

SB 673 PERMIT CRITERIA – COMMUNITY PROTECTION

TECHNICAL WORKSHOP I: ELEMENT 2

Wednesday, Sept 8, 2021 | 9:00 AM - 12:30 PM

BACKGROUND

The Department of Toxic Substances Control (DTSC) held a technical workshop with stakeholders who participated in Round 1 Work Groups in 2020 to continue the conversation. The workshop objective was to discuss incorporation of supplemental information into the DTSC permitting process as part of the SB673 Permit Criteria Framework.

MEETING SUMMARY

WELCOME, LOGISTICS, AND INTRODUCTIONS

Meredith Williams, Director, DTSC, and Rizgar Ghazi, Hazardous Waste Management Program Deputy Director, DTSC, thanked participants for joining the workshop and for their participation to date throughout development of the SB 673 Permit Criteria Framework. This is one of the first efforts in the country to address cumulative impacts and community vulnerability in permit decision-making processes. It will likely set the stage for work in other parts of the country, as well as other programs within DTSC. DTSC continues to look to stakeholders for input on how to make the incorporation of supplemental information meaningful.

ELEMENT 2 – SUPPLEMENTAL INFORMATION WITH THE CONTEXT OF SB673 AND THE DTSC PERMITTING PROCESS

Diana Le, Senior Environmental Scientist, DTSC, gave a presentation on the DTSC permitting process and how the SB 673 draft framework incorporates supplemental information, in particular Element 2, the facility tiered pathway and designation. Element 2 is part of the permit pre-application and involves determining whether a facility should be placed on one of three facility tiered pathways. The pathways determine a range of actions that a facility may need to take to mitigate community impacts. The tiered pathways are scaled to require the highest level of actions from facilities with the greatest potential for adverse effects on vulnerable communities.

DTSC proposes to determine a facility's pathway using the CalEnviroScreen score for the community in which a facility is located as well as other facility characteristics. This information would be included when DTSC notifies the public of a facility's forthcoming permit application, 18 months before the facility's current permit expires. The framework proposes to establish a public engagement opportunity before the facility tiered pathway is finalized. DTSC plans to make a public request for additional data, information, or tools that have not already been considered in determining the facility tiered pathway.

Supplemental information provides an opportunity to help evaluate community vulnerability by filling in gaps about community conditions that may not have been considered in the initial pathway designation. In some cases, supplemental information could serve as a basis for adjustments for facility pathway designations. It can also highlight issues that need to be addressed through additional research and appropriate facility actions.

Supplemental information may be site specific and may vary from facility to facility. It may include data or information generated by researchers, submitted by Tribes, local agencies, and the public. Supplemental information will need to be validated before being incorporated into permitting process, and DTSC will ultimately decide what data or information is used in decision making. Some examples of possible supplemental information include:

- Medical health data not available on a statewide basis
 - CDC databases
 - NATA air toxics cancer risk
 - NATA respiratory hazard index
 - Dept of Public Health (California Birth Defects Monitoring Program)
- Regional environmental or fence line monitoring data
 - SCAQMD Multiple Air Toxics Exposure Study V (MATES V)
 - AB 617 data, regional water board monitoring data
 - DTSC's Spatial Prioritization Geographic Information Tool (SPGIT)
- Blood monitoring data
 - Center for Disease Control (CDC) Childhood Blood Lead Surveillance Data
 - DTSC ECL's work on Flame Retardants
- UC research team indicators
 - Racial
 - Voter registration
 - Gas wells
 - Drinking wells
 - Sensitive land use

The Framework set out initial proposed criteria for supplemental information:

- Published in a scientifically peer reviewed report or literature
- Published in a report of the United States National Academy of Sciences
- Published in a report by international, federal, state, or local agency that implements environmental laws
- Conducted, developed, submitted, prepared for or reviewed and accepted by international, federal, state, or local health or regulatory agency

DTSC recognizes that the criteria for supplemental information must be flexible enough to include wide range of data and information and there may be important information that does not meet the above criteria, such as citizen or community science or Traditional Ecological Knowledge. During the breakouts, below, workshop participants were asked to provide feedback on the standards that DTSC may consider for accepting supplemental information or data to ensure relevance, quality, and timeliness.

DISCUSSION

Workshop participants shared questions and comments related to the Element 2 Facility Tiered Pathways presentation.

- How will DTSC balance gathering supplemental information with taking action on that information? How will supplemental information increase community protection?
 - The total of the information about a facility, including the information DTSC has gathered as well

as the supplemental information, informs the level of response and protective actions that the facility needs to take to alleviate impacts on the community. The facility's action plan will inform the final permit decision.

- There is already substantial information available about the impacts that facilities have on communities and the burden should not fall to communities to provide supplemental information, particularly if the information is unlikely to tip the scales in some way. This process should include a threshold at which a community is considered too burdened for any facility to be approved in that community.
- The framework should balance the service hazardous waste facilities provide with their impacts, for example accounting for situations in which the presence of the facility would not impact the CalEnviroScreen score.
- Supplemental information should inform facilities' work plans and permit applications, so the timeline in which a facility would receive all the supplemental information is key.

EXAMPLES OF INFORMATION RESOURCES AND APPLICATION OF SUPPLEMENTAL INFORMATION – PRESENTATIONS AND DISCUSSION

AB 617 MULTIPLE AIR TOXICS EXPOSURE STUDY

Scott Epstein, South Coast Air Quality Management District (SCAQMD), gave a presentation on AB 617 facility-focused monitoring data, specifically the Multiple Air Toxics Exposure Study (MATES V) data and appropriate uses for assessing community-level exposures. SCAQMD is a regional government agency responsible for protecting the 17 million people in three air basins in Riverside, San Bernardino, Orange, and Los Angeles counties from health effects of air pollution. SCAQMD conducts region-wide toxics assessment, including National Air Toxics Trends (NATTs) and Multiple Air Toxics Exposure Study (MATES), and targeted monitoring campaigns, including AB 617 Community Air Monitoring Plans (CAMPs) and special monitoring studies.

MATES is a comprehensive air toxics study the District conducts every six years, including intensive monitoring, air toxics admission inventory development, and health risk modeling. The measurement and model data are used to quantify cancer risk and non-cancer chronic risk. MATES V was recently finalized, providing a comprehensive understanding of cumulative air toxics risks in SCAQMD. The data can be explored through a visualization tool at www.aqmd.gov/mates5, and the raw data can be accessed through the SCAQMD Air Monitoring Data Dashboard.

The AB 617 monitoring looks at pollution in AB 617-designated communities, which are selected based on pollution burden and vulnerability to pollution. Based on community concerns, pollutants are measured through air quality monitoring and this information is used to develop community emission reduction plans. This data can be explored at www.aqmd.gov/ab617.

SCAQMD also conducts special monitoring campaigns, which are typically temporary monitoring studies focused on a single air quality concern, for example:

- Hexavalent chromium monitoring in Paramount
- VOC and methane monitoring near Aliso Canyon
- Refinery fence line and community monitoring (VOCs).

CALENVIROSCREEN

John Faust, Office of Environmental Health Hazard Assessment, gave an overview on the development of CalEnviroScreen, potential use of the underlying data sets, and how double counting is addressed. CalEnviroScreen is a spatial analysis of relative burdens related to both pollution and population vulnerability for communities across the state. CalEnviroScreen is an indicator-based tool that combines a set of indicators – in version 4.0, which will be finalized soon, there are 21 total indicators – which are used to calculate a single CalEnviroScreen score at the Census tract level. CalEnviroScreen was developed to address cumulative impacts on communities and is based on a long engagement and consultation process that asked communities for input on the issues they face. Community feedback also forms the basis of the improvements made with each CalEnviroScreen update.

CalEnviroScreen indicators fall into four categories: pollution burden, including exposures and environmental effects, and population characteristics, including sensitive populations and socioeconomic factors. Data on the indicators are not collected specifically for CalEnviroScreen, but rather are gathered from other State and national-level sources. OEHHA conducts the analysis to form the composite CalEnviroScreen scores, layering individual indicators together. Through the online mapping tool at <https://oehha.ca.gov/calenviroscreen/maps-data>, the public can explore CalEnviroScreen scores, drilling down on each indicator within a census tract. The tool can also show the individual data points that contribute to the score for each indicator, for example the location of hazardous waste facilities.

In addition to use by interested individuals and community members, CalEnviroScreen has been applied to identify disadvantaged communities under SB 535, for evaluation of environmental justice small grants, to identify enforcement priorities for the California Environmental Protection Agency (CalEPA), and to identify AB 617 process communities. Further information on CalEnviroScreen is available at <https://oehha.ca.gov/calenviroscreen>.

TRADITIONAL ECOLOGICAL KNOWLEDGE

Shasta Gaughen, Tribal Historic Preservation Officer, Pala Band of Mission Indians, gave a presentation on integrating Traditional Ecological Knowledge (TEK) with western science for environmental decision-making. Patricia Moran, Tribal Affairs Coordinator, DTSC, shared about the outreach DTSC has done with tribes on SB 673 so far.

Ms. Moran said DTSC has been doing tribal outreach and engagement through written communications, presentations at various tribal forums, and government-to-government consultation. This consultation is ongoing, with both federally recognized and non-federally recognized tribes. DTSC has heard very valuable perspectives and feedback and is collaborating with the tribes on how best to incorporate the input, including whether it might or might not appropriately fit within supplemental information. Tribes have multiple kinds of knowledge that they may bring to this process, including western science, community knowledge, and TEK.

Ms. Gaughen provided a brief presentation which included background information on tribes in the United States and California and an overview of TEK. There are 574 federally recognized tribes in California which each have unique, sovereign tribal governments. There are also hundreds of additional non-federally recognized tribal groups, some of which were previously federally recognized but terminated in the 1950s and others which are in the process of gaining federal recognition. Tribes range in size from membership in the hundreds of thousands to the single digits, and of the 2.7 million Native Americans in the United States, there are many that are not enrolled with their nation. Some tribes have reservation lands, which also range in size from 1.5 acres to over 17 million acres, and other tribes do not have any reservation lands. Reservation lands in the United States are concentrated in the West, yet in many cases tribes were pushed off their traditional lands to places that were not considered

their homeland. There is no place in the United States that does not have a connection to an existing tribe so when tribes have concerns about their territories, this goes beyond current reservation lands to their ancestral homelands, which may extend hundreds or even thousands of miles from where they are currently located.

Tribal nations have the right to sovereignty and self-governance. In recognition of this sovereignty, the State has an obligation to engage in government-to-government relationship with tribes. These are state-to-nation relationships and states do not have power over tribes. Government-to-government consultation is required for various projects and State-led or -funded initiatives, considering potential impacts to tribal cultural resources, including TEK.

Each tribe has a different definition of TEK. TEK is epistemologically distinct from Western knowledge, yet it is based on a process that many Western scientists would recognize – using observation and asking questions to gather knowledge. TEK is integral to living with the landscape in a way that promotes survival. For example, tribes developed a way to leach out toxic tannic acids from acorns, turning them into a staple food source. To incorporate TEK, agencies should first develop relationships with tribes and ask them about how the knowledge they have might be relevant to their work, what resources tribes want to see protected, and why. Tribes may share a response you had not thought of, for example beyond protecting waterways and food sources from toxins, a tribe may want a broader landscape protected because of a culturally significant plant that grows in the area. Consider establishing agreements with tribes so that the agency knows how to protect sensitive cultural resources. Agencies should also provide cultural education to agency employees, for example what tribes' ancestral land is within the area the agency is responsible for, who at the tribe should be contacted, and what constitutes TEK. Some of these processes may be challenging, as some tribes have limited staff and resources to engage with the many agencies working in their homelands. However, not receiving a response from a tribe should not be assumed to mean they are not interested; agencies should continue to work to build those relationships and respect tribal knowledge.

DISCUSSION

Participants were invited to share examples of the potential and challenges of incorporating supplemental information in the permitting process.

Added value to inform and improve permitting decisions

- Communities have long-term knowledge and information that agency representatives do not otherwise know. This information needs to be heard, valued, and incorporated into decision-making.
- Rural Census tracts often cover large areas so data may not meaningfully reflect the conditions in communities within those tracts. Community-specific supplemental data would help fill this gap.
- Supplemental information may increase the State's will to make changes that will protect vulnerable communities.
- CalEnviroScreen uses only statewide datasets so some important regional or local data cannot be included. Data such as MATES V air monitoring data may be the best available data to understand contributions to pollution and should be leveraged, where available, to designate facility tiered pathways.

Challenges of incorporating supplemental information in the permitting process

- There is value in simplicity and predictability.
- Clarity is needed about what gaps make the datasets included in CalEnviroScreen insufficient to identify vulnerable communities in California.
- Including supplemental information may give DTSC staff too much discretion in decision-making.
- Communities may not have resources to collect and submit data.
- The approach does not address zoning issues, which are a root cause.
- Data should be timely, requiring dynamic modes of data collection. Certain data quality criteria, such as peer-review, take time and may render the data outdated.
- Responsibility for community impacts should be distributed equally across all sources of burdens on the community.

Questions

- Will hazardous waste facilities be responsible for mitigating factors included in CalEnviroScreen scores that are unrelated to the facility's operations?
 - The Framework proposed to use CalEnviroScreen to identify areas that face multiple burdens. While facility and generator locations are one factor in CalEnviroScreen scores, CalEnviroScreen scores will not be used to determine the specific actions that the HWF will take to mitigate impacts on the community.
- New indicators have been recommended for inclusion in CalEnviroScreen, such as average voter turnout as a representation of a community's ability to participate in public processes. Does CalEnviroScreen include this metric?
 - The socioeconomic factors in CalEnviroScreen are included based on their relation to a community's vulnerability to pollution. CalEnviroScreen does not currently include average voter turnout and OEHHA has not evaluated the relationship between voter turnout at the Census tract level and community vulnerability to pollution.

Other comments

- HWFs provide an important service of hazardous waste management. Stakeholders need clarity regarding how the State will balance the portion of community burden that a HWF contributes with the benefit of the service it provides in making decisions about permitting and mitigation.
- Some communities face disproportionate cumulative impacts that call for drastic measures to protect those communities. Ensuring that HWF are not permitted in these communities and are sited in locations that are more appropriate is a key aspect of addressing the burden. In addition, hazardous waste generation must be reduced, alternative technologies to safely and completely destroy contaminants should be implemented, and policies around the types of hazardous waste that should be landfilled should be improved.

SUPPLEMENTAL DATA AND INFORMATION – SMALL GROUP DISCUSSION

Participants joined breakout groups for small group discussion on key questions related to relevance, quality, and timeliness for incorporating supplemental data in permitting decisions. Breakout groups were organized by

perspective, including community, industry, and agency (including some local government agencies, DTSC, and other State agencies). Each breakout group discussed the following questions:

- Relevance
 - What should be considered appropriate and substantive supplemental data for the DTSC permitting process?
 - How should DTSC validate the relevance and appropriateness of supplemental information?
- Quality
 - What additional guidelines are needed to ensure quality of data?
 - How can we ensure that these guidelines are inclusive while preserving the rigor of the data and its applicability to the permitting process?
- Timeliness
 - How can DTSC ensure that this added step would not keep the permitting process from moving forward in a timely manner?
 - How would supplemental information impact permitting decisions?

The groups were invited to track their discussion on Google Jamboards. The feedback captured is shared in the appendix below.

BREAKOUT DISCUSSIONS REPORT OUT

Community

- Relevance
 - Clearly define the gaps that supplemental data would fill.
 - DTSC should set guardrails for the supplemental information that will be considered.
 - Compliance history should be considered.
 - DTSC should trust communities' knowledge, following up as needed rather than putting the burden on communities to collect data.
 - Clarity about the process for considering and incorporating information will prevent DTSC staff from having too much discretion in decision-making.
 - Community-level data is critical, as CalEnviroScreen data is at the Census tract level and often is not representative of the impacts communities are facing.
- Quality
 - This process is likely to set a precedent, so it should not be onerous.
 - Communities do not have the level of resources available to industry and others for quality assurance and quality control. DTSC should follow up on information provided by communities to collect data and/or ensure quality.
- Timeliness
 - Rather than waiting for each permit to expire, DTSC can proactively begin to identify the tiers facilities will fall under and information gaps that will need to be filled.
 - DTSC can provide a measure of certainty to industry by using CalEnviroScreen to identify areas that are not appropriate for facility locations and areas that are appropriate.

Industry

- DTSC should consider the proportional impact a facility has on a community, balancing benefits and impacts.
- Clarity is needed about how this process would be coordinated with Tanner Air Toxics Act and California Environmental Quality Act review processes.
- Voluntary measures taken by HWFs to reduce impact, for example modifying truck traffic, should be incorporated in the process.
- There are no purely objective data sources, including peer-reviewed information, and there are important sources of information that may not meet certain quality standards, such as information about how facilities have contributed to the communities where they are located.
- There are important areas of agreement between community members and industry representatives, such as the need for certainty. However, what that means to each may be different, for example for industry it may mean certainty that the impacts they must address are proportional to their contribution while for community it may mean certainty that some communities will not face any additional impacts. It is important for the groups to be able to discuss this together.

Local Agency:

- Relevance
 - There is a need for balance between qualitative and quantitative information.
 - DTSC may need to establish thresholds for permit decisions.
 - If there are health impacts, DTSC has an obligation to correct them.
 - There are issues that are beyond DTSC control, such as land use restrictions within a community.
- Quality
 - DTSC must ensure that data is rigorous and findings about impacts are evidence-based.
 - There are some issues that need further follow up and investment in studies. Some of these might be highlighted by communities or may arise through home data collection systems like Purple Air.
 - It may be appropriate for the State to conduct necessary studies to gather rigorous information about concerns communities identify. It also may be appropriate for facilities to fund studies.
 - The criteria currently laid out in the Framework are too limiting – there is high-quality, relevant data that would not meet these criteria.
- Timeliness
 - Timing will be challenging, particularly if existing data is not sufficiently technical and follow-up is needed.
 - It is important that information be received within an appropriate timeframe for consideration in the permitting process.
 - DTSC will need to spend time developing thresholds.

DISCUSSION

Participants shared additional comments after hearing the report-outs from each group.

- Facility siting has come up as a theme in this conversation and is related to zoning established at the local level through general plans, which are 15- to 30-year planning documents.
- Local governments look to State and federal agencies for key information and feedback in their decisions and DTSC should proactively engage with local decision-makers to provide input on land use decisions. Additionally, DTSC is engaged in land use decision-making through this Framework.

CLOSING AND NEXT STEPS

Ms. Rodriguez thanked participants for their time and input and shared next steps:

- A second technical workshop was scheduled for September 28, 2021.
- The comment period for the draft framework was extended to October 8, 2021.
- The public review process continues through fall 2021.
- DTSC will refine the regulatory language in spring and summer 2022.
- The formal rulemaking process will begin in 2023.

APPENDIX A: COMPLETE BREAKOUT GROUPS NOTES

Each breakout group discussed the following questions:

- Relevance
 - What should be considered appropriate and substantive supplemental data for the DTSC permitting process?
 - How should DTSC validate the relevance and appropriateness of supplemental information?
- Quality
 - What additional guidelines are needed to ensure quality of data?
 - How can we ensure that these guidelines are inclusive while preserving the rigor of the data and its applicability to the permitting process?
- Timeliness
 - How can DTSC ensure that this added step would not keep the permitting process from moving forward in a timely manner?
 - How would supplemental information impact permitting decisions?

The groups were invited to track their discussion on Google Jamboards. The feedback captured is shared below, by group. A PDF of the Jamboards themselves follow.

COMMUNITY PERSPECTIVE

Relevance

- Community information should be directional for the agency to take action - including following up to ensure the quality of that data as needed
- Building relationships and empowering communities. Trusting their knowledge to continue research and collect data.
- Be careful about who has resources to collect data & what their motivation is to provide data
- Want transparency, trust, predictability - take discretion out of the process.
- Empower community to articulate their needs and think about their own solutions
- If there are data gaps, start gathering that info now. Consider involving another agency or process (e.g., OEHHA or AB617) to gather that info if needed.
- Burden should not be on community.
- Clearly define what supplemental information is needed: which indicators are not robust for a given community in CalEnviroScreen and target that data
- Supplemental info is good, particularly given concerns on under-inclusiveness, but set guardrails - a "closed universe" of information. Consider: compliance history
- Beware of "paralysis by analysis" - clearly define why CalEnviroScreen is not enough; and ensure that floodgates do not allow so much data that the process is buried
- Census tract size and boundaries are important - need to focus on community, not census tract

Quality

- Focus on building partnerships between communities, agencies/ed institutions for funding & time & ensuring data quality

- Provide clear guidelines for how particular data (e.g., median HH income) should be gathered to assure that if work is done, that data will be accepted, and ensure the quality of data
- Businesses respond to demand: DTSC should identify where needed new facilities should be located, and open to bids to build/run those
- Look at where the facilities are, what the scores are in those communities in the margins, and gut check whether that is representative - rather than thinking about this in the abstract
- Might need 2 sets of criteria: community and other, and DTSC follow up on info provided by communities to ensure quality
- I also want to raise that whatever comes out of this process may be a precedent for other types of decisions. Another reason why this shouldn't be onerous and difficult

Timeliness

- Start to gather the data that is needed to supplement CalEnviroScreen now
- Start all these processes now: look at where facilities are and start looking at tiers, information needed, etc. - do not wait for each permit expiration to arise
- Provide certainty of the process and start the dialogues now

INDUSTRY PERSPECTIVE

Relevance

- MATES + Purple Air + CalEnviroScreen + etc. – what does this actually show differently? How would DTSC consider air pollution burden using multiple data sets, and who would evaluate the data? Same applies for other domains, e.g., multiple indicators that depict socioeconomic vulnerability.
- Is data meant to characterize the community, regardless of the HWF, or the HWFs contribution to the overall cumulative impacts?
- How is a facility supposed to evaluate supplemental data and apply it to its proposed Work Plan? What are the boundaries by which a HWF will be required to offer up mitigations?
- If it is supposed to be about a facility's proportional contribution, then this needs to be explicitly stated by DTSC. Would DTSC then reject data that is completely unrelated to the facility and its impacts?

Quality

- How will DTSC ensure consistency in outcomes if each community has different data being considered?
- Relevancy is more important than data quality. After that, weighting of evidence.

Timeliness

- *No notes were provided by this breakout group on timeliness.*

AGENCY PERSPECTIVE

Relevance

- Obligated to review if there is a true health impact; can't be perception based; tangible that a facility can correct, it should be corrected. The weighting should be based on how well we can substantiate it.
- If there is factual info that there is harm, DTSC should act on this data.

- If data is not substantiated, how do we address it? The weight that DTSC gives supplemental data should be linked to its rigor
- Substantive evidence, based in fact; If meets criteria can utilize it. Thresholds? - What will be the thresholds? DTSC defaults to air districts or RWQCBs; DTSC can establish thresholds
- If evidence is based in fact, this needs to be considered.
- Thresholds might be needed to develop for permit decision.
- Hard to put pm 2.5 concentration in line with health thresholds to compare to chemical threshold. HRA may only focus on 1 chemical of concern; HRA needs to consider total effects of all chemicals involved.
- Qualitative vs quantitative balance; where is the balance;
- Intent is not to do big social problem solving; if the facility is no longer there, what is the real impact to potentially less stringent requirements

Quality

- Can't expect permit managers to be experts in all aspects; need a high bar on the quality of the data/information. How do we get the bar set to fairly treat unsubstantiated information?
- Citizens collect data through "Purple Air" or other tools. Data from devices at a home could be used to substantiate data. Need to be tested and provide real error in that data. Acceptable sampling and error rates.
- Could use the data as an "issue" indicator and support any permit decisions with data from a reputable source.
- Certain data quality objectives that DTSC holds facilities to; shouldn't lesson the quality for outside data; balancing data quality with decisions is really important. Maybe need to work similarly with public to help them with a study to make it quality data objectives.
- Perhaps facility can pay for data study when public has a concern? Will it ever be good enough?

Timeliness

- Will create issues with timing - No specified timeline for supplemental information; may take a long time to go through; Confirm the information? Open ended amount of stuff will cause delays.
- Thresholds might be needed to develop for permit decision. May take time in the permit decision.
- Make sure information is received in the appropriate time frame.