

August 2, 2017

**Environmental Justice Comments to DTSC
on development of DTSC Civil Rights and Language Access Policies**

The following provisions and language should be included in DTSC's new Civil Rights and Language Access policies:

I. Introduction and Relevant Authority Requiring Civil Rights Compliance

As a recipient of federal and state funds, the California Environmental Protection Agency and the Department of Toxic Substances Control are subject to Title VI of the Civil Rights Act of 1964 and its implementing regulations, and California Government Code 11135.

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, and the United States Environmental Protection Agency (U.S. EPA) Title VI regulations, 40 C.F.R. Part 7, prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. DTSC and CalEPA are recipients of financial assistance from U.S. EPA and are subject to the provisions of Title VI and U.S. EPA's implementing regulations.

As recipients of funding from the State of California, DTSC and CalEPA are subject to California Government Code, Section 11135 which prohibits discrimination under any program or activity that receives any financial assistance from the state.

Pursuant to Title VI and Government Code 11135, California EPA and DTSC will refrain from discrimination or taking actions that have discriminatory negative impact on the basis of race, color, or national origin in its permit and regulatory processes, decisions, actions, provision of services, administration of its programs, and contractual agreements.

DTSC is committed to the principle of environmental justice, equal opportunity and equitable service for all individuals in the State of California. DTSC will not tolerate discrimination, nor will it take any actions or make any decisions that have a discriminatory negative impact against protected classes of persons. Civil rights compliance will help bring about environmental justice and protect the health and well-being of California's most vulnerable residents.

DTSC will meet the intent and provisions of both Title VI and Section 11135. Pursuant to Title VI and Section 11135, DTSC will require that no person shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination on the basis of ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, race, national origin, marital status, military or veteran status, medical condition, or physical or mental disability, or any other basis by federal or state statutes in any program or activity undertaken by DTSC.

Applicable civil rights requirements include (but are not limited to) the following:

- a. The Civil Rights Act of 1964 including Title VI of that Act.
- b. Dymally-Alatorre Bilingual Services Act of 1973.
- c. California Government Code 11135.
- d. U.S. EPA Title VI Limited English Proficiency Guidance, 69 Federal Register 35602.
- e. U.S. Department of Justice Title VI Limited English Proficiency guidance, 67 Federal

Register 41455.

f. DTSC Bilingual Services Policy.

g. Title VI Civil Rights Act Settlement agreement signed August 10, 2016 that resolved the Title VI Complaint filed by Greenaction for Health and Environmental Justice and El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City against the DTSC and California EPA.

II. Applicability

The policies, procedures, and responsibility of this Civil Rights Policy apply to all DTSC staff, including those working on their behalf, such as contractors and grantees. It applies to all aspects of the agency's work, programs, activities, public participation processes, development of regulations and policies, and permit and regulatory decisions.

In addition, DTSC will ensure that those entities that receive funding from DTSC comply with applicable civil rights laws and regulations.

DTSC will not use documents or decisions from other agencies in making DTSC decisions if the other agency's decisions or processes failed to comply with civil rights laws.

III. Language Access

DTSC affirms that all people have a right to meaningful participation in decisions that affect them. Civil rights compliance includes ensuring "language access" in order to enable non-English speakers and Limited English Proficient individuals to participate in an equitable and meaningful way in DTSC's public processes. DTSC will take all reasonable steps to ensure that vital documents related to DTSC services, programs, and activities are translated into the most frequently encountered languages of those LEP individuals affected by the services, programs, and activities or are interpreted for the LEP individual(s).

This civil rights policy incorporates the DTSC Bilingual Services Policy: "It is the policy of the Department of Toxic Substances Control (DTSC) to ensure that all customers with Limited English Proficiency (LEP) have equal access to all available services and information provided by DTSC. DTSC will provide effective communication by identifying bilingual staff, ensuring the availability of resources, and providing translated written materials in other languages."

IV. Civil Rights Compliance to Ensure Meaningful Civic Engagement

Meaningful public participation through processes that comply with civil rights laws, regulations, policies, and guidance will have the following elements:

a) All relevant notices, documents, reports, meetings, and hearings (pursuant to Dymally-Alatorre Bilingual Services Act of 1973 and DTSC's Bilingual Services Policy) will be language accessible to all residents of affected communities ensuring their ability to actively participate in relevant DTSC decisions. These meetings will accommodate LEP individuals to ensure effective communication. This necessitates translations of vital documents, accompanying visuals, handouts, and presentations in public meetings, public hearings held by DTSC and processes conducted by DTSC. If no bilingual DTSC staff member is present, a contract translator or interpreter must be onsite to ensure all verbal communication may be understood by relevant LEP individuals.

Non-English speakers will be allocated the same amount of time to speak as English Speakers, with full simultaneous translation provided. If subsequent translation is used, the non-English speaker will be given twice the amount of time to speak. AB 1787 specifically requires local governmental bodies to abide by these equal time rules, and DTSC will not utilize any decisions or documents from local governmental bodies that failed to comply with AB 1787.

b) Clear prohibition on discriminatory practices, including practices of intimidation and hostile environments that prevent meaningful public participation. This includes a prohibition on having a large and/or intimidating police presence at DTSC meetings and hearings.

c) Meetings and hearings will be held at appropriate times and locations, facilitating and maximizing the ability of members of the public to participate. Meetings and hearings affecting a community should be held in that community.

d) Timely notices will be written in English and any other appropriate languages, with the English and translated versions on the same page when feasible, for workshops, meetings, available drafts, comment periods, and related documents and publications. Notices and documents should use plain language rather than all technical wording.

V. Review of Hazardous Waste Permit Applications, Permit and Regulatory Processes, and Decisions:

Applicable state and federal civil rights requirements will be complied with during DTSC's permitting processes and regulatory oversight of facilities under its jurisdiction.

a) DTSC will take into account civil rights during its permitting process for hazardous waste facilities and during all of its permitting and regulatory processes and activities. DTSC will conduct an analysis of civil rights and environmental justice considerations for each permit process and permit and regulatory decision and will include that written analysis in the decision documents;

b) DTSC will deny permits to facilities whose emissions and operations would have a disparate negative impact on overburdened communities of protected classes of persons;

c) DTSC will require and conduct a comprehensive cumulative impact analysis as part of every permit application process. DTSC will apply CalEnviroScreen and similar cumulative impact tools to analyze and address the vulnerability of nearby communities in permitting decisions. Each decision will include a written analysis of the vulnerability of an affected community;

d) DTSC must reject a permit if the most updated version of CalEnviroScreen's results show its issuance would have a harmful and disproportionate impact on people of color, non-English speakers and/or vulnerable groups of people protected by state and federal civil rights laws;

e) DTSC will utilize Statements of Overriding Consideration under the California Environmental Quality Act when necessary to protect and overburdened, vulnerable community of color from more pollution and prevent disparate negative impacts which are prohibited pursuant to civil rights laws;

f) DTSC will not utilize Statements of Overriding Consideration under the California Environmental Quality Act to approve permits for pollution if such a permit would have a disparate negative impact on protected classes of persons and would thus violate civil rights laws;

- g) DTSC will ensure language access in all aspects of its activities and processes;
- h) DTSC will cease use of or reliance on documents including Environmental Impact Reports prepared by other agencies that were approved during processes that violated the civil rights of residents, were conducted in a hostile environment, were not language accessible, and/or otherwise denied the affected public meaningful opportunities for public participation;
- i) DTSC affirms that public comment periods, permit and regulatory processes including appeals, are appropriate forums in which to raise objections to DTSC's permitting decisions that include civil rights claims, when those objections are raised consistent with DTSC's regulations.

VI. Consultation with Native Nations and Protection of Sacred Sites and Cultural Resources

DTSC will conduct meaningful consultation with Native Nations, recognized and unrecognized, at the beginning of any process and prior to any decision that would impact Native Nations, their members, environment, cultural resources and sacred sites whether on tribal lands and/or aboriginal territory.

DTSC will refrain from taking any action or approving any action that harms, desecrates or destroys Indigenous peoples' sacred sites or cultural resources.

Native Nations will be provided a full and meaningful opportunity for public participation in decisions that could impact their people, environment, sovereignty, sacred site and/or cultural resources.

VII. Roles and Responsibilities for DTSC staff

DTSC staff will be trained on civil rights compliance including language access policies and procedures, including how to access policies and procedures, how to access language assistance services and how to identify and work with LEP individuals, interpreters, and translators.

VII. Public Complaints/Complaint Procedures:

a) DTSC recognizes that if individuals or organizations feel their civil rights are being threatened or have been infringed upon by DTSC, then these individuals and organizations have the ability to take legal action and/or file administrative complaints in response to civil rights violations made by DTSC.

b) Filing an administrative civil rights complaint at the federal level is pursuant to Title VI of the Civil Rights Act of 1964. Public Complaints may therefore be sent to the U.S. EPA., Office of Civil Rights.

Address:

U.S. Environmental Protection Agency
Office of Civil Rights
Mail Code 1201A
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Email: Title_VI_Complaints@epa.gov

c) Filing a complaint at the state level is pursuant to Section 11135 and should be submitted to the Department Fair Employment and Housing. Visit <https://www.dfeh.ca.gov/complaint-process/complaint-forms/> for more information.

Respectfully submitted,

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California Environmental Justice Coalition (CEJC)
Thomas Helme, Coordinator
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California Safe Schools
Robina Suwol, Executive Director
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Code Pink – San Francisco
Jackie Barshak, Representative
San Francisco, CA

Comite Civico del Valle
Luis Olmedo and Humberto Lugo
Brawley, CA

Communities for a Better Environment – Richmond
Andrés Soto, Richmond Community Organizer
Richmond, CA

Community Food and Justice Coalition
Y. Armando Nieto, Executive Director
Oakland, CA

Community Science Institute
Denny Larson, Executive Director
Richmond, CA

Del Amo Action Committee

Cynthia Babich, Director
Torrance, CA

Desert Protection Society

Donna Charpied, Executive Director
Desert Center CA

Equal Justice Society

Allison Elgart, Legal Director
Oakland, CA

Food Empowerment Project

lauren Ornelas, Founder/Executive Director
Cotati, CA

Fresnans Against Fracking

Ron Martin, President
Fresno, CA

Friends of the Earth - US

Gary Graham Hughes, M.Sc., *Senior California Advocacy Campaigner*

Grayson Neighborhood Council

John Mataka, President
Grayson, CA

Healthy 880 Communities

Wafaa Aborashed, Executive Director
San Leandro, CA

Idle No More San Francisco Bay Area

Pennie Opal Plant, Coordinator

La Union Hace La Fuerza

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Anthony Khalil, Community Programs Director
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No Coal In Oakland

Margaret Rossoff, Secretary-Treasurer
Oakland, CA

Our Roots Multi-Cultural Center

John Hernandez, President
El Centro, CA

Resilient Communities Initiative

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Rootskeeper

David Braun, Director
Oakland, CA

Shore Up Marin

Hannah Dorress, Co-Director
Marin City, CA

Tehipite Chapter of the Sierra Club

Ron Martin, Vice Chair
Fresno, CA

The Environmental Justice Coalition for Water

Colin Bailey, Executive Director and Managing Attorney
Sacramento, CA

Tri-County Watchdogs

Katherine King
Frazier Park, CA

Tri-Valley CAREs (Communities Against a Radioactive Environment)

Marylia Kelley, Executive Director
Livermore, CA

West County Toxics Coalition

Dr. Henry Clark, Executive Director
Richmond, CA

Valley Improvement Projects (VIP)

Bianca Lopez, Chairperson
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West Berkeley Alliance for Clean Air and Safe Jobs

Janice Schroeder, Core Member
Berkeley, CA

West Oakland Environmental Indicators Project

Margaret Gordon and Brian Beveridge, Co-Directors
Oakland, CA