



October 30, 2017

Attention: Civil Rights Policy Comments
Department of Toxic Substances Control
Executive Office, 25th Floor
1001 I Street, Sacramento, CA 95814
Submitted via email DTSCPolicies@dtsc.ca.gov

Greenaction for Health and Environmental Justice submits these comments on the Department of Toxic Substances Control's (DTSC) draft Civil Rights Policy and draft Language Access Policy.

DTSC has spent several years developing new policies and practices to protect the health and environment of California communities most vulnerable, at risk, and impacted by pollution and environmental racism and injustice. To date, these initiatives have largely failed to change business as usual. We submit these comments in good faith with the hope, and demand, that DTSC's new Language Access and Civil Rights Policies actually do what they are intended to do.

I. DTSC Civil Rights and Language Access Policies Must Comply With and Incorporate the Civil Rights Commitments stated in the August 10, 2016 Title VI Civil Rights Settlement and Must Comply with Federal and State Civil Rights Laws:

Part of the impetus for developing these policies is the Settlement Agreement reached on August 10, 2016 between Greenaction and El Pueblo Para el Aire y Agua Limpia and California EPA and DTSC to resolve the Title VI Civil Rights complaint filed by Greenaction and El Pueblo against CalEPA and DTSC.

DTSC's policies should incorporate the statewide regulatory and programmatic commitments memorialized in the Title VI Civil Rights Settlement as ongoing policy.

In addition, we are concerned that the Civil Rights Policy, as currently drafted, would fail to ensure that state and federal civil rights laws are complied with in your permitting and regulatory activities. The draft policy fails to codify the protections afforded by Title VI of the Civil Rights Act of 1964 ("Title VI") and California Government Code, Section 11135.

We request that DTSC significantly revise and improve its Civil Rights Policy to conform with Title VI and California Government Code Section 11135, and their implementing regulations.

II. Civil Rights Policy Must Explicitly and Clearly Apply to All Aspects of DTSC's Permitting and Regulatory and Programmatic Work and Decisions:

DTSC's Civil Rights Policy must explicitly and clearly apply to all DTSC staff, as well as to those working on their behalf, such as contractors and grantees. It must apply to all aspects of the agency's actions, programs, activities, public participation processes, development of regulations and policies, and permit and regulatory decisions.

The Title VI Civil Rights Settlement ("Section IV: Programmatic And Regulatory Terms") states clearly the following:

A. Civil Rights Compliance: Applicable state and federal civil rights requirements will be complied with during DTSC's permitting process for hazardous waste disposal facilities and during regulatory oversight of facilities under its jurisdiction.

The Civil Rights Policy should specify that 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. We believe that this requires DTSC to 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. The Civil Rights Policy must clearly set forth the type of meaningful and thorough civil rights compliance review that DTSC will undertake in their regulatory and permitting processes.

III. DTSC's Draft Civil Rights Policy Lacks Significant Content:

The draft civil rights policy lacks significant content. Meaningful public input on the draft policy is limited due to the lack of specifics in the draft policy.

Greenaction, El Pueblo, the California Environmental Justice Coalition, and dozens of community and environmental justice ally organizations submitted specific recommendations that would provide clear content in the policies. These recommendations should be in the policies.

The draft policy also fails to inform the public that they may file a civil rights complaint against DTSC pursuant to California Government Code 11135 (it does mention Title VI). Too much of the draft policy is spent on how to file a complaint with DTSC itself.

IV. DTSC's Draft Civil Rights Policy omitted virtually all of the extensive recommendations submitted by three dozen community and environmental justice organizations in August:

On August 2, 2017, three dozen community and environmental justice organizations submitted extensive and specific recommendations to DTSC that we requested be included in the Civil Rights and Language Access policies. Virtually none of these important recommendations have been included by DTSC, but need to be. These recommendations reflect the real life experiences of communities with DTSC, and will help DTSC's policies and practices become meaningful and in compliance with civil rights laws.

The Civil Rights Policy must make clear that 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.

By failing to incorporate virtually all of these recommendations, it raises concerns about DTSC's commitment to meaningful public participation and civil rights compliance in all of your permitting and regulatory programs, activities, and decisions.

We attach and incorporate the August 2nd environmental justice movement recommendations into these comments.

V. Cumulative Impacts Consideration and Civil Rights Compliance:

The Civil Rights Policy must affirm that DTSC will deny permits to facilities whose emissions and operations would have a disparate negative impact on overburdened communities of protected classes of persons. DTSC must reject a permit if the most updated version of CalEnviroScreen's results shows its issuance would have a harmful and disproportionate impact on vulnerable groups of people protected by state and federal civil rights laws.

DTSC must require and conduct a comprehensive cumulative impact analysis as part of every Environmental Impact Report in a permit application process and in key regulatory oversight decisions. DTSC should use and apply CalEnviroScreen and similar cumulative impact tools to analyze and address the vulnerability of nearby communities in permitting and regulatory decisions. Each decision will include a written analysis of the vulnerability of an affected community.

VI. Use of Statements of Overriding Consideration Must Uphold, Not Undermine or Violate, Civil Rights:

DTSC's policies should affirm that the agency 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

The policy must prohibit DTSC from using Statements of Overriding Consideration in order to approve permits or regulatory actions if that action would have a disparate negative impact on protected classes of persons and would thus violate civil rights laws.

VII. DTSC's Policies Should State That Entities Receiving DTSC and/or CalEPA Funding Must Comply with Civil Rights and Language Access Laws, Regulations, and Policies and the DTSC Will Not Rely on Documents, Decisions, or Processes that Do Not Comply with Civil Rights Laws:

The policies must make clear that 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 and language access laws and policies.

DTSC must 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.

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

DTSC's Policies must include commitments, mandates and specific procedures to ensure proper and meaningful consultation with Native Nations, and ensure protection of sacred sites and cultural resources related to DTSC programmatic, permitting and regulatory activities. DTSC must 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.

The Civil Rights Policy should specify that DTSC will not any action or approving any action that harms, desecrates or destroys Indigenous peoples' sacred sites or cultural resources.

Native Nations must 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.

IX. DTSC’s Definition of Discrimination Is Overly Narrow and Violates Title VI and California Government Code, Section 11135:

Greenaction agrees with the comments submitted by Center on Race, Poverty and the Environment on the draft policies, and we attach and incorporate them into our comments.

X. DTSC’s Reliance on a Discriminatory Intent Standard Violates Section 11135 and Title VI Implementing Regulations:

Greenaction agrees with the comments submitted by Center on Race, Poverty and the Environment on the draft policies, and we attach and incorporate them into our comments.

XI. The Draft Civil Rights Policy Does Not Include a Remedy if Discrimination Found:

The DTSC Civil Rights Policy must have a zero tolerance for discrimination and for policies, practices and/or decisions that have a discriminatory impact.

For example, a permit decision based on any type of discrimination or having a discriminatory impact must be voided.

XII. DTSC’s Civil Rights Policy Must be Integrated with the Department of Fair Housing and Employment’s Civil Rights Complaint Process:

In 2016, Governor Brown signed SB 1442 (Liu) into law, which transferred responsibility for investigating and enforcing Section 11135 to the Department of Fair Housing and Employment (“DFEH”). The bill also requires that whenever a state agency has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, the head of the state agency, or his or her designee, shall submit a complaint detailing the alleged violations with the Department of Fair Employment and Housing for investigation and determination.

DTSC has not incorporated these new provisions into its Civil Rights Policy or explain the relationship between DTSC’s civil rights policy and the new authority of the DFEH, and how the dual tracks for civil rights complaints at DTSC and DFEH will interact. At a minimum, DTSC must explain in the Civil Rights Policy its approach to complying with its reporting responsibilities to DFEH when it suspects unlawful discrimination.

XIII. Draft Language Access Policy:

The draft language access policy overall is positive, including the acknowledgement that vital documents must be language accessible. Cost must not be a criteria for determining if a document is to be considered vital.

For health and environmental justice,

A handwritten signature in cursive script that reads "Bradley Angel".

Bradley Angel, Executive Director
Greenaction for Health and Environmental Justice