



October 8, 2021

Hazardous Waste Management Program
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814

Re: Waste Management Comments on SB-673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework

Waste Management (WM) appreciates the opportunity to provide comments on the Department of Toxic Substances Control (DTSC) SB-673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework. WM is the leading provider of environmental services in North America, with over 50,000 employees operating 263 solid waste landfills, 348 transfer stations, 103 materials recovery facilities, 44 organics processing facilities, 5 hazardous waste landfills, and a fleet of more than 17,000 collection vehicles operating throughout the United States and Canada.

I. Waste Management's Commitment to Environmental Justice

The U.S. Environmental Protection Agency (EPA), California, and many other jurisdictions have developed regulations or policies seeking to advance environmental justice, which EPA defines as the "fair treatment of people of all races, cultures and incomes with respect to the development, implementation and enforcement of environmental laws." The fundamental component of all environmental justice programs is early and frequent outreach to facility neighbors to understand and seek to respond to environmental concerns. Although community outreach is an important part of business operations, the concept of environmental justice requires that special efforts are made with respect to minority, low-income, tribal, and indigenous populations that potentially experience disproportionate environmental harms and risks.

The communities in which WM resides entrust us with the responsibility of environmental stewardship, protecting their health and well-being, and providing safe and effective waste services. As part of WM's commitment to demonstrating responsible citizenship in these localities, we strive to conduct our operations in a manner consistent with the principles of environmental justice, including by:

- Meeting high standards of environmental performance that minimize environmental impacts;
- Working with stakeholders in regulatory, legislative, and other settings to support policies that advance the fair treatment of all races, cultures, and incomes;
- Continuing to support and partner with organizations that are representative of the communities we serve; and

- Maintaining open and responsive communications while working collaboratively with our neighbors and surrounding communities to address environmental justice concerns.

II. Synchronizing SB-673 with Other Statutory and Environmental Review Requirements

Determining whether to issue a new or renewed hazardous waste permit, and the related necessary approvals from the local lead agency as well as other responsible and trustee agencies, requires multiple extensive environmental analyses and public review periods, including under the California Environmental Quality Act (CEQA)¹ and the Tanner Act,² among other authorities. CEQA and the Tanner Act operate in tandem to ensure that proposed permit renewals or permits for facility expansions are thoroughly considered for their potential effects on the environment and human health and, if approved, that projects are built, expanded, and operated in a safe and responsible manner. Under each of these authorities, a project's potential adverse impacts are identified and mitigation measures or alternatives are adopted to avoid or minimize impacts to the environment and nearby communities.

SB-673 provides another layer of permitting considerations on top of CEQA and the Tanner Act, directing DTSC to "adopt regulations establishing or updating criteria used for the issuance of a new or modified permit or renewal of a permit." Perhaps in a nod to the many challenges involving permitting under CEQA and the Tanner Act, SB-673 also requires DTSC to "develop and implement programmatic reforms" to "enhance public involvement using procedures that provide for early identification and integration of public concerns into permitting decisions," including the interests of environmental justice communities. The law further instructs DTSC to ensure that any potential reforms do not prevent the agency from "making timely permit decisions."

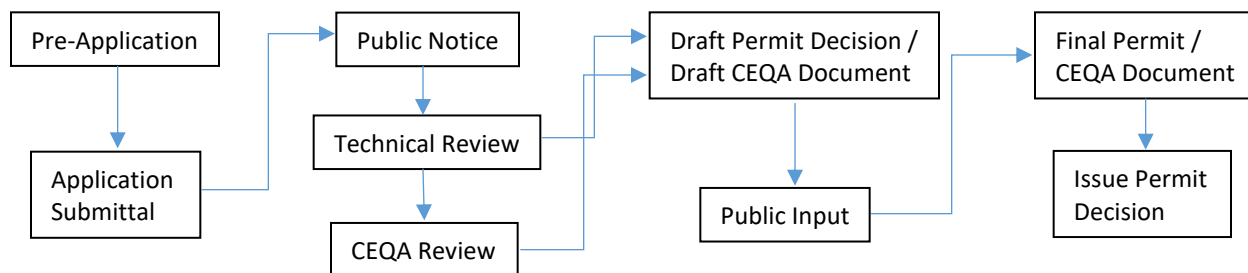
In WM's experience, the process for completion of an environmental impact report (EIR) under CEQA varies in length and complexity, with the average duration being four to seven years. This timeline has resulted from the need to gather, review, analyze, and respond to a significant amount of technical information and community input. Likewise, the typical timeline for completion of a review under the Tanner Act averages five years. These timeframes do not include the roughly two to five years it often takes to defend a project approval in the event of litigation through a court of appeals. The B-18/B-20 Subsequent EIR prepared for the expansion of the Kettleman Hills Hazardous Waste Facility, for example, took well over seven years for processing and approval under CEQA. The timeline for that review involved three 45-day public review and comment periods on the Draft SEIR and two revised and recirculated portions of the Draft SEIR, prior to preparation of the Final SEIR. The Kings County Planning Commission and Board of Supervisors held at least four public hearings to accept comments and testimony for consideration. Additionally, between 2005 and 2009, twenty-five public Local Assessment

¹ CEQA requires that state and local government agencies inform decision-makers and the public about the reasonably foreseeable and potentially significant adverse environmental impacts of proposed projects on the physical environment, and to reduce those environmental impacts to the extent feasible.

² The Tanner Act governs the preparation of hazardous waste management plans and the siting of hazardous waste facilities in the state of California. The Act mandates that each county adopt a Hazardous Waste Management Plan that, among other things, defines the planning process for waste management and the permit process for new and expanded facilities.

Committee meetings were held in the Hanford and Kettleman City areas (with notice provided in Spanish and translators available at each hearing) to fulfill the provisions of the Tanner Act.³

Given WM’s familiarity with the hazardous waste permitting process, we believe it is critical for public lead, responsible, and trustee agencies to improve coordination of their respective permitting and public review processes, and integrate similar regulatory requirements, with any new regulations and procedures resulting from SB-673. DTSC has attempted to do so by synchronizing the Draft Regulatory Framework with the CEQA process while proposing additional opportunities for public engagement beginning at least twenty-four months prior to the submission of a new permit application:



WM applauds DTSC for seeking to coordinate the SB-673 process with CEQA, and we recognize that the task of balancing the need for robust stakeholder input with ensuring permitting efficiencies is complex. Nevertheless, we believe that the pre-application process, as potentially applied in practice, could lead to uninformed or premature determinations about the potential effects of a permit modification or renewal, which, upon completion of an environmental review, may not be supported by subsequent data and analysis. Although one of the stated goals of SB-673 is to allow for “early identification and integration of public concerns” into the permitting process, early and robust public participation already is a fundamental component of both CEQA and the Tanner Act. WM worries that additional frontloaded public engagement under SB-673 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.

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 run counter to statutory objectives and be unduly burdensome on applicants, resulting in significant project delays. WM believes that the “programmatic reforms” contemplated by SB-673 should not include a lengthy pre-application process; rather, DTSC should allow the CEQA and Tanner Act processes to unfold, allowing the technical and environmental analyses performed as part of those reviews to result in mitigation measures or changes

³ As a result of the Local Assessment Committee process, Chemical Waste Management committed to fund over \$1.2 million in various community improvements and studies, including up to \$100,000 for a community health survey of Kettleman City residents to address community concerns regarding birth defects and cancer (despite completing two health risk assessments during the SEIR process); \$552,300 to extinguish the debt owed by the Kettleman City Community Services District (thereby enabling the District to qualify for funds needed to construct a new water treatment plant in Kettleman); \$220,000 for construction of a Safe Crossing Project and electronic speed devises for SR-41 in Kettleman City; and \$450,000 for installation of a walking track, soccer field lighting, pavilion, and parking lot at the Kettleman City Elementary School, among other conditions.

to a project to avoid or lessen significant impacts once they are identified. Doing so would allow scientific analysis to influence the final approval of a project rather than running the risk that incomplete data could result in stakeholders and decisionmakers becoming entrenched in their respective viewpoints about what may, or may not, be required for study and analysis.

If DTSC were to interpret SB-673 as an opportunity to synchronize existing public and environmental review procedures, recognizing the common goal of more effectively engaging with environmental justice stakeholders, there may not be a need to establish a new potentially redundant and lengthy pre-application process, especially one that contemplates similar requirements for public engagement before and after a permit application is submitted. The process of public engagement, as well as providing input on a draft workplan, could be managed after submission of an application while simultaneously balancing the legislative directives of encouraging robust public participation and “making timely permitting decisions,” accounting for the time and resource constraints experienced by not only community groups and government agencies, but also the business community.

Vice President Harris, when she served as Attorney General for the State of California Department of Justice, authored recommendations on how agencies could incorporate environmental justice analyses into the CEQA process.⁴ Additionally, there have been numerous efforts at the federal level to ensure that environmental analyses consider principles of environmental justice without creating inefficiencies for agencies, the regulated community, potentially impacted parties, and other stakeholders.⁵ Although SB-673, CEQA, and the Tanner Act represent independent statutory authorities, WM believes enabling concurrent and synchronized environmental and permitting review processes under each of these programs is good policy as doing so:

- Contemplates information-gathering and consultation under SB-673 that informs the reviews under CEQA and the Tanner Act (and vice-versa);
- Avoids duplication of effort and creates efficiencies by maximizing opportunities for public involvement and comment, project development, and consideration of mitigation measures;
- Realizes shared goals of promoting transparency and accountability in public decision-making processes, while reducing potential for DTSC or other agencies to avoid properly notifying communities or holding public hearings as required;
- Reduces the time and complexity of project development; ensures projects receive the appropriate coordinated review; and saves time, resources, and costs for all pertinent stakeholders;
- Reduces confusion among the public;
- Supports a broad discussion of effects to the environment and underserved populations in each permitting process; and

⁴ See *Environmental Justice at the Local and Regional Level: Legal Background*, CAL. ATT’Y GEN. (Jul. 10, 2012), at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf (directing agencies on how to integrate environmental justice analyses into the CEQA process).

⁵ See, e.g., *Report: Promising Practices for EJ Methodologies in NEPA Reviews*, EXEC. OFF. OF THE PRESIDENT, COUNCIL ON ENVTL. QUALITY (March 2016), at https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf; *CEQ Guidance: Environmental Justice: Guidance under the National Environmental Policy Act*, EXEC. OFF. OF THE PRESIDENT, COUNCIL ON ENVTL. QUALITY, (Dec. 10, 1997), at <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

- Streamlines processes required to be completed before issuing a new or renewed hazardous waste permit.

We reiterate our support that early and continuous engagement with environmental justice stakeholders is a fundamental component of hazardous waste facility management and permitting while emphasizing the business imperative of synchronizing concurrent reviews to promote efficiency. As such, we recommend that DTSC, in fulfilling the mandates of SB-673, evaluate options to align SB-673 reviews more closely with CEQA and the Tanner Act while working closely with the hazardous waste industry to understand how best to align these permitting requirements. WM specifically recommends that DTSC prioritize agency resources and consider employing external independent consultants to coordinate with lead agencies at the beginning of the CEQA and Tanner Act review periods, thus avoiding the potential for duplication, delay, and added costs during the SB-673 process. We also encourage DTSC to consult with its sister agencies, including CalEPA, on implementing SB-673 to avoid inserting potentially redundant, overlapping, or unnecessary requirements into the already highly regulated and uncertain permitting process for hazardous waste facilities.

III. Promoting Transparency and Certainty via SB-673 Implementation

Transparency, certainty, and fairness are essential components of regulatory policy in ensuring requirements are clear and applied objectively to all regulated parties. The California legislature recognized these imperatives when it expressly directed DTSC to “[e]stablish transparent standards and procedures for permitting decisions” and “[e]mploy consistent procedures for reviewing permit applications, integrating public input into those procedures, and making timely permit decisions.”

WM is concerned that certain areas of ambiguity reflected in the Draft Regulatory Framework may be less than transparent, applied subjectively, lead to uncertainty, and introduce undue political influence into the permitting process. For instance, the following areas of discussion in the Draft Regulatory Framework are unclear to WM how they would be applied in practice:

- The criteria DTSC would use under the second screening in Element 1 to adjust the area of analysis, including site-specific data, supplemental information, and vulnerability indicators that may be available to the agency.
- The methodology DTSC could employ under Element 1 in designing a facility scoring tool to assign a tiered pathway to a facility that reflects the vulnerability of a surrounding community.
- How a facility’s tiered pathway could be adjusted after submission of an application should later environmental reviews reveal facility characteristics and community vulnerability indicators that are less concerning than originally believed.
- The types of facility actions that could be required for a facility designated as Pathway 1 or Pathway 2, and how DTSC would determine if the actions are feasible, cost-effective, and reliable.
- How DTSC would evaluate “community impact” and “the level of public interest in the permit application” under Element 4 in determining the public participation plan for the facility.

As discussed above, WM encourages DTSC to work closely with the hazardous waste industry in the forthcoming rulemaking process to ensure that environmental justice reviews are undertaken in a straightforward and objective manner that is transparent and well understood by regulated entities and environmental justice communities alike.

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WM appreciates the opportunity to comment on the Draft Regulatory Framework, and we look forward to working constructively with DTSC in the months ahead. If you have any questions about our recommendations, please do not hesitate to contact me at 202-639-1218 or at mjensen1@wm.com.

Sincerely,

Michael C. Jensen
Senior Counsel / Director of Regulatory Affairs
Waste Management