



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

May 14, 2018

Department of Toxic Substances Control
Executive Office, 25th Floor
1001 I Street
Sacramento, CA 95814

Sent via email to DTSCPolicies@dtsc.ca.gov

**Re: Comments on October 2017 Draft Civil Rights and Language Access
Implementation Plan**

El Pueblo Para el Aire y Agua Limpia, Greenaction for Health and Environmental Justice, DTSC, and Cal EPA entered into the Title VI Settlement Agreement on August 10, 2016. Section IV of the Settlement Agreement provides for the development of Civil Rights and Language Access policies. DTSC released the Draft Civil Rights and Language Access Implementation Plan (Implementation Plan) in October 2017 and began a noticed 60-day public comment period on March 12, 2018. Below are comments on the draft Implementation Plan.

I. The draft Implementation Plan Focuses on Improving Civil Rights Compliance
The draft Implementation Plan states that “DTSC has and will continue to meet the intent and provisions of both Title VI...and California Government Code section 11135.” Pages 1 and 7. The signatories to the Kettleman Title VI Settlement Agreement disagree with this statement as it implies past compliance with civil rights laws. The assertion is unnecessary. A statement that DTSC is required to meet the intent and provisions of Title VI and 11135 would be sufficient.

II. Translation and Interpretation of Vital Documents and Information Process
The draft Implementation Plan is more inclusive when determining the Potentially Interested Community. However, in the absence of an identified Potentially Interested Community, the draft sets the minimum geographic area at a ¼ mile perimeter around the outside boundary of the facility or site. A ¼ mile is too small of a geographic region, especially if a facility or site includes potential air emissions. DTSC should increase the minimum geographic area to be more protective of potentially affected communities.

In determining whether a Threshold LEP Population exists and thus whether DTSC will provide translation of vital documents and information, the draft Implementation Plan is too restrictive and incongruent. The draft states that if at least 5% of the Potentially Interested Community or 1,000 individuals, “whichever is less,” are members of an LEP population, then a threshold LEP population exists and DTSC *will* translate vital documents and information. With this definition, if 900 individuals within a Potentially Interested Community are members of an LEP, then a threshold LEP population exists and DTSC will translate vital documents and information.



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However, in the next paragraph on page 13, and in Appendix F, it states that “if less than 5% ... or 1,000 individuals within the Potentially Interested Community are members of an LEP population” then it is not a threshold LEP population and DTSC, at its discretion, may translate or orally interpret vital documents and information. With this definition, if 900 individuals within a Potentially Interested Community are members of an LEP, then a threshold LEP population does not exist and DTSC may or may not translate vital documents and information.

Requiring that there be at least 1,000 individuals in an LEP population fails to acknowledge the small communities impacted by local projects. Communities with hazardous waste facilities, for example, are small. Kettleman City had a 2010 population of 1,439, Buttonwillow had a 2010 population of 1,508, and Westmoreland had a 2010 population of 2,225. Yet it is unclear whether translation of vital documents and information would be provided if 900 individuals in each of these communities were members of the same LEP group when translation should be provided.

The draft Implementation Plan is unclear as to the approach to translate or interpret vital documents and information. The draft states on page 13 that when at least 5% of the Potentially Interested Community or 1,000 individuals within the Potentially Interested Community are members of a single LEP population, then DTSC will “translate *or orally interpret* vital documents and information.” In Appendix F, the chart states that in this circumstance, DTSC *will* translate vital documents and information, not orally interpret. In both Appendix F and page 13, a footnote clarifies that translation may not be provided and that oral interpretation will be provided when the 5% is comprised of 50 individuals or less. It is unclear whether the reference to oral interpretation on page 13 is limited to circumstances where the 5% is comprised of 50 individuals or less or in all circumstances. This should be clarified favoring greater access to written translation since oral interpretation does not provide the same level of accessibility as written translation.

III. Designation of Presumptively Vital Documents

Additional documents should be designated as presumptively vital documents to ensure impacted LEP communities are fully informed and able to participate. Some documents are listed as vital or presumptively vital in some program areas but not in others. The following documents should be considered vital and translated in all program areas: compliance history reports, responses to public comments, inspection reports, final administrative orders, notices of violation, summaries of violation, human health and ecological risk assessments, final remedy selection documents, final statement of reasons, statements of overriding consideration

IV. Consistency with Final Civil Rights and Language Access Policies

The draft Implementation Plan completed in October 2017 could not reflect the changes made to the Civil Rights Policy and Language Access Policy finalized March 29, 2018. The draft Implementation Plan must be updated to be consistent with the final Civil Rights and Language Access policies. Important inconsistencies include the protection for being perceived as a



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member of a protected class, the ability to submit a complaint as a third-party witness of unlawful discrimination, the ability to submit a complaint directly to DFEH, and the additional time to file a complaint for discrimination that was unknown until after the initial time limit.

V. Civil Rights beyond permits and projects

Throughout the draft Implementation Plan there is a focus on using civil rights, language access, and public participation as means to improve the permit and project processes. Civil rights, language access, and public participation must also be used in the initial decision on whether to issue or deny permits, whether to accept a project, and whether DTSC actions and policies comply with civil rights. The draft Implementation Plan will need to be updated to address these issues and in the future when SB 673 regulations are completed.

VI. Additional Comments

Additional comments on the draft Implementation Plan include the following:

- On pages 1 and 7, the statement that “DTSC will not tolerate discrimination against any person seeking to participate in, or receive the benefits of, any program or activity that DTSC offers or conducts” should include *any person affected by* any program or activity since civil rights laws include exclusion from participation in, denied the benefits of, or otherwise subjected to discrimination by DTSC programs, services, or activities.
- The references to appendices throughout the document should be checked for accuracy. For example, page 2 references Appendix G for contact information for DTSC’s Office of Civil Rights when the information is in Appendix B.
- On pages 5 and 28, the draft states that one goal of the implementation plan is to “develop permits that address environmental justice issues to the greatest extent practicable.” The goal should be for permits that address environmental justice issues *and comply with civil rights laws*.
- On page 6 it states that “DTSC is considering undertaking potential actions to better integrate environmental justice.” This phrasing is vague and noncommittal. DTSC must take affirmative steps to better integrate environmental justice in its permitting activities. The Implementation Plan should include concrete steps.
- Pages 35 and 40 state that “public participation activities *may* occur” when a cleanup remedy is designed, built, and implemented. Notifying community members and informing them of remediation efforts is necessary to ensure residents are informed and able to participate. Remedies need to be developed with the impacted community and be consistent with civil rights laws and policies in order to lessen the burden on environmental justice communities.
- The draft states that DTSC assists in forming and supporting Community Advisory Groups to review response actions proposed by DTSC in site mitigation processes. Formation of a CAG could potentially provide residents with a forum to be more involved and informed. The draft Implementation Plan should include additional details on how DTSC would form and support a CAG, including ensuring the CAG is representative of the impacted community and developing trainings as needed to ensure the CAG can participate in often technical processes.



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- The Public Participation and Environmental Justice Enhancements chart on page E3 is too small to read.
- Appendix F states that “non-DTSC, peer-reviewed documents or studies” should inform whether to adjust the Potentially Interested Community. Most EJ communities do not have relevant peer-reviewed studies conducted, but may have studies or reports conducted by other organizations working with the community. Limiting to peer-reviewed information excludes important work done by community based organizations which may be the only information available for that community.

We look forward to improved civil rights, language access, and public participation processes.

Sincerely,

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