

# SB 673 PERMIT CRITERIA – COMMUNITY PROTECTION

## TECHNICAL WORKSHOP II

Tuesday, Sept 28, 2021 | 1:00 – 4:00 PM

### BACKGROUND

The Department of Toxic Substances Control (DTSC) held a second technical workshop with stakeholders who participated in Round 1 Work Groups in 2020. The workshop objective was to provide an opportunity for in-depth conversation on specific topics that were previously identified as important by stakeholders to inform further refinement of the SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework (Framework).

### MEETING SUMMARY

#### WELCOME, LOGISTICS, AND INTRODUCTIONS

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 Framework. A public comment period on the Framework was extended through October 8, 2021. DTSC will provide additional learning opportunities for after the framework has been reviewed based on the comments received.

Orit Kalman, Senior Facilitator, Sacramento State Consensus and Collaboration Program, shared highlights from the first technical workshop, held on September 8, 2021. Key points shared by participants during the discussion on incorporating supplemental information included:

- Build in certainty and clarity about the process.
- Balance the need for additional information with timeliness.
- Consider the value of supplemental information as part of the permitting process: supplemental information should fill an information gap and meet criteria for utilization.
- Identify where funding and resources for collecting and developing supplemental information will come from. Consider including this funding as part of a facility's action.
- Facilities are critical to the management of hazardous waste in California and cannot be eliminated.
- There is a great imbalance in terms of impacts on EJ communities:
  - Drastic measures are needed to stop and mitigate these burdens.
  - Society needs to reduce the amount of hazardous waste that is being generated.
  - Investment is needed for research and implementation of alternative technologies that can safely and completely eliminate contaminants.
- Local land use planning and zoning decisions have a significant role.
- This is an important process which may become a precedent for other types of decisions.

#### FACILITY TIERED PATHWAY AND DESIGNATION

Diana Le, Senior Environmental Scientist, DTSC, gave a presentation on the facility tiered pathway designations and facility actions. Through a screening process, each facility would be placed onto one of three tiered pathways and

the pathway designation would determine the appropriate level of action the facility would need to take to address burdens on the community.

- Pathway 1: Requires the highest level of facility upgrades, monitoring, environmental improvements, and community outreach.
- Pathway 2: Requires some of facility upgrades, monitoring, environmental improvements, and community outreach.
- Pathway 3: Requires only public engagement or outreach to address community impacts and burdens.

The specific actions each facility will take to address community needs are not defined by the pathway, but rather by specific community and facility characteristics. The intent of the pathway designation approach is to provide clarity about what is expected of facilities, give early notice to facilities regarding projected expectations, minimize the burden on communities to identify and provide supplemental information, and provide flexibility to address community-specific needs.

The criteria that will determine pathway designations have not been defined, but would account for community characteristics (using CalEnviroScreen (CES) scores), facility characteristics, and the potential health, environmental, or societal impacts a facility may have on the community. The designations can also take supplemental information into account.

The draft framework proposes that facilities be placed into the three tiers as follows:

CalEnviroScreen %	Potential Facility Impacts	Tiered Pathway
90 <sup>th</sup> percentile or higher	High	1
75 <sup>th</sup> to 89 <sup>th</sup> percentile	Elevated	2
60 <sup>th</sup> to 74 <sup>th</sup> percentile	Moderate	3
Below 60 <sup>th</sup> percentile	Not evaluated	Not evaluated

Based on this approach, about half of all facilities would fall into Pathway 1, one quarter in Pathway 2, and one quarter in Pathway three or no pathway. Ms. Le emphasized that the tiered pathways speak to the level of response expected from facilities, but do not solely drive facility actions. Facility actions should address community vulnerability and potential impacts caused by the facility. Facility actions cannot be based solely on screening criteria; there needs to be a causal link between community outcomes and facility activities.

Based on stakeholder feedback, DTSC identified the following considerations related to the pathways approach:

- Finalizing a facility’s pathway designation prior to application submittal
- Establishing QA/QC standards before accepting supplemental information
- Providing supplemental information to facilities in a timely manner
- Building certainty into the process

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## DISCUSSION

Workshop participants shared questions and comments related to the presentation.

- Addressing cumulative impacts
  - DTSC needs to balance impacts from a particular facility with cumulative impacts that can compound one another. If the rulemaking considers only the direct impacts of a facility, then it is

- o not addressing how a community experiences cumulative impacts of pollution.
- o It is good to see that facilities will only be expected to address impacts that its operations contribute directly to.
- o Because communities are not able to filter out impacts from certain sources versus others, the permitting process should account for all of the pollution and impacts a community experiences.
- o CES scores do not parse out the direct influence facilities have on the surrounding communities. Facility actions should be based on the proportion of impact they are directly responsible for.
- o This framework should address not only when permits are issued, but whether permits are issued – permit denial needs to be addressed.
- **Timeline**
  - o The permitting process update is long overdue. Do not extend the timeline for implementation.
  - o Permit criteria should have been adopted by January 2018 and until the process is completed, permits are continuing to be issued without considering cumulative impacts.
- **Enforcement**
  - o DTSC should link enforcement with the permitting process, for example conducting more frequent inspections of facilities that fall within Tier 1. DTSC should also coordinate with other environmental regulatory agencies.

**USING AVAILABLE INFORMATION TO DESIGNATE INITIAL FACILITIES PATHWAYS**

Evelia Rodriguez, Senior Hazardous Substances Engineer, DTSC, shared a sample process for designating each facility’s pathway based on community cumulative impacts and facility impacts. In the sample, CES scores were used to indicate community characteristics. The sample approach uses the CES score for the most impacted Census block near each facility, not necessarily the Census block where the facility is located. Potential facility impacts are indicated using facility characteristics such as facility type (size, permit type, proximity to populated Census block) and facility activities (hazardous waste traffic, corrective actions, other environmental requirements such as air and water permits, and compliance history).

In the sample shared, the facility pathways would be defined through the combination of community and facility characteristics as follows:

Maximum CalEnviroScreen score near facility	High Potential Facility Impacts	Medium Potential Facility Impacts	Low Potential Facility Impacts
High community vulnerability (90 <sup>th</sup> percentile or higher)	Pathway 1	Pathway 1	Pathway 2
Elevated community vulnerability (75 <sup>th</sup> to 89 <sup>th</sup> percentile)	Pathway 1	Pathway 2	Pathway 2
Moderate community vulnerability (60 <sup>th</sup> to 74 <sup>th</sup> percentile)	Pathway 2	Pathway 3	Pathway 3
Pathway designations not applicable (Below 60 <sup>th</sup> percentile)	Not evaluated	Not evaluated	Not evaluated

As mentioned above, the pathways set forth the general level of actions needed, but site-specific evaluation, including supplemental information, will determine the specific facility actions. DTSC will provide an initial package of supplemental information that will go into this analysis and additional supplemental information will be requested to establish a more complete picture of the pollution burden and existing health risks to surrounding communities. One facility action could be development of new information to fill an existing data gap.

Ms. Rodriguez emphasized that DTSC is looking to ensure that the process appropriately characterizes communities and facilities so that the pathways and actions are responsive to communities' needs.

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## DISCUSSION

Workshop participants shared questions and comments related to the presentation.

- SB 673 directs DTSC to develop criteria for approving or denying permits, taking into account burdens and vulnerabilities that surrounding communities face. This tiered pathway approach diverges from that direction, focusing on facilities mitigating impacts on communities rather than potentially denying permits based on the cumulative impacts experienced by communities.
- What are the facility scores based on?
  - Ms. Rodriguez said that the matrix presented was a conceptual example to gather input on the overall concept and structure. The proposed structure includes two halves of a combined facility score which determine the facility pathway: facility score by type and facility score by activity.
- The pathways must include a cumulative impact threshold past which DTSC would not permit facilities in that community.
- If supplemental data is submitted that addresses a variable already included in CES, will that supplemental data be merged in some way with the CES score or added to the facility combined score?
  - Ms. Rodriguez said that known pollution burden and community health risk will be rounded out by supplemental information, which will then drive facility actions to lessen that burden.
- Clarity is needed about the impact of getting a high score in the matrix – will those facilities be inspected more often, will their permits be reviewed earlier, etc.?
- There is overlap in the scores that lead to different pathways, for example the lowest combined score for a Tier 1 facility is 13 while the highest combined score for a Tier 2 facility is 18. How is the tier for facilities with scores in this range determined?
  - Ms. Rodriguez said that the facility combined score will be used along with the CES score, so that facilities within a given CES range could be in one of two tiers, based upon the facility combined score. The matrix shared is an illustrative sample. The concept uses a conservative approach, which results in half of all facilities in Tier 1. Additionally, the CES scores used for each facility are the highest scores within a given radius of the facility, as different kinds of facilities are likely to impact communities in Census tracts beyond the specific location of the facility.
- DTSC should consider the impacts of permitting decisions on the export of hazardous waste outside of California.

### REFINING THE PATHWAY DESIGNATION PROCESS – SMALL GROUP DISCUSSION

Participants discussed the following questions in small groups, by stakeholder perspective:

- What should it mean to be in a designated pathway? Are the current pathway designations appropriate?
- How should we use the pathway designation approach to appropriately inform the permitting process?
- What additional categories of facility actions should be added to improve the community's quality of life?

The groups were invited to track their discussion on Google Jamboards. The feedback captured is shared in Appendix A.

### BREAKOUT DISCUSSIONS REPORT OUT

Participants in the Industry Perspective breakout discussed the value of the pathway approach versus other ways to achieving the SB 673 objectives. A key concern is that the pathways approach is overly complicated and lacks certainty. Additionally, the group was concerned about how scores are calculated. If the pathway approach is maintained, industry participants requested an opportunity for further discussion on how the scores are

calculated. The group suggested that an alternative approach would start with existing legal frameworks around cumulative impacts, such as CEQA and the Tanner Act, and then thinking through what facility-specific assessments and approaches would need to be developed to meet the purpose of SB 673.

Participants in the Community Perspective breakout also shared significant concerns with the proposed pathways approach. Two issues the group identified as critical were that (1) community acceptance is not accounted for in the pathways designation approach and (2) the pathway designation approach screening is an inappropriate application for CES. If a community does not accept siting of a facility in their area, facility mitigation work should not be used to outweigh community concerns. The group noted that the pathways approach does not include permit denial and said it is critical to include a mechanism for permit denial. The group also suggested that the process be based upon the SB 673 criteria rather than developing new pathways. Despite the existence of multiple laws meant to protect them, communities are experiencing disproportionate impacts and SB 673 was designed as a course correction to address this issue. Related to the use of CES, the group emphasized that CES was developed to support understanding of the relative balance of impacts experienced by communities across the state. CES cannot be used to answer the question of what pollution impacts a given community is experiencing and does not provide an analysis of neighborhood-level cumulative impacts. Additionally, CES does not have a mechanism for ground truthing, so there may be very significant impacts and experiences that are not reflected in CES. The combination of CES and facility-specific impacts do not fully address community-specific cumulative impacts. Finally, the group expressed frustration that the discussion questions were largely conceptual, stating that given the time that has elapsed, implementation of SB 673 needs to be beyond a conceptual stage. They also shared that communities are concerned not just about permitted facilities but also about issues related to hazardous waste generators.

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## DISCUSSION

Following the group-specific report out, participants offered the following additional comments.

- Consider whether to identify facilities of concern and examine those in more in-depth, rather than examining each of the 75 facilities in the state.
- Other protective steps, beyond facility permitting, are also needed, including prevention and reduction of hazardous waste generation and alternative technologies that can completely treat contaminants.
- Facilities should be located appropriately outside of communities.
- Multiple efforts have failed to lead to the needed changes, including a report on reducing hazardous waste generation and an effort to identify appropriate locations for facilities in Southern California counties.
- Monitoring, enforcement, and compliance are all critical.
- Adoption of improved technology also requires permits, which effectively discourages it. DTSC should facilitate these improvements.
- Long histories have led to deep lack of trust between communities and facilities and the tensions appear during the permitting process. These longstanding issues will not be fixed through small changes. It is critical that communities have a place in the process.
- DTSC should adopt a bold vision for hazardous waste management in the state, with minimized hazardous waste production handled appropriately by good actors. This will require that DTSC deny some permits, including of existing facilities, and make room for new facilities sited more appropriately. DTSC should review the draft framework and ensure that it is centered on communities' needs and this bold vision.

## CLOSING AND NEXT STEPS

Ms. Rodriguez thanked participants for their input. DTSC will review the framework considering the input shared and develop a more refined proposal and path forward. Participants were invited to share suggestions about how to better communicate as the process continues. The next steps in the process are:

- Fall 2021: Public review process (comments due by October 8, 2021)
  - DTSC will share findings and feedback heard
  - DTSC will provide additional opportunities for stakeholders to learn about the proposal before starting formal rulemaking
- Spring and Summer 2022: Revise regulatory language
- 2023: Initiate formal rulemaking process

Participants were invited to reach out to DTSC staff with any questions ([Evelia.Rodriguez@dtsc.ca.gov](mailto:Evelia.Rodriguez@dtsc.ca.gov) and [Diana.Le@dtsc.ca.gov](mailto:Diana.Le@dtsc.ca.gov)).

## APPENDIX A: COMPLETE BREAKOUT GROUPS NOTES

Each breakout group discussed the following questions:

1. What should it mean to be in a designated pathway? Are the current pathway designations appropriate?
2. How should we use the pathway designation approach to appropriately inform the permitting process?
3. What additional categories of facility actions should be added to improve the community's quality of life?

The groups were invited to track their discussion on Google Jamboards. The feedback captured is shared below, by group.

### COMMUNITY PERSPECTIVE

#### Question 1

- Should be looking at SB 673 criteria rather than setting up new pathways.
- SB 673 should enable permit denial when appropriate.
- Proposed designations are not appropriate.
- Unsure about using CES as a hard screen mechanism - may not allow analysis of cumulative impacts on community-by-community basis. Statewide comparison tool, intended to direct funding to most burdened communities - misses a lot & need ground truthing.
- Modify permits to reduce risk & harm associated with a facility: Consider reducing volume of waste, modernizing equipment/ensuring it is functioning.
- This process should be beyond the conceptual level. 673 should inform permit decisions, including denials and modifications. Disheartening to be at this point.
- Appropriate to use classification as the first step in this process. Facility types vary greatly. Appropriate to include criteria (neighborhood characteristics) & take larger geographical area.
- Devil is in the details - particularly evaluating cumulative impacts vs. particular impacts of a particular facility.

#### Question 2

- Importance of compliance and enforcement - e.g., tier 1 should be more frequently inspected.
- Two examples where CES score would have missed - a mine in Mojave desert, massive fires along I-5 freeway.
- Worried that a lot of the issues are not permitted facilities, but generators.
- CES does not capture everything – ground truthing process is critical.
- Should include permit denial.
- Update language to reflect that potential permit denial is a part of the process.
- Break connection between pathway and action plan steps - instead, for facilities where community has significant impacts, create a clear threshold for denying permits.

#### Question 3

- If problem facilities on enhanced surveillance have repeat violations, should use permit denial.
- Requiring increased monitoring for facilities with any violations in the past 5 years.
- Not allowing monitors to be turned off (enforcement).

## INDUSTRY PERSPECTIVE

### Question 1

- Concern - bog down the process and confusing. build off what existing statutes are providing for, built in triggers (during expansion/modification).
- Path to denial or environmental improvement - pathway improvement (health and environment). Denial has other components to it.
- This is another layer of complexity.
- Focus on renewal.
- LAC process.
- Determining impacts - requires analysis beyond the pathway parameters.
- Increased cost of doing HW in California- what is the alternative?
- HW is going out of state - good policy? denial is not pathway to improvement.
- Health risk assessment should be at the forefront.
- Need legal analysis/authority to do this work.
- Clarification - actions based on impacts – SB 673 language is not clear on intent. facilitation and forms.

### Question 2

- Putting together the work of the facilities in addressing HW and community interests is complex.
- The total CES is not informative as to facility impacts.
- Pollution burden scores and indicators. More investigation is needed.
- Pathway approach makes DTSCs work much more difficult. Early steps are creating community expectations regarding facilities threats and they may not be consistent with information/data.
- Looking at specific indicators? complexity may not contribute to the outcome.
- Scrap the pathway approach.
- Are we building a process that is just about three facilities?
- Spotlight on these facilities.
- Have the communities with highest levels of vulnerabilities identified? Tackle those.
- Don't lose sight if we are needing to address specific facilities.

### Question 3

- How does the blackbox work? how would each perspective define the values?
- Provide specific examples of the process to pathway designation?
- Don't agree with the pathway approach - existing requirements and c/i elsewhere
- Move towards facility-specific assessment.

## AGENCY PERSPECTIVE

### Question 1

- Is there a way to determine a threshold for pollution burden, "the straw that breaks the camel's back?"

### Question 2



- Pathways in the framework do not inform permit decisions, but how could they be used by permitting to improve the process?
- When assessing alternative, cumulative impacts must detail both the good and the bad outcomes.

### Question 3

- Include goals that benefit the community, such as jobs and summer internships.
- May need to build in acknowledgement of local benefits of permits. Rerouting is possible, distant facilities or out of state facilities means more miles and greenhouse gases.
- While denial is an option, mitigation can provide trade-offs, such as jobs and impacts.
- Why can't mitigation measures just provide additional protections without being tied to facility operations? In Kettleman City, the landfill planted trees to protect residents from pesticide drift.
- Should the impacts distinguish between level of impacts? Groundwater with VOCs may expose residents to indoor vapor intrusion, but not all contaminated groundwater presents the same level of potential impacts.
- Reduce diesel impacts by requiring newer engines, improved diesel scrubbers.
- Impacts from air quality have highest impacts, then water, then soil. How do we address not only the presence of pollution but also weigh the burden?
- Proposal should have separate criteria for new facilities and for facility permit renewals.