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Advocates See Hazardous Waste Rights Pact As Model For Future Cases

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Environmental justice advocates are hailing a federal civil rights settlement reached with state regulators over a hazardous waste landfill expansion permit as a model for future agreements nationwide to ensure that the health of minority residents is protected when projects may harm the environment and safety.

"We think it's historic - possibly the most far-reaching environmental justice Title VI civil rights compliance resolution, period," says one advocate.

Cal/EPA and the Department of Toxic Substances Control Aug. 10 announced an agreement with Greenaction for Health and Environmental Justice (Greenaction) and El Pueblo/People for Clean Air & Water of Kettleman City to resolve a civil rights complaint the groups filed with U.S. EPA over DTSC's 2014 decision to approve a permit to expand the Kettleman Hills hazardous waste landfill. *The agreement is available on InsideEPA.com. (Doc. ID: 193754)*

DTSC and Cal/EPA are recipients of financial assistance from EPA and are therefore subject to the provisions of Title VI and EPA's implementing regulations, which aim to ensure that recipients of funds do not engage in discrimination under the rights law.

The agreement is "one of the first examples of a voluntary resolution jointly developed by state agencies and community groups under Title VI of the federal Civil Rights Act, which prohibits discrimination on the basis of race, color or national origin in any programs or activities receiving federal financial assistance," the agencies say in an Aug. 10 press release.

DTSC has agreed to "help facilitate Greenaction and El Pueblo's efforts to conduct a community-based public health assessment, improve third-party and community-based environmental monitoring, and establish an asthma intervention program for residents of Kettleman City," the release says. In addition, the agreement aims to "enhance the transparency and rigor of DTSC's compliance with civil rights laws."

The plan also includes a list of factors related to environmental justice that DTSC must consider when reviewing a pending application by Chemical Waste Management Inc. to renew its operating permit for the Kettleman Hills landfill and any expansion application if submitted within three years.

DTSC "will comply with applicable state and federal civil rights requirements during its permitting process for hazardous waste disposal facilities and during regulatory oversight of

facilities under its jurisdiction," the release adds. The department will also "adopt policies to create a framework for more fully incorporating civil rights considerations, meaningful public participation and language access in its decision-making process."

The settlement follows about seven months of federal mediation hearings between Cal/EPA, DTSC and the environmental justice advocates to resolve the civil rights complaint filed by the advocates in March 2015, which was accepted later that year by EPA.

The groups alleged in the claim that DTSC discriminated against local Latino residents when it approved a permit for an expanded hazardous waste dump in Kettleman City.

Specifically, the groups alleged Cal/EPA and DTSC 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.

EPA's Office of Civil Rights (OCR) investigated 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 an April 17, 2015, EPA letter accepting the complaint.

In May 2015, EPA 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.

Cal/EPA Secretary Matt Rodriguez says that the agreement "helps the people of Kettleman City and aligns with our efforts to prioritize environmental justice in the decision-making processes of all the boards and departments within Cal/EPA," the press release states.

DTSC Director Barbara Lee said the agreement is an "important step towards better partnership with environmental justice communities across the state. We're looking forward to working with Greenaction and El Pueblo to continue our focus on protecting health and the environment for the most vulnerable and impacted communities."

Maricela Mares-Alatorre, with El Pueblo/People for Clean Air & Water of Kettleman City, said that although the agreement "doesn't fix all of the problems, it is good to know that moving forward, everyone can expect to participate in DTSC public processes in a more meaningful and equitable level. It is our hope that Kettleman City's struggle for environmental justice will be an example for other communities facing similar issues."

Bradley Angel, executive director for Greenaction for Health and Environmental Justice, said the "historic settlement will help protect the health, environment and civil rights of low-income, people of color and non-English speaking residents living in Kettleman City and dozens of other at-risk and polluted communities across the state. By affirming that state hazardous waste

permitting processes and regulatory oversight must comply with civil rights laws and by strengthening opportunities for meaningful public participation, this agreement is an important step forward in making environmental justice a reality," the release says.

But the advocacy source says that there are several major problems with DTSC's permitting processes that the settlement likely will not resolve. Chief among them is the tendency of DTSC and some other regulatory agencies to approve projects that have major, unmitigatable environmental and public safety hazards by granting permits through a "statement of overriding considerations" process.

Through this process, state officials essentially deem the project too important to deny despite the environmental and public health impacts it may cause.