



**CALIFORNIA RURAL LEGAL ASSISTANCE, INC.**  
**FIGHTING FOR JUSTICE, CHANGING LIVES**

---

March 1, 2018

Matt Rodriguez  
Secretary, California EPA  
1001 I Street  
Sacramento, CA 95812

Barbara Lee  
Director, DTSC  
1001 I Street  
Sacramento, CA 95812

*Sent via email*

**Re: Notice of Non-Compliance with Title VI Settlement Agreement**

Dear Secretary Rodriguez and Director Lee,

Pursuant to Section V.A of the Title VI Settlement Agreement (“Settlement Agreement” or “Agreement”) entered into on August 10, 2016 by the undersigned, DTSC and CalEPA, we write to notify you that DTSC has not satisfied Section IV.D. of the Settlement Agreement, which requires DTSC to “no later than January 1, 2018 and consistent with SB 673’s requirements” ... “adopt by regulation criteria for [hazardous waste facility] permit issuance.” To date, DTSC has not finalized any regulations for hazardous waste facility permitting.

Section V.A of the Agreement provides that

Complainants shall notify DTSC and CalEPA in writing if Complainants contend that DTSC or CalEPA has not satisfied a term of this Agreement. Complainants’ written notice to DTSC and CalEPA shall be made within ninety (90) calendar days of receipt of DTSC or CalEPA actions or an alleged failure to act and shall include a statement of the facts and circumstances upon which Complainants relied in making their determination.

Accordingly, in addition to notifying you of DTSC’s non-compliance, we also provide the “statement of facts and circumstances” upon which we relied in determining that DTSC has failed to fulfill Section IV.D of the Agreement. We further request information and action by DTSC so that we can reach resolution on this important matter.

The parties to the Agreement have made some progress in implementing other provisions of the Agreement, and we hope to continue such a positive progress notwithstanding this violation. Unfortunately, just yesterday, on February 27, 2018, DTSC canceled the scheduled meeting of



# CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

---

the signatories to the Agreement during which SB 673 and DTSC's failure to comply with the January 1, 2018 deadline was scheduled to be discussed.

## Statement of Facts and Circumstances

Over 18 months after the execution of the Settlement Agreement, DTSC has failed to fulfill Section IV.D and to meet the terms of SB 673 which states, in pertinent part, that "on or before January 1, 2018" DTSC "shall adopt regulations establishing or updating criteria used for the issuance of a new or modified [hazardous waste facility] permit or renewal of a [hazardous waste facility] permit, which may include criteria for the denial or suspension of a [hazardous waste facility] permit."

We understand from our communications with your agency and from public notices that DTSC has chosen to divide the development of these regulations into two tracks. DTSC first informed us of its "two-track" approach at our May 31, 2017 signatory meeting. At that time, DTSC told us that "Track 1" would be completed by January 1, 2018 but did not provide a timeline for "Track 2," which would include cumulative impact permitting criteria.

As we have expressed during our discussions with you and your staff, neither the Settlement Agreement nor the text of SB 673 contemplate such a two-track approach to the development of hazardous waste facility permitting criteria. The January 1, 2018 deadline in the Agreement and in SB 673 applies to *all* criteria, including cumulative impacts criteria, regardless of how DTSC has chosen to divide its rule-making.

We understand that DTSC has taken the following actions to date and that it is currently reviewing comments that it received for the proposed Track 1 permitting criteria.

- December 14-15, 2016: Track 1 Permitting Criteria workshop in Sacramento and Cypress.
- March 27, 2017: Track 2 Cumulative Impacts and Community Vulnerability symposium in Sacramento.
- July 27, 2017: Second Track 2 Cumulative Impacts and Community Vulnerability Symposium.
- September 22, 2017: Beginning of Track 1 Permitting Criteria 45-day public comment period.
- November 6, 2017: Track 1 Permitting Criteria formal APA public hearing in Sacramento.

Despite these steps, DTSC has not complied with the Settlement Agreement or with the SB 673.



### **Consequences of Non-Compliance**

DTSC's failure to meet the January 1, 2018 deadline for adopting hazardous waste facility permitting criteria is of grave concern to vulnerable communities impacted by hazardous waste disposal. First, new permitting criteria are long overdue, and SB 673 is the acknowledgement and response to the need for new permitting criteria. The communities impacted by hazardous waste in California bear a disproportionate pollution burden and have been systematically marginalized by governmental discriminatory policies including a failure to comply with civil rights and language access laws.

Second, we entered into the Settlement Agreement and consented to its three-year term limit with the understanding that DTSC would adopt the permitting criteria by January 1, 2018. DTSC's failure to meet the January 1, 2018 deadline undermines other terms of the Agreement. For example, Section III.B of the Settlement Agreement sets forth considerations DTSC will take into account when reviewing applications submitted by Chemical Waste Management for the Kettleman Hills facility. We agreed to those terms assuming DTSC would have met its January 1, 2018 deadline for publishing new permitting criteria that were protective of the community's health and well-being.

Third, hazardous waste facilities in California have permit applications pending before DTSC. It is imperative that DTSC adopt its SB 673 regulations without delay so that these and all future permits are considered under the updated permit criteria required by SB 673. Until the new regulations are adopted, DTSC should prohibit hazardous waste facilities with permits whose end date has passed from accepting any more hazardous waste. Furthermore, DTSC should not approve any permit applications until it adopts new permitting criteria and reviews applications subject to those criteria.

We have already brought DTSC's violation of Section IV.D and of SB 673 to your attention. In our January 17, 2018 letter to you we explained:

DTSC is in violation of SB 673 and this settlement because it has failed to adopt by January 1, 2018 regulation criteria for permit issuance. DTSC is required to consider criteria in adopting the regulations, including the assessment of vulnerability and existing health risks using available tools, such as CalEnviroScreen, California Health and Safety Code Section 39711, and other appropriate determinations or assessments, including cumulative impact analysis, and actions that can help to address potential impacts from hazardous waste facilities in vulnerable communities.

The November 6, 2017 public hearing held in Sacramento was not conducive to meaningful civic engagement and was attended almost entirely by the toxic waste companies, polluters and their lobbyists. Only three environmental justice



# CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

---

advocates were able to attend due to the time and location of the hearing.

The failure to comply with these legislative and civil rights settlement mandates has a direct, significant, and adverse effect on minorities and non-English speaking residents on the three farmworker communities hosting hazardous waste landfills, and the similar communities living near hazardous waste facilities statewide.

As mentioned above, the February 27, 2018 scheduled meeting of the signatories to the Agreement was canceled thereby frustrating our attempts to resolve this critical issue.

## Next Steps

Section V.B of the agreement provides that, after notice of non-compliance has been provided, “DTSC, CalEPA and Complainants will have sixty (60) calendar days from the date DTSC and CalEPA receive Complainants’ written notice to resolve and memorialize any disputed issue(s) by informal means.”

Accordingly, we request a response from DTSC that addresses our concerns and proposes a solution to this violation of the Settlement Agreement.

We believe, that, in the meantime, we can continue to make progress on the implementation of other terms of this important Settlement Agreement.

Thank you and we look forward to your response.

Sincerely,

Marisol F. Aguilar  
California Rural Legal Assistance, Inc.

Maricela Mares-Alatorre  
El Pueblo Para el Aire y Agua Limpia

Bradley Angel  
Greenaction for Health and Environmental Justice



## **CALIFORNIA RURAL LEGAL ASSISTANCE, INC.**

**FIGHTING FOR JUSTICE, CHANGING LIVES**

---

cc: Ana Mascareñas, Assistant Director for Environmental Justice and Tribal Affairs, DTSC  
Erik Erreca, Environmental Justice and Tribal Affairs Specialist, DTSC  
Ilene Jacobs, Director of Litigation and Training, CRLA, Inc.  
Nina Robertson, Earthrise Law Center, Lewis & Clark Law School