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Equity Groups Urge CalEPA To Extend Civil Rights Pact To Meet Deadlines

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California environmental justice organizations are urging CalEPA and the state toxics department to extend the expiration date of a civil rights legal settlement they reached with the agencies in 2016, to help ensure regulators comply with requirements to strengthen hazardous waste dump permitting and other key provisions.

“We write to provide details of the ongoing violations of the Settlement Agreement, to request that immediate action be taken to bring CalEPA and [the Department of Toxic Substances Control (DTSC)] into compliance, and to propose that the Settlement Agreement be extended two years to allow for compliance with all terms of the Settlement Agreement,” states [a July 8 letter](#) to CalEPA Secretary Jared Blumenfeld and DTSC acting director Meredith Williams.

The letter is signed by representatives of two environmental justice groups -- being represented by California Rural Legal Assistance (CRLA) -- that were parties to the 2016 civil rights legal settlement. The groups are Greenaction for Health and Environmental Justice and El Pueblo Para el Aire y Agua Limpia.

The groups reached a legal settlement with CalEPA and DTSC in August 2016 that resolved a federal Title VI civil rights complaint they filed with EPA over DTSC's 2014 decision to approve a permit to expand the Kettleman Hills hazardous waste landfill.

DTSC and CalEPA receive financial assistance from EPA and are thus 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.

Representatives of the equity groups met with Blumenfeld and Williams in Kettleman City on July 10 to discuss the status of the settlement agreement and the groups' request to extend its Aug. 10 expiration date by two years “to allow for DTSC and CalEPA to fully comply with all the terms of the Settlement Agreement,” the letter says.

A CalEPA spokesman declined to comment on the meeting and whether the agency would agree to extend the expiration date.

But a source with the environmental justice organizations says CalEPA and DTSC officials said at the meeting that they would decide on the request for the two-year extension by the end of July and notify the equity group representatives at that time.

The equity groups claim DTSC and CalEPA have violated key provisions of the pact, including “timelines to adopt policies and regulatory criteria to use in permit decisions and allowing the State’s hazardous waste landfills to continue to operate on expired permits without submitting adequate renewal applications,” the letter says.

Specifically, the groups allege that DTSC has failed to meet the requirements of a 2017 law, SB 673, to adopt criteria to consider cumulative impacts in permit decisions by Jan. 1, 2018. They say DTSC does not plan to implement SB 673 until at least 2020.

“By extending the timeline for SB 673 implementation, DTSC will allow permit decisions between now and implementation to occur without the additional protections of SB 673,” the groups say in their letter.

Civil Rights Policy

DTSC’s civil rights policy and its implementation plan for the civil rights and language access policies are also deficient, the equity groups argue.

“The Civil Rights Policy lacked substantive mandates for DTSC compliance with state and federal civil rights laws. . . . DTSC failed to include the necessary additional substantive requirements in the final Policy, stating that the substance of the Policy would be included in the Implementation Plan. DTSC has since stated that the Implementation Plan will not be considered a binding document with the force of the Policy, but instead will be used to guide employee actions, resembling an internal DTSC employee handbook,” the letter says.

The department’s decision to “interpret the Implementation Plan as mere guidance rather than a binding policy is unacceptable,” the groups add. “By interpreting the Policy as the sole binding civil rights document, DTSC adopted a

document that lacks substantive commitments to civil rights laws and is unlikely to ensure compliance with DTSC’s legal obligations.”

The groups also complain that DTSC and CalEPA continue to allow the two hazardous waste landfills in the state -- Kettleman City and Buttonwillow -- to operate on expired permits. “DTSC has stated that this might continue indefinitely. Meanwhile Latino residents continue to disproportionately bear the burden of hazardous waste facilities and having facilities with expired permits further exposes them to those burdens without the protection of possible new mitigation measures, SB 673 analyses, or any new information since the expired permit was approved.”

DTSC’s current permit review process is also inadequate to comply with the settlement agreement, the groups charge. DTSC released a draft Environmental Document Analysis (EDA) this year, one of the steps in the permit review process. But the EDA “does not address specific points in the settlement agreement, nor does the permit review process in general.”

The pact requires DTSC to consider specific factors when reviewing the Kettleman Hills facility permit application, the groups say. For example, one section requires DTSC to consider “Kettleman City’s vulnerability as identified by CalEnviroScreen . . . including pollution levels, income, health, linguistic isolation and language access needs,” the letter says. In addition, DTSC is required to “consider whether the ‘processes undertaken in relation to the permit decision are consistent with applicable civil rights laws.’”

The environmental justice groups are also urging DTSC and CalEPA to begin an environmental review process under the California Environmental Quality Act (CEQA) for a permit renewal for the Clean Harbors Buttonwillow Landfill.

“DTSC and CalEPA stated in 2018 that Kern County soon would start the CEQA process for the Clean Harbors’s permit application for a permit renewal for Buttonwillow. However, a Notice of Preparation (NOP) for the CEQA process for this facility has not been issued; the CEQA process must begin immediately to ensure that environmental review and protections are implemented as soon as possible,” the letter says.

The equity group source says extending the settlement agreement and its accountability provisions by two years is important “to hold their feet to the fire,” but “we have additional ways to do that, if necessary.”

If the regulators decide not to extend the settlement, the equity groups will press forward with other actions to ensure the provisions are implemented, the source says.

“I don’t think it hurts our ability to negotiate, due to the effectiveness of [our groups],” the source says. “We will continue to be able to be at the table directly.”

If the agencies continue to “breach” the settlement provisions, the equity groups may consider refiling another civil rights complaint “to add to the pressure,” the source adds. “But we’re hoping not to have to do that.” -- *Curt Barry* (cbarry@iwpnews.com)