility operations.

These new hazardous waste facility permitting criteria regulations became effective January 1, 2019.

DTSC established the second track to increase protections for vulnerable communities through additional permit criteria to address cumulative impacts and establish setback distances from locations, such as schools, daycare centers and hospitals. As part of its review process, DTSC has released SB 673 Draft Regulatory Framework Elements and is seeking comments on these elements before finalizing the additional permit criteria set forth in track 2. ETC submits the following comments on the Draft Regulatory Framework Elements of SB 673.

## **Element 1: Community and Facility Screening**

Under Element 1 DTSC would use CalEnviroScreen (CES) as an initial screening tool to combine information from individual facility assessments (including size, characteristics, and activity information), with the percentile of the community surrounding the hazardous waste facility to place facilities on one of three facility action pathways to address cumulative impacts and community vulnerability. A CES score higher than 60<sup>th</sup> percentile is considered a vulnerable community. Additionally, if a facility has a CES aggregate score higher than the 60<sup>th</sup> percentile, then the DTSC proceeds to the second screening which is to determine which tier pathway the facility falls in.

ETC and its members oppose the use of the CES for this purpose as it was not designed to be a trigger mechanism for determining if a hazardous waste facility should receive a permit or a permit renewal. The California Environmental Protection Agency (Cal-EPA) and the Office of Environmental Health Hazard Assessment (OEHHA) which developed the CES tool, acknowledged the tools limitations in a report that accompanied the release of the original CES tool. The report stated:

“CalEnviroScreen assesses environmental factors and effects on a regional or community-wide basis and cannot be used in lieu of performing an analysis of the potentially significant impacts of any specific project.... [T]he tool’s output should not be used as a focused risk assessment of a given community or site. It cannot predict or quantify specific health risk or effects associated with cumulative exposures identified for a given community or individual.”  
(CalEnviroScreen Version 1.0) (April 2013), pages iii-iv.

ETC and its member companies support the position of the Cal-EPA and OEHHA. Although the additional environmental reviews and public consultations contemplated under the Draft Regulatory Framework understandably are aimed at reducing adverse impacts to environmental justice populations, the overall strategy may prove to be unduly burdensome on facilities, resulting in project delays and increased costs. Moreover, since the CES score integrates a much broader range of considerations it could allow a facility that makes no contributions to the environmental risk of the community to get included in a high tier simply because it is getting swept along by larger forces. In sum, CalEnviroScreen was not designed for this purpose. The granting and denial of a new or renewed permit request must be based on a scientific analysis of facility-specific information and a determination that the facility is causing or

significantly contributing to actual harm to public health or negative environmental impacts to the community.

## **Element 2: Facility Tiered Pathway and Designation**

As part of the CES process described in Element 1 the DTSC would conduct a second screening under Element 2 to determine the tiered pathway for a hazardous waste facility that had a CES aggregate score higher than the 60<sup>th</sup> percentile. The tiers would establish additional regulatory requirements for affected facilities. The higher the tier the greater the requirements on the facility. For example, a facility placed in Tier 3 would be subject to an enhanced community engagement program, while a Tier 1 facility would be subject to monitoring and mitigation measures through the permitting process.

Protecting communities of color, indigenous communities and low-income communities from environmental injustices should and must be a priority for state and local governments; however, DTSC's fails to realize and acknowledge that prohibiting permits, and especially denying renewal of existing facility permits, will cost jobs and substantially harm businesses, especially because a facility that needs a permit renewal may not be the only, or even a significant, contributor of the environmental risk or harm in a community. DTSC also has not taken into account the exorbitant cost associated with moving or building a new facility to replace one that does not get its permit renewed. There would be a significant carbon footprint and substantial waste generated during the building of a new facility particularly when an existing facility is adequately doing the job and meeting the requirements of its permit.

DTSC's Draft Regulatory framework seems to make the assumption that any permitted hazardous waste facility has an overall negative impact on the environment, which may not be the case. Permitted hazardous waste facilities provide support for core industrial and commercial needs in California. Without these facilities there could be unintended negative impacts on the communities the DTSC seeks to protect. For example, denial of a permit renewal for a permitted facility would mean that the waste would have to go elsewhere. It could potentially be dumped in disadvantaged communities as opposed to being properly and safely disposed of at a RCRA permitted facility that is meeting the requirements of its permit.

## **Element 3 & 4: Facility Action**

Under Element 3 and 4 facilities that meet the 60<sup>th</sup> or higher percentile and are placed in a higher tier would be required to submit a work-plan with a permit application (or major permit modification application). The work-plan would outline facility actions to reduce community impacts. As ETC and its members do not support the processes set forth in Elements 1 & 2, we do not support the proposed subsequent mandates that follow

in Elements 3 and 4. Our opposition, is not meant to suggest that we do not understand and appreciate the importance of reducing and where possible eliminating negative environmental impacts in low income and communities of color. To the contrary, as part of their business practices ETC member companies are continuously engaging with the communities in which they operate to ensure that their facilities are operating in a responsible, safe and secure manner to protect against environmental injustices. Regular community outreach also allows our member companies the opportunity to have meaningful dialogue with the community and allows the community to share information and their viewpoints regarding our operations. Work-plans that outline the steps to be taken by a facility to reduce community impacts should be voluntary and based on information the facility receives from the community. This approach would allow a facility to tailor its work-plan to address the specific concerns of the community in which it operates or seeks to operate.

#### **Element 5: Decision to Revoke or Deny a Permit**

Element 5 notes that the DTSC would amend regulations to include additional factors to be considered in revoking or denying all or some activities in a permit. Under sections 66270.41 and 66270.43 of Title 22, California Code of Regulations, a decision to deny or revoke could be initiated by the DTSC in response to a permit application (or could be initiated as a permit modification application). Additionally, the Department is proposing a “weight of evidence” determination for permit decisions. The consideration of weight of evidence would include a finding that several factors, including the vulnerability of, and health risks to, nearby populations have been considered in deciding that a permit should be denied, suspended or revoked.

Again, ETC and its members support the protection of low income communities from environmental justices. However, the denial or revoking of a hazardous waste treatment, storage and disposal (TSDF) permit based on qualitative or subjective assessments of community vulnerability would position facilities for arbitrary permit denials. We believe this would be an extreme regulatory response that should only be considered where DTSC determines that a facility’s operation poses significant health risk in the community that cannot be mitigated below established levels or significance. Such decisions should not be based solely on community perceptions or facility location relative to other land uses. Additionally, the denial or revoking of a permit would be inappropriate in instances where available information shows that factors unrelated to the operation of the permitted facility are the cause of public health risk in the community.

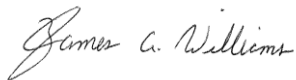
#### **Element 6: Violations Scoring Procedure Inspection Scoring Adjustment for Violations in Vulnerable Communities**

According to the Draft Regulatory Framework, each year a Violation Scoring Procedure (VSP) is determined for each facility by dividing the total inspections scores for all Class 1 violations by the number of inspections occurring over a ten-year period to determine the annual VSP facility score. Class 1 violations include those actions that have the potential for moderate or major harm. ETC and its members are concerned that the VSP remains a subjective process that goes beyond what is necessary. A better approach would be for DTSC to determine the types and frequency of violations that justify denial or revocation of a permit based on violations that are knowing, intentional, or are clearly based on negligence and disregard human health, safety, and the environment that result in serious actual harm or an imminent and substantial endangerment. ETC and its members do not believe facilities should face denial or revocation of their permits on the basis of violations that fall below the level of gravity described above. Notwithstanding the DTSC's effort to describe the VSP as an evenhanded, objective process, ETC and its members are very concerned that the inherently subjective nature of the ranking process under the VSP will result in outcomes that are very unfair and that will have severe consequences for hazardous waste TSDFs.

Finally, if the DTSC is set on the continuous use of the VSP, we recommend that the timeline for a facility to dispute a score be increased from 60 days to 90 days.

Thank you for the opportunity to comment and for your consideration of our concerns and recommended suggestions. ETC and its members look forward to working with the DTSC to ensure California maintains capacity to manage its hazardous waste and that any framework put forth is workable, consistently applied, mindful of the DTSC's jurisdiction and other regulatory requirements and protective of human health and the environment. Should you have any questions, please feel free to contact me at 202-731-1815 or via e-mail at [jwilliams@etc.org](mailto:jwilliams@etc.org)

Sincerely,



James A. Williams, II  
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