

SVSWA discriminated against Latinos and Spanish speakers, including many foreign-born persons, including in failing to provide Spanish translations of key documents necessary to participate in the public comment process related to the Plasco proposal, as well as failing to make its website accessible to Spanish speakers; failing to provide adequate interpretation between English and Spanish at public meetings; failing to organize its meetings to be able to receive and records comments in Spanish; and failing to give equal notice and opportunity for Spanish speakers to participate in public meetings.

Failing to provide make information available in Spanish and allow for discussion between Spanish and English clearly has the effect of disproportionately disadvantaging and excluding Latino residents in Gonzales. As detailed in Section V.A, Gonzales is a predominantly Latino/Hispanic town (88.1 percent of residents are Latino), and 74.6 percent of residents speak Spanish at home. Of the Spanish speakers, approximately 54.5 percent speak English “less than ‘very well’ ”, and 25.8 percent speak English “not at all”. Foreign-born residents of Gonzales are even more disproportionately affected by lack of Spanish translation -- 95 percent of foreign born residents of Gonzales are Spanish speakers, of whom approximately 89.8 percent speaks English less than “very well” and 47.2 percent speak English “not at all”. 39.1 percent of the residents in Gonzales are foreign born. See *supra* Section V.A. Statement of Facts, The Community.

Because the information related to the Plasco project is very technical, it is impossible for a person that does not speak English very well or does not speak English at all to be able to understand most documents and participate meaningfully in the entire process, unless translations are provided for notice, written documents and oral proceedings. Thus, failure to provide such translations in Spanish effectively excludes a significant proportion of the Gonzales community from meaningful participation in the government review and public participation process related to the Plasco plasma arc gasification (and any “conversion technology”) proposal. This constitutes discrimination based on race, ethnic identification and nationality that violates Section 11135.

SVSWA also violated Section 11135 by giving unequal opportunity and notice for opportunities of public participation to Spanish speaking residents.

1. Failing to provide Spanish translations of key information

While SVSWA has provided Spanish translation of a handful (approximately six) of documents related to the Plasco plasma arc gasification proposal⁸⁴, it has not provided and continues to fail to provide Spanish translation of key documents required for meaningful participation in the process. For instance, key documents required for meaningful participation in the current CEQA/Environmental Impact Report process (the purpose of which is to identify the issues that should be analyzed in the EIR) have not been translated into Spanish, including:

- SVSWA’s “Plasco Salinas Valley Notice of Preparation”, which gives notice of the undertaking of the EIR;
- SVSWA’s Plasco Salinas Valley Initial Study, a 56-page document that gives detail on the proposed plan for the EIR, which “is provided to other governmental agencies and for the public to encourage comments on what should be analyzed in the EIR”⁸⁵.

The Initial Study document is the key document for the CEQA process to date, and the SVSWA’s failure to translate this 56-page document effectively and unequivocally prevents Spanish-speaking residents and Limited English Speaking residents from participating equally in the process.

The notice for the February 22, 2012 meeting directed people to the SVSWA website, and the Spanish version of the Initial Study was not available as of the date of filing of this complaint.⁸⁶

⁸⁴ The SVSWA has provided English and Spanish versions of the following documents: “Authority Facts”, a 4-page fact sheet about the SVSWA; Scoping Meeting Notice dated 1/30/2012 (community members received this in the mail with their utility bill around February 3, 2012, though there was a controversy because the initial Spanish that was sent omitted the February 22, 2012 scoping meeting, while the English listed the February 22 and 28 scoping meetings); SVSWA Staff Report to the Board of 12/15/11; SVSWA Staff Report to the Board of 11/17/11; SVSWA Staff Report to the City of Gonzales of 9/19/11; SVSWA Press Release 9/19/11.

⁸⁵ See Exhibit 3, SVSWA notice received by residents on February 3, 2011, *supra* note 58.

At the February 22, 2012 scoping meeting, the SVSWA had copies of the slides for Powerpoint presentation which was translated into Spanish. However, this document had only very general information about the Initial Study, and would not make it possible to read or key permit document, the Initial Study.

The Public Comment card, which a member of the public is supposed to fill out to mail his or her comments to the SVSWA about issues that should be addressed in the EIR, was made available in Spanish at the February 22, 2012 scoping meeting, but is not available on the SVSWA website as of the date of this complaint.

(Further, there are also problems with access by Spanish speakers to documents on the website, which will be discussed below.)

All this clearly restricts the ability of Spanish speakers to participate equally and meaningfully in the commenting process for the EIR, and constitutes systemic exclusion of Spanish speakers from meaningful participation in the process. Both the English and Spanish notices for the scoping meetings state that there would be a 30 day comment period to submit comments on what should be analyzed in the EIR , and that the Notice of Preparation and Initial Study would be made available around February 6, 2012⁸⁷. The English version of these documents was made available around that date, but Spanish versions have never been provided as of the date of this complaint. Yet SVSWA set the deadline for comment as March 7, 2012.

Further, other key documents that have not and are not being provided in Spanish include:

- Notice and agendas for upcoming board meetings
- Documents to be discussed at SVSWA Board Meetings, related to the Plasco proposal

⁸⁶ In English: “A copy of the Notice of Preparation and Initial Study can be obtained from the Authority’s website at www.svswwa.org, Gonzales City Hall or Monterey County Library at 851 Fifth Street.” In Spanish, “Una copia del Aviso de Preparación y Estudio Inicial se puede obtener en www.svswwa.org, City Hall o Librería del Condado de Monterey ubicada en 851 de la Calle 5. From scoping meeting notices received February 3, 2012, *supra* note 58.

⁸⁷ Both the English and Spanish notice states that the Notice of Preparation and the Initial Study would be made available around February 6, 2012, and there would be a 30 day comment period. From scoping meeting notices received February 3, 2012, *supra* note 58. The English version of these documents was made available on the SVSWA website as stated, but the Spanish versions were not.

- Minutes of Board meetings

As detailed in Section VI.B. above, the SVSWA staff and Board have been making decisions that have and will significantly affect Gonzales residents since at least 2006, when it decided to site the new “conversion technology” facility at Johnson Canyon landfill. Upcoming Board meetings will do the same.

It is an egregious violation of civil rights for a governmental entity to fail to provide Spanish translation of information related to its acts that can have a significant adverse effect on the residents, in a community where 74.6% speak Spanish at home, and approximately 40.6 percent of the population are Spanish speakers who spoke English less than “very well”, and 19.2 percent do not speak English at all. See *supra* Section V.A. Statement of Facts, The Community. This constitutes discrimination based on race and cultural identity; further, the lack of Spanish translation has an even more discriminatory effect on the foreign born – 85.5 percent of foreign born residents are Spanish speakers that speak English “less than very well”, and 44.9 percent speak English “not at all”. See *supra* Section V.A. Statement of Facts, The Community.

SVSWA must translate documents that are necessary for equal opportunity of participation by all Gonzales residents in current and upcoming public comment opportunities. Within the EIR process, there should have been translation of the Notice of Preparation and the Initial Study that is required to participate meaningfully in the current public comment process on the Environmental Impact Report (which SVSWA has scheduled to close on March 7, 2012) as well as translation (and issuance) of the notice and agenda of meetings of the SVSWA Board that address issues that relate to the Plasco project, and the relevant documents that the Board will be discussing.

2. Failure to make the SVSWA website accessible in Spanish

SVSWA clearly uses its website as one of the principal distributors of information to the public. As stated above, the notice on the February 22 and 28, 2012 scoping meetings directed persons to the website to download the Notice of Preparation for the EIR, and the Initial Study.

Further, the notice stated, “For more information on the CEQA process, visit the Authority website at www.svswwa.org or call (831) 776 3000.”⁸⁸

However, as of the date of this complaint, the SVSWA website is inaccessible to limited English speakers and monolingual Spanish speakers, because the entire website and its navigation menus are in English. Thus a limited English or monolingual Spanish speaker would not even be able to know how to navigate to the six documents that are made available in Spanish. Websites that properly intend to provide information to limited English speakers always have a link in the home page that makes clear what other languages are available, and then has navigation options in those languages.

3. Failing to provide adequate interpretation in Spanish at key public meetings.

Further, the SVSWA failed to provide adequate interpretation services at meetings discussing the Plasco plasma arc gasification proposal.

According to Asamblea which sought to attend all meetings of the SVSWA Board of Directors since at least March 2011, if it became aware that Plasco was on the agenda, only two of the meetings have provided Spanish interpretation, the meeting of September 15, 2011 and the meeting of January 19, 2012. At all meetings that Asamblea has attended of the SVSWA Board of Directors, no written materials were provided in Spanish.

At the February 22, 2012 scoping meeting, English to Spanish interpretation was supposed to be provided, but SVSWA did not provide a sufficient number of headsets. SVSWA appeared to have only between 30 and 50 headsets, when approximately 120 residents attended the meeting, and at least some limited English speakers and monolingual Spanish speakers, and limited or non-Spanish speakers (including SVSWA Executive Director Patrick Matthews, ESA representative Paul Miller, and the court reporter doing the transcription of the proceedings), did not receive headsets.

SVSWA knowingly and intentionally refused to provide adequate interpretation at the

⁸⁸ From scoping meeting notices received February 3, 2012, *supra* note 58.

scoping meeting on February 22, 2012. At the start of that meeting, members of Asamblea and other residents pointed out to the facilitator and SVSWA officials that interpretation headsets had run out, and requested cancellation of the meeting because limited English Spanish and monolingual Spanish speakers would not be able to understand, and, because many English speakers also did not have headsets. Patrick Matthews, SVSWA Executive Director, was asked publicly at the meeting asked by a community member whether he spoke Spanish, and he stated he did not. A resident stated at the meeting that he asked the court reporter whether she spoke Spanish and she did not. Neither had headsets. Paul Miller from ESA also did not have a headset and it is suspected that he does not speak Spanish. There were also other limited Spanish speakers and monolingual Spanish speakers that did not get translation headsets because they ran out.

Asamblea and other residents protested vociferously for approximately 20 minutes and repeatedly requested cancellation of the meeting, but Candace Ingram, the facilitator selected by SVSWA, and SVSWA officials, refused. Ingram stated that the meeting will proceed, but at one point stated that consecutive translation will be provided. Some consecutive translation was provided, but this was sporadic, and the presentation made by SVSWA Executive Director Patrick Matthews was not translated into Spanish through consecutive interpretation, and when residents pointed this out, SVSWA said that the meeting will proceed regardless, and did not provide consecutive translation of most subsequent discussions. This led to the walk out in protest of approximately 100 to 120 residents who had been in attendance, and the refusal to give testimony by a number of persons that remained.

This entire fiasco clearly had the effect of limiting meaningful participation by Spanish speakers in the discussions about the environmental review process for the Plasco plasma arc gasification proposal. Aside from the Spanish speakers being denied equal opportunity to participate at the February 22, 2012 scoping meeting, the overall impression that these processes were not welcoming or meaningful for Spanish speakers may discourage Spanish speakers (and Latinos) from seeking to participate in future opportunities.

4. Failing to institute procedures that would allow for genuine participation of Latinos and Spanish speakers, by assuring that comments can be received in Spanish.

Astoundingly, at the February 22, 2012 scoping meeting, the SVSWA did not even appear to genuinely intend to receive or record comments by Latino Spanish speakers, as the meeting was conducted in English and was initially set up to provide only English to Spanish interpretation, and not Spanish to English interpretation.

Shockingly, key officials including Patrick Matthews, Executive Director of SVSWA did not speak Spanish but made no effort to take an interpretation headset, even though he arrived early to the meeting. Further, the court reporter who was transcribing the proceedings also did not speak Spanish but was not given an interpretation headset, so obviously could not understand or transcribe comments made by Spanish speakers, including requests at the beginning of the meeting to cancel the meeting because of inadequate translation. It is suspected that Paul Miller from ESA (the company that was chosen by SVSWA to conduct the Environmental Impact Assessment for the project) also did not speak Spanish, though he also did not have a headset.

Obviously, the participation by Spanish speakers in the meeting would not be meaningful, if their comments would neither heard by the authority with decision making power, nor recorded so they could be accessible to anyone else.

As noted above, residents pointed these flaws out at the beginning of the meeting, and requested cancellation of the meeting. SVSWA refused to do so.

5. Failure to provide equal notice and equal opportunity for Spanish speakers to participation in public comment processes

For the reasons stated above, SVSWA has denied equal opportunity to Spanish speakers to participate in discussions related to conversion technology and the Plasco plasma arc gasification proposal. SVSWA has consistently failed to provide adequate notice to Spanish speakers about upcoming meetings where public comment could be made. As discussed above,

SVSWA has made very few efforts generally to notify Gonzales residents of public opportunities for comment on the conversion technology discussions and the Plasco project, including those residents who submitted written requests for notice on January 20, 2011.

Of the notices and documents issued, very few were translated into Spanish, and Spanish speakers systematically have had (and currently have) unequal notice and access to information about almost all meetings and opportunities for public comment.

Even written notices provided by the SVSWA has had many flaws and inequalities. For the scoping meetings for February 22 and 28, 2012, SVSWA's "notice" in English and Spanish was flawed and unequal, resulting in inequality for Spanish speakers. Gonzales residents received a notice of these meetings, in English and Spanish, in the mail with their utility bill on February 3, 2012. However, the English and Spanish notices were not the same-- the "Notice" in English notified residents who read English about both the February 22 and 28 scoping meetings, yet the Spanish language "Notice" only mentioned the February 28 scoping meeting. Regardless of whether this failure to notify Spanish speaking residents about the February 22nd Scoping Meeting was intentional or accidental, it constituted unequal and improper and discriminatory notice. Gonzales residents did subsequently receive a revised notice (on February 15, 2012), in which the Spanish copies now listed both the February 22 and February 28 meetings. This did not remedy the inequality, however, as it caused confusion in the community, and had disparate adverse impacts – Spanish speakers ended up having only about one week of notice to prepare for the scoping meeting, while English speakers had 19 days.

Because of this defect, on February 15, 2012 Asamblea and Greenaction sent a letter to the SVSWA by email and calling for the cancellation of both meetings due to the defective and unequal notices (and also due to the fact that SVSWA scheduled the February 22, 2012 Scoping Meeting on an important Catholic religious observance, Ash Wednesday and the beginning of Lent.)⁸⁹

On February 16, 2012, Susan Warner of SVSWA responded with an email rejecting the

⁸⁹ See Exhibit 4. Letter from Asamblea Poder Popular de Gonzales & Greenaction to SVSWA, see *supra* note 63.

request for canceling the Scoping Meetings due to the notification issue, though she acknowledged the discrepancy and called it “regrettable”.⁹⁰ SVSWA’s response also acknowledged the fact that they were aware that key religious observances would occur in Gonzales at the same time as the Scoping Meeting on February 22nd (religious services were scheduled for 5:30 and 7:00 in the evening, while the scoping meeting was scheduled for 6:30pm.) Despite acknowledging these problems, SVSWA decided to proceed with the scoping meetings even though it is clear many residents would have to attend their important religious observance instead of the scoping meeting.

For all these reasons, SVSWA instituted a pattern of practices, some of which were knowing and intentional, that limited the opportunities available to Spanish speakers to participate equally and meaningfully in the decision-making process. Thus the SVSWA has violated Section 11135 by intentionally discriminating against Gonzales residents on the basis of their race, ethnic identification and national origin, thus denying the people most affected by the proposed project the ability to fully participate. This far exceeds the showing of disparate impact necessary to find a violation of § 11135.

VII. REMEDIES

For all the reasons above, SVSWA violated Section 11135 by engaging in discrimination based on race, ethnic identification, and nationality.

Complainant requests that the State of California Attorney General conduct an investigation to determine whether the Salinas Valley Solid Waste Authority violated California Government Code section 11135 due to the violations and discriminatory actions described in this complaint.

⁹⁰ Exhibit 7. Copy of Email Response from Susan Warner, Diversion Manager of SVSWA, of February 16, 2012, *supra* note 66.

In order to provide effective remedies for the discrimination set forth in this Complaint, the State of California should require as a condition of continuing to provide state financial assistance to the SVSWA that the Authority:

- (1) Immediately cease the CEQA review of the Plasco proposal, that was selected through improper procedures, and is currently being conducted in a discriminatory and biased manner, including the EIR process that is being conducted by a vendor that was chosen in a closed process that Gonzales residents were effectively and systematically excluded from;
- (2) Reverse its decision of January 20, 2011 to select the Plasco plasma gasification project, and begin the entire “Conversion Technology” review process from the beginning with full opportunities for meaningful participation of all residents, including examination of varied options for locations to site conversion technology projects;
- (3) Require that all Gonzales and Salinas Valley residents receive equal and adequate notice, in English and Spanish, for all future meetings on any waste disposal, waste management and/or waste treatment projects being considered, reviewed or evaluated by the SVSWA, including but not limited to the proposed Plasco Plasma Gasification project; this includes meetings of the SVSWA Board at which the Plasco proposal, or any other discussion affecting Gonzales, will be discussed. Residents who request it should also receive the agenda and documents for discussion for these meetings,
- (4) Cease language discrimination by:
 - Translating all key documents related to the discussions on “conversion technologies” that would affect Gonzales and all communities in the Salinas Valley into Spanish, including documents such as “Notices of Preparation” and “Initial Studies”, and notices and agendas for meetings of the SVSWA board and documents to be discussed that are relevant to the Plasco project or any other issue that affects Gonzales or other Latino, Spanish-speaking communities in the SVSWA jurisdiction; SVSWA Board minutes; and other relevant documents from other bodies that are

critical for meaningful participation by Spanish speakers on the “conversion technology” discussions;

- (5) For any official comment period, assure that Spanish speakers have equal time to submit comments as English speakers, counting the date that Spanish translation of the required documents are made available to the public;
- (6) Translate the SVSWA website into Spanish, or as a minimum provide navigation tools for Spanish speakers to be able to find the Spanish documents on the website. During the period that this has not completed, SVSWA should provide a Spanish speaking contact to the community, through which residents can ask for Spanish copies of documents.
- (7) Provide simultaneous translation between English and Spanish for all participants in public meetings that are open to public participation and comment on the Plasco proposal (and other projects that will affect Gonzales and the Salinas Valley), including relevant scoping meetings, meetings of the SVSWA Board, and other meetings. This should assure both that Spanish speakers can understand English, and English speakers can understand Spanish;
- (8) Ensure that the comments made by the public, in both English and Spanish, through comment periods, public meetings of the SVSWA and other relevant bodies, are recorded adequately and faithfully, so that it serves as a meaningful and accurate record of the comments;
- (9) Cease siting waste management and other polluting facilities in a discriminatory fashion that disproportionately affect communities of color and immigrants, such as Gonzales.
- (10) Respect environmental justice principles, and develop a SVSWA Environmental Justice Policy in compliance with state and federal environmental justice principles, in consultation with communities within the SVSWA jurisdiction;
- (11) Assure full compliance with the Brown Act in providing transparency in proceedings, notification, copies of documents.
- (12) Provide complainants with copies of all correspondence to or from the SVSWA throughout the course of the investigation, deliberation and disposition of this Complaint.

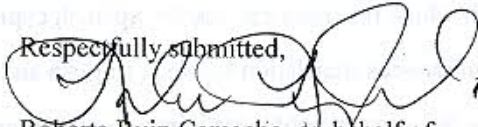
VIII. CONCLUSION

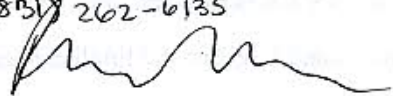
SVSWA is a local authority subject to Ca. Gov. Code Section 11135 because it receives state funding, but violated its provisions by engaging in both actions that will cause significant adverse impact on Latinos and Spanish speakers in Gonzales on the basis of race, national origin, and ethnic group identification, as well as acts that constitute intentional discrimination against them on protected characteristics.

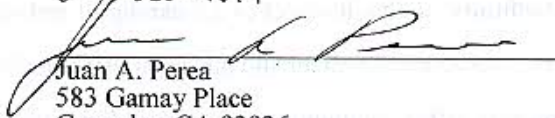
We call on the State of California to investigate these actions, and seek enforcement of the requested remedy.

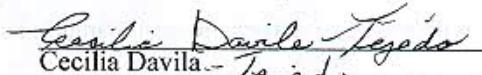
DATE: February 28, 2012

Respectfully submitted,


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Asamblea Poder Popular de Gonzales Complaint Against Salinas Valley Solid Waste Authority
Under Ca. Gov. Code Sect. 11135
February 28, 2012

LIST OF EXHIBITS

EXHIBIT 1. “Summary of Current & Previous State and Federal Grants as of February 2012”, received from the Salinas Valley Solid Waste Authority on 2 February 2012 in response to a California Records Act Request by Greenaction

EXHIBIT 2. Greenaction for Health and Environmental Justice, “Untrue Statements and Key Omissions by the Salinas Valley Waste Authority in their Presentation to SVSWA Board Members Urging Approval of Moving Forward With the Proposed Plasma Arc Facility”, February 4, 2011

EXHIBIT 3(A) & 3(B). SVSWA, “Public Information and Public Participation Opportunities Regarding a Proposal by Salinas Valley Solid Waste Authority to Develop a Plasma Arc Gasification Facility at the Johnson Canyon Landfill” (no identifiable date on the text, but community members received it with their utility bill on February 3, 2012) (A – ENGLISH; B – SPANISH)

EXHIBIT 4. Letter from Asamblea Poder Popular de Gonzales & Greenaction for Health and Environmental Justice on “Fatal Defects in SVSWA Notice of Scoping Meeting & Request to Cancel Scoping Meetings of February 22 and 28, 2012”, February 15, 2012

EXHIBIT 5(A) & 5(B). Notice from SVSWA received by Gonzales residents on February 15, 2012 (containing similar information from the notice that arrived February 3, 2012, but with revised Spanish information that listed both the February 22 and 28, 2012 scoping meetings.) (A-ENGLISH; B-SPANISH)

EXHIBIT 6. Letter from Assemblymember of 28th District Luis Alejo, on “Salinas Valley Solid Waste Authority’s Failure of Appropriate Notice on CEQA Process to Gonzales City Residents” (requesting cancellation of scoping meetings), February 16, 2012.

EXHIBIT 7. Copy of Email Response from Susan Warner, Diversion Manager of SVSWA, responding to Asamblea and Greenaction letter of February 15, 2012 which requested cancellation of the February 22 and 28, 2012 scoping meetings.

EXHIBIT 8(A), 8(B) & 8(C).

8(A) (Partial) List of “Gonzales, Ca. Residents Who Submitted Written Requests To Salinas Valley Solid Waste Authority On 20 January 2011 For Notice For ‘Any And All Opportunities For Public Comment On Waste Treatment Technologies And/Or Facilities Being Considered Or Proposed For The Salinas Valley’”; and

8(B) - Sample Request in English and

8(C) – Sample Request in Spanish

EXHIBIT 9. Plasco, Drawing of proposed facility, submitted in 2008 to SVSWA in response to Request for Proposals. Source: Conversion Technology Commission, Agenda Packet for October 29, 2008