

CALIFORNIA ENVIRONMENTAL JUSTICE COALITION

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To: Governor Jerry Brown
California Environmental Protection Agency
Department of Toxic Substances Control
State Legislature

From: California Environmental Justice Coalition

The California Environmental Justice Coalition respectfully submits these comprehensive recommendations to you with the goal of bringing about much needed improvement in the Department of Toxic Substances Control. The CEJC is a grassroots coalition of 34 urban, rural and indigenous groups from across the state of California. The CEJC's recommendations for reforming and improving DTSC are the product of intensive input from dozens of grassroots community and environmental justice groups. Our communities continue to suffer from pollution and environmental racism and injustice, and unfortunately DTSC continues to fail to carry out its mission to protect our health and environment. It is time for a change in DTSC.

We look forward to discussing these recommendations with you in the near future.

ENVIRONMENTAL JUSTICE POLICY RECOMMENDATIONS TO REFORM AND IMPROVE THE STATE DEPARTMENT OF TOXIC SUBSTANCES CONTROL:

I. Reform Toxic Contamination Clean-up Practices:

- Conduct simultaneous cross-media (air, water, soil) testing where toxic exposures are suspected. Do not rely on the polluter to do the tests. Use independent third-party contractors selected by a committee that includes majority representation of impacted residents, and the contractor should be paid for by the polluter;
- Use biomonitoring to establish possible health links to pollution
- Adjust remediation and clean-up goals to meet the most stringent health protective standards, and consider the cumulative impacts of multiple pollution sources and vulnerabilities in these decisions
- Adopt and implement remediation plans in a timely fashion. Toxic contamination sites should not be left unremediated for years or decades as is often the case.
- Offer and provide temporary or permanent relocation to residents at risk from the toxic site and/or remediation activities (risk should be evaluated based on a cumulative impact and vulnerability

analysis, and should be based on the precautionary principle of protecting people before harm takes place)

- Increase technical assistance support for communities, including grants to hire independent technical experts.
- Provide meaningful opportunities for public participation in the site remediation process included proposed remedies. Check-in regularly with local municipalities, impacted and interested residents, and community and environmental justice organizations about the status of site clean-ups and to solicit feedback and recommendations. Establish a formal public participation process including a representative community advisory group process to oversee the remediation.
- Respect and protect Indigenous peoples' sacred and culturally significant sites and areas impacted by remediation and/or any other DTSC activity, and engage in proper consultation with Native Nations and peoples impacted by any issue within DTSC's jurisdiction.

II. Improve Enforcement Against Pollution Violations:

- Increase unannounced inspections of industrial facilities and waste treatment and disposal facilities, with an emphasis on environmental justice communities and facilities with serious, repeat and/or chronic violations.
- Hire additional qualified staff including lawyers and inspectors
- Use criminal enforcement to hold violators liable where appropriate
- Impose and collect the maximum fines for each violation for serious and/or chronic violations
- Establish mandatory minimums that must be imposed for each type of violation, with maximum fines levied against chronic polluters and violators. There should be flexibility to be mindful of low-income property owners who might get caught in problems they unknowingly inherited.
- Return a portion of collected fines to impacted communities
- Revoke and/or deny permits for repeat and/or chronic violations
- Provide community air monitoring equipment and grants to communities to enable community watchdog and oversight of polluting facilities

III. Reform DTSC Permitting Process

- Develop criteria to determine how many violations trigger a suspension, denial or revocation of a permit. DTSC should establish a process to gather and consider community "anecdotal" evidence so that a history of informal complaints could, in aggregate, constitute legitimate evidence against a company.
- Restrict ability of facilities to operate on expired permits
- Develop and publicize clear criteria for permit decisions
- Require an independent Health Risk Assessment and comprehensive cumulative impact analysis as part of every permit application process

- Require that companies use least hazardous process possible in order to obtain permit
- Improve and Use CalEnviroScreen and similar cumulative impact tools to address the vulnerability of nearby communities in permitting decisions.
- Require facilities to assume additional liability if locating in areas with high pollution levels
- Deny permits if new facility proposed near schools or other sensitive receptors or is in an already overburdened community (as evidenced by being in the top 15% of vulnerable communities identified by CalEnviroScreen or similar cumulative impact screening tools)
- DTSC must immediately cease use of Statements of Overriding Considerations that enable the agency to approve dangerous projects despite the clear health and/or environmental threats to environmental justice communities
- 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 or otherwise denied the affected public meaningful opportunities for public participation
- DTSC must reject a permit if its issuance would have a harmful and discriminatory impact on people of color, non-English speakers and/or other groups of people protected by state and federal civil rights laws
- DTSC must end the disproportionate siting of hazardous waste disposal and treatment facilities in low income and communities of color

IV. Ensure Success of DTSC Hazardous Waste Reduction Initiative

- DTSC must conduct a thorough public process with full community involvement to ensure full input into their hazardous waste reduction initiative and to ensure that polluters do not dominate the process
- DTSC's should prepare an action plan for reducing quantities of hazardous waste in the state. That plan shall identify policies for (1) reducing the use of hazardous materials in California and (2) preventing new contamination of soil, buildings, and other environmental media by hazardous materials. The plan shall not rely for meeting the target on (1) any proposal that would result in reduced cleanup of contaminated sites, including "leave-in-place" or on-site disposal, (2) techniques that merely reduce the volume of the hazardous waste and not the quantity of hazardous material in the waste, (3) redefining hazardous waste so that materials that are currently considered hazardous wastes are no longer defined as such, or (4) shipping the waste out of state
- DTSC should rescind the illegal and racially discriminatory approval of the permit to expand the violation plagued Kettleman Hills hazardous waste facility as the expansion and the dramatic increase in waste disposal there would be a disincentive to achieving the goals of a hazardous waste reduction initiative.

V. Ensuring Meaningful Public Participation

- DTSC should adopt, with the full participation of the affected public, a formal public participation plan that ensures meaningful civic engagement and compliance with state and federal civil rights laws. There should be a legal and regulatory mandate for such public participation.
- Resources should be made available to community and environmental justice groups to help foster increased public participation. Make the permit applicant pay for it in the fees.
- DTSC should provide adequate and clear notices to all affected and interested parties of opportunities for public participation in permit and regulatory decisions
- DTSC should conduct extensive and multilingual outreach to publicize how the public can sign up to receive notices of public participation opportunities and permit applications and decisions
- DTSC must ensure that their notices, permit and regulatory documents and public meetings and hearings be provided in languages spoken by the affected members of the public
- DTSC must work with the communities to identify the time and location of public meetings and hearings to maximize public participation
- Public hearings and meetings must be free of police presence or intimidation by police or companies and/or their workers

VI. Improve Emergency Response

- Establish multilingual hotline and website that residents can easily access and use to report variety of issues that threaten the health of residents
- Partner with independent medical professionals to investigate suspected cases of illness and disease clusters caused by potential toxic exposures
- Coordinate with local area hospitals and local public health departments and use community knowledge to establish existence of disease clusters and/or increased or unusual incidences of illnesses

VII. Reducing Conflicts of Interest at DTSC

- Create a Community-Driven Oversight Committee comprised of representatives of diverse grassroots, community and environmental justice groups
- Separate the DTSC's enforcement arm from the DTSC's administrative & other programs
- Require and fund independent, neutral third party testing when requested by the community

VIII. Improve Transparency at DTSC

- Develop one easily accessible website where all Cal/EPA reports, settlements and notices are posted
- Maintain a publicly available list of hazardous waste permit holders that exhibit a repeating or recurring pattern of violations
- Webcast each public meeting and hearing

- Create site-specific community committees to increase communication between the community-at-large and DTSC
- Provide an independent technical advisor chosen by the community to assist each impacted community
- If requested by a community, create a liaison between all Cal/EPA boards and departments that have jurisdiction over a site and impacted residents
- Provide residents with prompt and full access to raw data, if requested,
- Waive all fees for Public Record Act requests from residents and community and environmental justice groups

IX. DTSC's new Director must be independent and committed to environmental health and justice

- DTSC's new director must be hired from outside the agency
- S/he must be independent and committed to environmental health and justice, committed to rigorous enforcement of the laws and regulations designed to protect community health and the environment, and committed to compliance with state and federal civil rights laws and environmental justice mandates.