



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

July 8, 2019

Mr. Jared Blumenfeld
Secretary
California Environmental Protection Agency
1001 I Street Sacramento, CA 95812

Ms. Meredith Williams
Acting Director
Department of Toxic Substances Control
1001 I Street Sacramento, CA 95812

Sent via email

Re: CalEPA & DTSC Ongoing Violations of Kettleman City Title VI Settlement

Dear Secretary Blumenfeld and Acting Director Williams,

El Pueblo para el Aire y Agua Limpia (El Pueblo), Greenaction for Health and Environmental Justice (Greenaction), the California Environmental Protection Agency (CalEPA), and the Department of Toxic Substances Control (DTSC) entered into an agreement on August 10, 2016 (Settlement Agreement), that addressed civil rights violations associated with the Kettleman Hills Hazardous Waste Facility permit processes. The Settlement Agreement requires DTSC and CalEPA to take actions that address the effects on Kettleman City residents and systemic flaws in the regulation and siting of hazardous waste facilities.

The parties have engaged in good faith in bi-monthly meetings over the last three years to track implementation of the Settlement Agreement. DTSC and CalEPA have complied with some provisions of the Settlement Agreement, including assisting El Pueblo and Greenaction in securing funds and resources to conduct a community health survey, supporting our successful grant application to the California Air Resources Board for a Community Air Monitoring and Air Quality Project under AB 617, and adopting a Language Access Policy which is overall positive. We acknowledge and appreciate these efforts.

DTSC and CalEPA, however, have violated key provisions of the Settlement Agreement, including timelines to adopt policies and regulatory criteria to use in permit decisions and allowing the State's hazardous waste landfills to continue to operate on expired permits without submitting adequate renewal applications.

This is not the first time we have notified CalEPA and DTSC about their failure to comply with the Settlement Agreement. El Pueblo and Greenaction sent DTSC and CalEPA a Notice of Non-Compliance on March 1, 2018, detailing DTSC's violation of Section IV.D. of the Settlement Agreement. This section requires DTSC to adopt criteria for hazardous waste facility permit issuance consistent with SB 673's requirements no later than January 1, 2018. SB 673 requires, among other things, that DTSC develop a process through which the cumulative impacts on communities are considered in permit issuance and renewal of hazardous waste facilities. The criteria to consider cumulative impacts still has not been adopted, DTSC has been unable to set a clear timeline for its completion and estimates it will take an undefined time of more than a year.

We write to provide details of the ongoing violations of the Settlement Agreement, to request that immediate action be taken to bring CalEPA and DTSC into compliance, and to propose that the Settlement Agreement be extended two years to allow for compliance with all terms of the Settlement Agreement.

I. SB 673 Cumulative Impact Criteria

DTSC was required by SB 673 and the Settlement Agreement to adopt criteria to consider cumulative impacts in permit decisions by January 1, 2018. DTSC has stated that adoption and implementation of SB 673 will not occur until at least 2020. By extending the timeline for SB 673 implementation, DTSC will allow permit decisions between now and implementation to occur without the additional protections of SB 673.

II. Civil Rights Policy and Implementation Plan for the Civil Rights and Language Access Policies

DTSC released for public comment a Civil Rights Policy (Policy) and Civil Rights Policy Implementation Plan (Implementation Plan). The Civil Rights Policy lacked substantive mandates for DTSC compliance with state and federal civil rights laws. Greenaction, El Pueblo, California Environmental Justice Coalition, and other advocacy groups provided comments on these deficiencies and identified additional requirements that the Policy must include to comply with DTSC's legal obligations. DTSC failed to include the necessary additional substantive requirements in the final Policy, stating that the substance of the Policy would be included in the Implementation Plan. DTSC has since stated that the Implementation Plan will not be considered a binding document with the force of the Policy, but instead will be used to guide employee actions, resembling an internal DTSC employee handbook.

DTSC's decision to interpret the Implementation Plan as mere guidance rather than a binding policy is unacceptable. By interpreting the Policy as the sole binding civil rights document, DTSC adopted a

document that lacks substantive commitments to civil rights laws and is unlikely to ensure compliance with DTSC's legal obligations.

Furthermore, the Implementation Plan and Civil Rights Policy has no effect on the permit processes undertaken by outside agencies. Local governments for example, are not precluded from using processes that violate civil rights policies. DTSC would be able to accept documents produced through processes that violate civil rights laws. In effect, DTSC's Civil Rights Policy and Implementation Plan permit the same Kettleman City fact pattern to be repeated. DTSC must strengthen and integrate the Implementation Plan into the Policy and make both documents binding on every aspect of facility permitting.

III. Expired Permits

DTSC and CalEPA continue to allow the two operating hazardous waste landfills in the state (Kettleman City and Buttonwillow) to continue to operate on expired permits. DTSC has stated that this might continue indefinitely. Meanwhile Latino residents continue to disproportionately bear the burden of hazardous waste facilities and having facilities with expired permits further exposes them to those burdens without the protection of possible new mitigation measures, SB 673 analyses, or any new information since the expired permit was approved.

IV. Kettleman Hills Permit Renewal Process

The current permit review process is inadequate to comply with the Settlement Agreement. DTSC released the draft Environmental Document Analysis (EDA) this year, one of the steps in the permit review process. Signatories submitted a comment letter on the EDA outlining legal mandates that DTSC must consider in its analysis of whether a subsequent environmental document is required in the permitting application process for the Kettleman Hills facility. But the EDA does not address specific points in the Settlement Agreement, nor does the permit review process in general.

The Settlement Agreement requires DTSC to consider specific factors when reviewing the Kettleman Hills Facility permit application. Section III.B.2. of the Settlement Agreement requires DTSC to consider "Kettleman City's vulnerability as identified by CalEnviroScreen ... including pollution levels, income, health, linguistic isolation and language access needs." Further, DTSC is required to consider whether the "processes undertaken in relation to the permit decision are consistent with applicable civil rights laws."

The permit application review process must include consideration of Kettleman City's vulnerability indicators and the civil rights compliance of the processes related to the permit. This includes the civil rights compliance of any county and DTSC process related to the permit application and documents

prepared during those processes. DTSC has been unable to describe where in the permit application review process these Settlement terms will be included.

V. Delay in Clean Harbors Buttonwillow Landfill Permit Process

DTSC and CalEPA stated in 2018 that Kern County soon would start the CEQA process for the Clean Harbors's permit application for a permit renewal for Buttonwillow. However, a Notice of Preparation (NOP) for the CEQA process for this facility has not been issued; the CEQA process must begin immediately to ensure that environmental review and protections are implemented as soon as possible.

VI. Kettleman City Clean Water Project Delays

Kettleman City residents continue to have contaminated drinking water because of multiple delays. Cal EPA and DTSC recently stated that the infrastructure to provide safe drinking water for the residents of Kettleman City would be completed and begin service in August 2019. Please confirm in writing the exact date on which this will happen.

VII. Civil Rights Settlement Extension

The Settlement Agreement is set to expire August 10, 2019. Given the violations and delays outlined above, and DTSC's own stated timelines for completion of settlement terms, DTSC and CalEPA will not be able to fully comply with the Settlement Agreement by its expiration date. We therefore propose to extend the Settlement Agreement two years, until August 10, 2021, to allow for DTSC and CalEPA to fully comply with all the terms of the Settlement Agreement.

We look forward to meeting with you in Kettleman City on July 10th and to working with the new leadership at CalEPA and DTSC to fully implement the Settlement Agreement and protect the health of vulnerable communities.

Sincerely,

Maricela Mares Alatorre, El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City

Bradley Angel and Miguel Alatorre, Greenaction for Health and Environmental Justice

cc: Ana Mascareñas, Assistant Director for Environmental Justice and Tribal Affairs, DTSC
Marisol F. Aguilar, Community Equity Initiative Director, CRLA, Inc.
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