

Equity Activists, DTSC Begin Mediation Over Landfill Civil Rights Complaint

By Curt Barry/ "Inside Cal EPA" newsletter November 25, 2015

Cal/EPA and state toxics department officials are poised to begin federal mediation hearings with environmental justice advocates in an effort to resolve a civil rights complaint by the advocates accepted earlier this year by U.S. EPA, which alleges that the department discriminated against local Latino residents when it approved a permit for an expanded hazardous waste dump in Kettleman City.

Advocates are confident that they may receive significant "remedies" through the process, which they say could mark an important milestone under EPA's civil rights complaint process in terms of forcing change to California state agency policies and regulations.

The complaint -- filed March 19 by the Kettleman City-based group El Pueblo Para el Aire y Agua Limpia and the San Francisco-based group Greenaction for Health and Environmental Justice -- alleges that Cal/EPA and the Department of Toxic Substances Control violated Title VI of the Civil Rights Act and EPA's implementing regulations by approving in May 2014 a permit modification to expand the Kettleman Hills Hazardous Waste Facility that discriminates against Latinos in neighboring communities on the basis of national origin.

Specifically, EPA's Office of Civil Rights (OCR) is investigating whether Cal/EPA and DTSC violated Title VI by relying on reports developed through public participation processes that "discriminated against limited-English proficient, Spanish speaking residents on the basis of national origin, and that subjected them to a hostile environment on the basis of national origin," according to EPA's April 17 letter accepting the complaint. *Relevant documents are available on InsideEPA.com. (Doc. ID: 186881)*

In addition, the advocacy groups charge that Cal/EPA and DTSC refused to consider information about alleged discrimination on the basis of national origin in the group's earlier petition for review to state officials, the EPA letter says.

A source closely following the dispute said that top EPA officials in May asked representatives of the advocacy groups whether they would consider federal mediation with Cal/EPA and DTSC under its alternative dispute resolution process to try to resolve the matter, rather than going through an internal EPA process that tends to take much longer to conclude.

The groups agreed and both sides recently decided on a mediator for the process, the source said. Hearings are expected to begin within two weeks.

Equity advocates expect "some major positive results out of" the mediation process based on their belief that they have a "rock-solid case," the source says. "I do believe that the current civil rights complaint regarding Kettleman City raises profoundly important issues that will show whether Cal/EPA and DTSC are finally willing to end their violation of civil rights laws and remedy their racially discriminatory actions, and whether the federal government will finally take seriously their responsibility to enforce compliance with federal civil rights laws," the source says.

"I also am optimistic that either through mediation, or if that fails through a decision by [EPA's OCR] or even litigation, this current complaint will bring about several major positive changes in Cal/EPA and DTSC policies and practices," the source adds.

In the original petition to EPA, the advocacy groups seek the following remedies as a condition of EPA continuing to provide financial assistance to DTSC and Cal/EPA: reverse the approval for the expansion/permit modification of the landfill; rescind an order denying the petitions for review; cease use of or reliance on environmental review documents or other permit documents that were approved by any agency using racially discriminatory procedures; cease use of statements of overriding consideration in permit decisions affecting low-income and communities of color heavily and disproportionately impacted by pollution; uphold and comply with applicable civil rights laws in permit decisions; and actively work with all relevant parties to ensure that Kettleman City's contaminated water supply is replaced within six months with safe uncontaminated water.

On a separate track, California Attorney General Kamala Harris (D) has not yet responded to the groups' similar complaint filed under state law, according to the source. The groups may soon take follow-up action to spur that response, according to the source.

Spokesmen for Cal/EPA and DTSC either declined to comment or did not respond to requests for comment by press time.