



CENTER ON RACE, POVERTY & THE ENVIRONMENT

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Attention: Draft Civil Rights and Language Access Implementation Plan and Policies
Recommendations
Department of Toxic Substances Control
Executive Office, 25th Floor
1001 I Street
Sacramento, CA 95814

To Whom It May Concern:

The Center on Race, Poverty & the Environment (CRPE) submits these comments on the Department of Toxic Substances Control's (DTSC) proposed Draft Civil Rights Policy (Civil Rights Policy), Draft Language Access Policy (Language Access Policy), and Draft Civil Rights and Language Access Implementation Plan (Plan).

I. DTSC Should Revise Complaint Process to Ensure Compliance with the Disparate Impact Prong of Title VI and Government Code 11135

While DTSC correctly identifies decisions or actions that cause unintentional disparate impacts as violating state and federal civil rights laws, its complaint process continues to require an allegation of intentional discrimination. A complainant may only file a civil rights complaint if the complainant believes he or she was discriminated against *because* he or she has or is perceived as having a protected characteristic. The Policy also states that the DTSC may only act if it finds that the complainant suffered alleged discrimination *based* on a protected characteristic. Therefore, DTSC will only find discrimination if its decisions are unlawfully based on race, or some other protected characteristic. This writes out completely federal and state prohibitions on facially neutral actions that have a disparate impact. DTSC should revise its policy to allow complaints based on facially neutral actions or activities that have a disparate impact on protected classes.

II. DTSC Should Be Coordinate the Complaint Process and the Petition for Review Process.

The Settlement Agreement includes language mandating that the Civil Rights Policy include the following elements: (1) review of hazardous waste permit applications; (2) comments on such applications; (3) the creation of environmental documents and hazardous waste permit decisions;

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(4) consideration of Petitions for Review; and (5) redress procedures in the event that non-compliance is found. *See* Section IV, B, 1-5. Moreover, the Plan states that “DTSC will consider alleged state and federal civil rights violations as part of an appeal of a hazardous waste facility permit decision.” Petitions for Review based on alleged civil rights violations are considered through a separate process than the complaint process described in DTSC’s Civil Rights policy.

Thus, it is unclear how the complaint process, especially given its timeline, is supposed to interact with the Permit Appeal Phase. DTSC must ensure that allegations of civil rights violations are fully assessed through the complaint process prior to issuing a permit. The Civil Rights Policy should be changed to direct that the Appeals Officer forward any Petition for Review alleging civil rights violations to the appropriate Civil Rights review process.

Here, too, specificity is needed to clarify how the “neutral and thorough investigation into the allegations,” Civil Rights Implementation Plan at 21, will be carried out. In particular, there must be some explicit procedure to ensure that appeals to permitting decisions are not reviewed by the very same individuals who issued the original permits.

III. DTSC Should Allow Online Submission of Individual Complaints

The current complaint form (DTSC Form 1443) may be mailed, faxed or emailed. However, online submission would both assist complainants and also speed up the review process. For example, the State of Massachusetts allows civil rights complaints to be filed online, in both English and Spanish, and follows up with complainants within one week. *See* “File a Civil Rights Complaint,” <https://www.mass.gov/how-to/file-a-civil-rights-complaint>. In contrast, the current DTSC currently requires 20 business days simply to acknowledge receipt of a complaint. An electronic submission process would speed up DTSC’s ability to respond to complaints, by allowing time and energy to be spent on the merits, rather than the submission process.

IV. DTSC Should Consider Forming an Independent Committee, Based on the Model of the San Francisco Bay Area Rapid Transit District

The San Francisco Bay Area Rapid Transit District’s (“BART”) Environmental Justice Policy provides for full and fair participation by minority and low-income populations in its decision-making processes. BART Environmental Justice Policy at 1. The policy directs the Office of Civil Rights to create an Advisory Committee to provide input on the most effective methods for responding to the needs of Environmental Justice populations; provide input on transportation decisions; and ensure that the District incorporates Environmental Justice principles in its transportation decisions. *Id.* at 2. The success of BART’s model relies in part on the composition of its committee: diverse and representative of the low-income, minority, and limited English proficient groups in BART’s service area. *Id.*

We request that DTSC consider including a committee to guide and influence the implementation of the agency’s Environmental Justice and Civil Rights policies. The formation of such a committee, consisting of residents impacted by DTSC, community leaders and environmental justice advocates, would demonstrate a true commitment to environmental justice principles and serve to rebuild broken community relationships. For example, the committee

could serve as a venue in which impacted residents are provided a meaningful opportunity to participate in local permitting assessments and decision-making processes.

V. DTSC’s Language Access Policy and Plan Must be Modified to Meet Legal Requirements Under the California Government Code

a. The DTSC’s Definition of Vital Documents is Overly Narrow and Violates the Dymally-Alatorre Bilingual Services Act

DTSC should broaden its definition of “Vital Documents or Information” to include the entirety of documents deemed to contain vital information or a summary of the key information within the document within both its Language Access Policy and Plan. By only translating portions of documents that are deemed “vital,” DTSC runs the risk of failing to provide enough context for translated documents to accurately convey the very information that is deemed “vital.” Several other California agency language access plans, such as those of the California Department of Transportation and BART, do not appear to contain the same restriction upon translating only the “vital” portions of documents that DTSC proposes.

Second, for those LEP communities that do not meet the threshold for translation of vital documents, DTSC should modify its Plan and Language Access Policy to state that it shall provide written notice in the primary languages of the LEP communities of their right to oral interpretation of the written materials, free of cost, to ensure LEP access to vital documents. This course of action is laid out in the Department of Justice’s Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, and an example provision can be found in the San Bernardino Department of Community Development and Housing Language Access Plan and the U.S. Department of Agriculture’s LEP Implementing Strategy for Federally Assisted Programs. The County of San Bernardino Limited English Proficiency Plan at 3 (San Bernardino Plan); National Institute of Food and Agriculture, Limited English Proficiency (LEP) Implementing Strategy for Federally Assisted Programs at 15.

DTSC’s commitment to providing translations only of vital documents is too narrow under state law. According to Section 7295 of the Dymally-Alatorre Bilingual Services Act (California Government Code §7290 et seq.), “[a]ny materials explaining services available to the public shall be translated into any non-English language spoken by a substantial number of the public served by the agency.” Cal. Gov. Code § 7295. Similarly, “[e]very state agency which serves a substantial number of non-English speaking people and which provides materials in English explaining services shall also provide the same type of materials in any non-English language spoken by a substantial number of the public served by the agency.” Cal. Gov. Code § 7295.2. Thus, while such translations need not be verbatim, *id.*, they are not limited to what the agency defines as “vital” documents. Rather, any materials that the agency finds necessary to produce in English must in some form be reproduced in the relevant non-English language, such that limited-English-proficient (LEP) persons receive substantially the same information as the agency has deemed necessary for English-speakers.

If DTSC is going to translate only vital documents—an approach drawn from the example of federal agencies, not from the stricter state law requirements of California’s Dymally-Alatorre Bilingual Services Act—it must also ensure, and make more clear in its plan, that such

determinations of “vitality” will still provide “the same type of materials” for LEP persons as it does for English-speakers. This will ensure compliance with the Act’s specific provisions and with its general intent to “provide for effective communication between all levels of government in this state and the people of this state who are precluded from utilizing public services because of language barriers.” Cal. Gov. Code § 7291.

b. The DTSC’s Process for Filing Complaints Must Address LEP Communities’ Needs

If DTSC serves a substantial number of non-English speakers who also do not speak Spanish, it must be prepared to provide a method for filing complaints in that other language. *See* Cal. Gov. Code § 7299.3. DTSC’s current draft Policy only directs potential complainants to Communication Assistance Resolution Forms in English or Spanish.

VI. Conclusion

Thank you for your consideration of these comments and recommendations on DTSC’s Civil Rights Policy, Language Access Policy, and Plan.

Sincerely,

Ingrid Brostrom
Assistant Director