Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Deborah O. Raphael, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

Edmund G. Brown Jr.
Governor

On August 30, 2012 the Office of Civil Rights in the United States Environmental Protection Agency (USEPA) announced that it has dismissed the complaint and closed an investigation of the California Department of Toxic Substances Control (DTSC) into alleged violations of the federal Civil Rights Act of 1964 (Title VI). The allegations date back to 1994 and were filed by groups alleging that DTSC had violated the Civil Rights Act with regard to three hazardous waste landfills in California.

Title VI prohibits the intentional discrimination and discriminatory effects on the basis of race, color, and national origin by recipients of federal financial assistance.

USEPA dismissed the nearly 18-year-old complaint that DTSC had discriminated against the predominantly Latino communities of Westmorland, Kettleman City and Buttonwillow. Those claims related to the siting, public participation processes, permitting and associated alleged impacts at California's three commercial hazardous waste disposal facilities.

"While we are happy with USEPA's conclusion that our past decisions and actions were not discriminatory, we are committed to conducting our current and future work in a way that does not unfairly burden Latino or other communities," said DTSC Director Debbie Raphael. "Since 1994 we have vastly updated and enhanced our process, including our outreach process."

Since the filing of the complaint, DTSC challenged these claims and cooperated with all information requests made by USEPA as it evaluated the complaints.

In its decision, USEPA did not address siting issues, because the facilities were sited by local agencies that did not receive federal funding. Instead, USEPA limited its investigation to decisions under the authority of DTSC. USEPA also dismissed allegations that DTSC violated the civil rights of the three communities when it relied on environmental documents prepared by local agencies. This was based on a finding that those documents were one of many relevant elements in DTSC's decision-making, DTSC did not control the local decisions that led to the development of those documents, and DTSC had its own public outreach process in connection with its permitting process.

In addition, the investigation could find no adverse health impacts to the surrounding community or environment, using available information and its own modeling and other analyses. USEPA looked at impacts related to accidental releases, groundwater and

Printed on Recycled Paper

surface water contamination, earthquakes, particulate emissions, ozone precursor emissions and air toxics emissions. In each case it found no link to health impacts and dismissed the claims.

With regard to public outreach, USEPA found that DTSC's records of its outreach activities for the Westmorland facility in 1994 showed an "apparent inadequacy". However, the complaint was dismissed because DTSC's "current public participation program and planned public participation activities … differ substantially from, and are a significant improvement over those conducted for the (Westmorland) facility in 1994." Consequently, USEPA "strongly" recommended that DTSC update its written outreach guidance to reflect improved public participation practices and provide annual updates of its progress.

To enhance its permitting and outreach process, as well as all of DTSC's efforts, the Department has:

- Developed an updated public outreach strategy (link) for Kettleman City that provides community members better access to DTSC staff, and will be used as a template for enhanced public outreach in Westmorland and Buttonwillow.
- Formed a work group with the California Department of Public Health and the Office of Environmental Health Hazard Assessment to address ongoing health issues in Kettleman City
- Met with key leaders from Kettleman City, Westmorland and Buttonwillow to identify ways to further enhance public outreach and identify community needs
- Worked with the California Department of Public Health to develop a strategy for improving drinking water in Kettleman City
- Appointed an Environmental Justice Coordinator to help ensure that the Department's efforts are relevant to the needs of all communities;
- Committed resources to numerous internet-based tools designed to encourage community members to report and track environmental concerns and issues in their communities;
- Participates in Environmental Justice Task Forces throughout the state to encourage direct and ongoing communication between the Department and community members;
- Investigated additional potential cumulative impacts to the Kettleman City and Avenal areas to ensure that the adequacy of the SEIR is evaluated effectively;
- Investigated different methods of communicating with the public and provide feedback channels to the public to maintain effective communication through social networks;
- Begun updating Public Participation Plans for landfill communities to maintain effective community outreach procedures;
- Interviewed community leaders, members, and activist groups to understand how to improve the communication between DTSC and communities; and
- Developed practices that utilize cumulative impact methodologies to more effectively commit enforcement resources to communities which suffer the most significant health burdens from environmental exposures.

DTSC intends to apply an outreach process for similar to the one proposed for Kettleman City during its outreach efforts in Westmorland and Buttonwillow. The draft of this proposal can be found at:
www.dtsc.ca.gov/HazardousWaste/Projects/CWMI_Kettleman.cfm

"We see a long-term opportunity to better engage communities affected by our decisions, and we intend to remain involved even after permit decisions are made," Raphael said. "We are committed to protecting the health of all Californians."

The full USEPA decision can be found here: www.epa.gov/civilrights/extcom.htm
This action by the USEPA, Office of Civil Rights, follows a previous action by OCR in which it closed an investigation of a Title VI complaint filed in 1995 against DTSC. That complaint alleged that DTSC's enforcement activities evidenced a pattern of statewide discrimination against Latino communities. USEPA concluded that "no evidence of a statewide pattern [of discrimination] was presented or discovered during [its] investigation." The complaint alleged five areas of discriminatory conduct by DTSC. In a series of letters in 1999, 2001, and 2003, USEPA had previously rejected for investigation or action all of the allegations in the complaint, except for the allegation of discriminatory enforcement. A July 12, 2012 letter found that there was an insufficient basis to warrant an investigation of this last allegation. This letter can be found at:
www.dtsc.ca.gov/HazardousWaste/Projects/upload/Pure-EtchTitleIVClosure1.pdf

There are no other pending complaints against DTSC under Title VI.