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**BOARD OF SUPERVISORS CITY OF SAN
FRANCISCO**

Planning Case No. 180841

**GREENACTION for HEALTH and
ENVIRONMENTAL JUSTICE**

**APPEAL OF EIR APPROVAL INDIA BASIN
PROJECT**

v.

DATE: September 17, 2018

**SAN FRANCISCO PLANNING
DEPARTMENT**

INTRODUCTION

On August 27, 2018, Greenaction for Health and Environmental Justice (“Greenaction”) appealed the Planning Commission’s (“Planning”) approval of India Basin Mixed Use Project.

Among the issues raised on appeal is language access. Planning’s failure to provide translated documents in the EIR process inherently discriminated against limited English proficiency (“LEP”) citizens and barred them from active participation in local decision making directly affecting their health. This brief addresses the language access issues on appeal.

STATEMENT OF FACTS

On June 7, 2016, Greenaction wrote to Planning raising the language access issue in the Scoping and EIR processes; English-only notices in the environmental review process. (See *Exhibit*

E, pg. 1). Planning's Brett Bollinger responded on June 7, 2016. Mr. Bollinger stated that it did “not have the resources to translate every page of analysis into multiple languages.” (See Exhibit H, pg. 1). Mr. Bollinger also provided a link to the Mayor’s Office of Disability for individuals that need translation services.

By email correspondence on September 29, 2017, Planning’s Joy Navarrete stated that it would “translate the Notice of Availability of the Draft EIR into Spanish Chinese, and Tagalong.” (See Exhibit I, pg. 1). Navarrete also acknowledged that lack of the translations, describing it as an “unfortunate oversight.”(See Exhibit I, pg. 1).

On September 8, 2017, in an email from Lisa Gibson, the Environmental Review Officer at Planning, Gibson stated the developer BUILD, Inc., had “proposed” to translate the Draft EIR Executive summary into other languages: “We acknowledge that the department did not provide a translated Notice of Availability of the Notice Preparation of an EIR, *an oversight we deeply regret.*” (Emphasis added, See Exhibit A pg. 2). To the extent Planning did translate the documents into the locally relevant languages, it was too late to provide LEPs with an opportunity to participate.

The City of San Francisco’s website contains a section entitled *Language Diversity Data* which displays the breakdown of languages spoken by neighborhood (<https://sfgov.org/oceia/language-diversity-data>). Bayview, the neighborhood the India Basin project will join, has a total of 34,956 residents. Below is a breakdown of the limited English proficient (LEP) community in Bayview alone:

Total Population by Language spoken at home, Limited English Proficient (“LEP”)

Language	Number of (LEP) Residents
Chinese	6,189
Spanish	3,180
Vietnamese	609
Filipino	321
Other Asian Pacific Islander	262

Other Indo European	96
Russian Polish or Slavic	39
German	17
French	11
Korean	9

This data demonstrates that 10,733 of the 34,956, or 30.7% of Bayview residents, have limited English abilities.

In total, the city’s website counts 171,758 LEPs citywide, a significant proportion to exclude from civic engagement.

ARGUMENT

I. Planning Has a Duty to Translate Important Documents such as the Notice of Availability and the Draft EIR Into Locally Relevant Languages.

A. Excluding LEPs from Civic Decision Making Is Discriminatory under Title VI of the Civil Rights Act of 1964.

Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. 28 C.F.R §42.104 (vii)(3) states:

In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

By excluding LEPs from civic decision making, Planning is discriminating against LEPs based on national origin. By not providing the Notice and draft EIR in languages other than English, Planning is actively excluding individuals from a program that has direct impact on them; in this case, significantly more air pollution that will impact their health.

The U.S. Department of Justice issued guidance establishing four factors that an agency may use to determine whether it must provide access to language services: 1) How many limited English-

proficient speakers does the program serve or encounter? 2) How often do limited English-proficient speakers come into contact with the program? 3) What kind of program, activity, or service does the agency provide and how important is it to people's lives? 4) How much will it cost to provide language access services and what resources are available to the program?

<https://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf>.

In applying these factors to India Basin, it is clear that significant numbers of LEPs are affected and Bayview LEPs will encounter the India Basin project every day. Planning's decision is critically important to the community's health. Furthermore, although Planning claims it does not have the resources to translate, it has not offered any quantification of those costs whatsoever. Under the circumstances, Planning's failure violates the DOJ guidelines.

Language access is not merely about process, it is a tool that allows the residents of Bayview to advocate for their health and well-being and protect themselves from diseases like asthma, to which they are already susceptible.

Planning did not take into account Bayview's LEP population in making its decision. This constitutes discrimination based on national origin. Planning calls its failure "an unfortunate oversight," (*See Exhibit I*, pg. 1) but in reality it is an admission Planning knows it should have translated important documents but did not.

B. Excluding LEPs Is Discriminatory Under California Gov. Code 11135

Gov. Code 11135 states:

No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."

This language is much broader than Title VI, incorporating more protected categories.

Language discrimination implicates all of the protected classes underlined above.

C. Excluding LEPs From Civic Decision Making Violates The Dymally-Alatorre Bilingual Services Act

Under Government Code Section 7290, et seq., California state and local agencies are required to facilitate access to information and services for non-English speaking members of the public. The Act states “that the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the rights and ability of the government to communicate with them.”

Planning failed its obligation as a lead agency to assess the need for translating notices into non-English languages. It also ignored Greenactions request for translation on multiple occasions. Planning’s violation of this act bars citizens from their lawful right to participate in civic decision making.

In addition, in August 2016, Greenaction, El Pueblo para el Aire y Agua Limpia (joint plaintiffs) and the California Environmental Protection Agency (“EPA”) and Department of Toxic Substances Control (“DTSC”) entered into an agreement in a case involving permitting hazardous waste facilities in Kettleman, California. In it, EPA and DTSC committed “to provide meaningful opportunities for public input, including language access and community education, and to be responsive to all public inquiries.” The settlement called for translation of executive summaries of decision-making documents and supporting technical documents of substantial importance, “including California Environmental Quality Act decision documents prepared by DTSC.” The settlement calls for “[t]imely notices in English and any other appropriate languages, with the English and translated versions on the same page when feasible, for workshops, meetings, available drafts, comment periods, and related documents and publications,” and “accommodation of cultural, linguistic, and educational characteristics of the affected communities.” (See *Exhibit J*, pp. 3-7.)

While the Kettleman Settlement may not bind City agencies, it establishes a template for language access throughout California – one San Francisco, a city that proudly welcomes non-English-speaking immigrants from around the world, should embrace.

D. Excluding LEPs Violates San Francisco Administrative Code, Chapter 12A

Administrative Code Chapter 12A.2 states:

It is hereby declared: That the policy of the City and County of San Francisco is to act to give effect to the rights of every inhabitant of the City and County to equal economic, political and educational opportunity, to equal accommodations in all business establishments in the City and County and to equal service and protection by public agencies; That an instrumentality should be established to give effect to such rights, to eliminate prejudice and discrimination because of race, religion, color, ancestry, age, sex, sexual orientation, gender identity, disability, or place of birth, to inform the inhabitants of the City and County of developments in human relations, to provide expert advice and assistance to the officers, agencies, boards, departments and employees of the City and County in undertaking ameliorative practices to keep peace and good order and to officially encourage private persons and groups to promote and provide equal opportunity for and good will toward all people.(Emphasis added.)

Planning's refusal to offer translations of important documents contradicts this San Francisco policy. By not accommodating LEPs, it has barred equal access to public agencies by virtue of their non-English-speaking ancestry and place of birth. Though Planning provided a link to the Mayor's Office of Disability for those seeking translation services, this only serves to underline unequal access for two reasons. First, the link was provided in *English*, the very language LEPs need translation help with. Why would one look for language translation services under "disability?" This is hardly adequate notice. Second, the link was to the Department of Disabilities, alluding to LEPs as having disabilities. This is not the attitude San Francisco government agencies should take.

E. Excluding LEPs is a violation of the Planning Department's own Language Access Ordinance

In addition to the City-wide policy, Planning has its own language access policy. It states it will provide free language assistance to LEPs when *requested*. (See <http://sf-planning.org/language-access-ordinance>). Planning provides both translation and interpretation services.

Greenaction *requested*, on June 7, 2016, that the Planning Department extend the public comment period beyond July 1 2016 to ensure meaningful civic engagement and to ensure environmental documents were prepared and provided in additional languages besides English. On June 9, 2016 the Planning Department denied Greenaction's requests. This denial is in direct

contradiction with the policy they allegedly uphold themselves to. Thus, the Planning Department has not upheld their duty to provide language assistance to (LEP) speakers.

Conclusion

Planning has failed in its duty to provide access to decision making processes to LEPs through its failure to provide adequate translation services. Its failure is discriminatory and has created a significant bar on civic engagement in violation of federal and state law and city policy. Its failure has created a significant bar on civic engagement in the India Basin project. Planning's decision must be overturned.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Castleman", with a long horizontal line extending to the right.

Steven Castleman

September 17, 2018

EXHIBIT J

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made, entered into and executed by and between Greenaction for Health and Environmental Justice and El Pueblo para el Aire y Agua Limpia (collectively, Complainants) and the California Environmental Protection Agency (CalEPA) and Department of Toxic Substances Control (DTSC).

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, and the United States Environmental Protection Agency (U.S. EPA) Title VI regulations, 40 C.F.R. Part 7, prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. DTSC and CalEPA are recipients of financial assistance from U.S. EPA and are subject to the provisions of Title VI and U.S. EPA's implementing regulations.

SECTION I: FACTUAL BACKGROUND.

The Parties

- A. El Pueblo para el Aire y Agua Limpia (El Pueblo) is a grassroots unincorporated association of the residents of Kettleman City, California. El Pueblo advocates for the health of Kettleman City residents, to preserve a clean environment, and for the rights of the people of Kettleman City.
- B. Greenaction for Health and Environmental Justice (Greenaction) is a grassroots organization that advocates for a clean environment for all people and for meaningful and equal opportunities for public involvement in government decision-making processes for environmental justice communities and other communities, including, but not limited to, non-English speaking and limited-English speaking communities.
- C. CalEPA is the State of California's cabinet-level environmental agency, comprised of DTSC, the Air Resources Board, the Department of Pesticide Regulation, the Department of Resources Recycling and Recovery, the Office of Environmental Health Hazard Assessment, and the State Water Resources Control Board. CalEPA's mission is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality.
- D. DTSC, among other functions, oversees the permitting of hazardous waste facilities. DTSC's mission is to protect California's people and environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

Kettleman City, the Kettleman Hills Facility, and the Permit Modification Decision

- E. Kettleman City is located in Kings County, California. A substantial percentage of Kettleman City residents are monolingual Spanish speakers.

- F. The Kettleman Hills Facility (KHF) is a hazardous waste disposal facility owned and operated by Waste Management, Inc. through its subsidiary Chemical Waste Management, Inc. KHF is located approximately three miles from Kettleman City in Kings County.
- G. Chemical Waste Management, Inc. has a permit to dispose of hazardous waste in KHF. DTSC approved a modification to the permit on May 21, 2014, expanding the hazardous waste landfill unit (B-18) at KHF.

Petitions for Review of the 2014 Permit Decision

- H. Greenaction and El Pueblo objected to DTSC's May 21, 2014, permit decision on numerous grounds, including civil rights grounds, and filed a Petition for Review of the decision with DTSC on June 23, 2014.
- I. DTSC denied the Petition for Review on October 13, 2014.

Title VI Complaint to the U.S. EPA's Office of Civil Rights

- J. El Pueblo and Greenaction filed a complaint (the Title VI Complaint) with U.S. EPA's Office of Civil Rights (OCR) against CalEPA and DTSC on March 19, 2015, (EPA File No. 09R-15-R4). The Title VI Complaint objected to DTSC's May 21, 2014, permit decision.
- K. OCR accepted the complaint for investigation by letter on April 17, 2015, concluding it met the four jurisdictional requirements described in U.S. EPA's nondiscrimination regulations.
- L. OCR identified in its acceptance letter the three areas for investigation under U.S. EPA's jurisdiction and stated that it would contact the parties about alternative dispute resolution. The parties agreed and mediation sessions were held on the following dates in 2016: January 19 and 20, February 24, April 1, May 6, June 15, and July 29.

SECTION II: RECITALS.

- A. DTSC and CalEPA are committed to carrying out their responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA implementing regulations. The activities detailed in Sections III and IV of this Agreement, which DTSC and CalEPA have voluntarily agreed to undertake and implement, are in furtherance of this commitment;
- B. DTSC and CalEPA are committed to continually improve their internal operations and processes, and strive to streamline CalEPA and DTSC operations through optimally utilizing information technology and human resources;

- C. DTSC and CalEPA are committed to provide meaningful opportunities for public input, including language access and community education, and to be responsive to all public inquiries;
- D. DTSC and CalEPA maintain an ongoing interest in integrating better protections for human health, vulnerable communities, the environment, and civil rights into DTSC programs;
- E. Complainants advocate for meaningful and equal opportunities for public involvement in government decision-making processes for environmental justice communities and other communities, including, but not limited to, non-English speaking and limited-English speaking communities;
- F. Complainants are committed to ensuring that Kettleman City is restored to being a healthy, vibrant community, removing the ill effects of decades of hazardous waste in its environs, and improving the quality of the environment, life and health for Kettleman City residents;
- G. Complainants are committed to ensuring that the civil rights of Kettleman City residents and all people of color and non-English proficient people are respected, protected and enforced so they can effectively and safely participate in environmental, permitting and governmental decision-making processes that are language accessible and free of intimidation;
- H. This Agreement is a model for the types of activities and considerations that can help vulnerable communities and DTSC's actions in vulnerable communities;
- I. Complainants and CalEPA and DTSC agree to work together to continue to increase opportunities to assist vulnerable communities, including, but not limited to, communities predominantly comprised of low-income people of color disproportionately affected by socio-economic burdens and environmental pollution (e.g., factors identified by health screening tools such as CalEnviroScreen), and to provide for meaningful public involvement; and
- J. El Pueblo, Greenaction, DTSC and CalEPA, (collectively, the Parties) therefore agree to the following terms described in the remainder of this Agreement.

SECTION III: SPECIFIC TERMS RELATED TO KETTLEMAN CITY.

- A. Notice to Complainants of Actions at KHF. DTSC will continue to notify Complainants, through DTSC's electronic notification system, of opportunities for public comment and other important actions related to KHF. DTSC will notify Complainants of any statement of violation or enforcement order related to KHF's hazardous waste landfill operations and will make non-confidential background information available online if notice is not already provided through the existing notification system. DTSC's provision of additional non-electronic notifications to the Complainants ends when DTSC makes a decision on Chemical

Waste Management, Inc.'s permit renewal application submitted to DTSC on February 12, 2013. DTSC will notify the Complainants of that decision.

- B. Considerations related to KHF Hazardous Waste Permit Applications. DTSC acknowledges that decisions regarding whether to issue or deny Chemical Waste Management, Inc.'s permit renewal application submitted to DTSC on February 12, 2013, and any other permit decision for KHF must be made on the record after public notice, an opportunity for public comment, and public hearing(s) in compliance with the California Health and Safety Code, California Administrative Procedures Act, and applicable regulations including civil rights and language access regulations and laws. DTSC may not predetermine its permitting decisions. Consistent with these requirements, DTSC will consider the factors listed below related to Chemical Waste Management, Inc.'s February 12, 2013, permit renewal application and for an application to expand a hazardous waste management unit at KHF, if such application is submitted during a three-year period following the Effective Date of this Agreement. The factors to be considered include:
1. Kettleman City's vulnerability as identified by CalEnviroScreen indicators for such vulnerability, including pollution levels, income, health, linguistic isolation and language access needs.
 2. Whether the decision on the permit application and processes undertaken in relation to the permit decision are consistent with applicable civil rights laws.
 3. Enforcement actions against KHF since the last permit issuance.
 4. Violations or noncompliance that show a repeating or recurring pattern.
- C. Petitions for Review and Civil Rights. DTSC acknowledges that Petitions for Review of permit decisions are an appropriate forum in which to raise objections to DTSC's permitting decisions that include civil rights claims, when those objections are raised consistent with DTSC's regulations.
- D. Improved Air Quality Controls. DTSC, using its regulatory authorities during the consideration of the February 12, 2013, permit renewal application, and in consultation with CalEPA and the San Joaquin Valley Air Pollution Control District, will analyze measures to reduce air pollution related to KHF's hazardous waste management activities to help improve air quality in Kettleman City. These analyses will include the consideration of:
1. Use of emissions control devices for vehicles and equipment used on-site and in association with the hazardous waste operations at KHF.
 2. Rerouting trucks associated with KHF's hazardous waste operations either by avoiding the use of Highway 41 by those trucks within Kettleman City limits or by requiring the trucks to use a bypass.
 3. Coordination with the California Air Resources Board and the San Joaquin Valley Air Control District to reduce illegal diesel vehicle idling.
 4. Monitoring and enforcement of permit conditions.
- E. Improved Environmental Monitoring and Enforcement. DTSC will use its best efforts to support additional monitoring including of the air and water quality in Kettleman City and its environs through support of grant funding opportunities during the three years following the Effective Date of this Agreement. This support will include:

1. Efforts to identify potential sources of funding for a neutral, third-party expert to conduct air and water quality monitoring not otherwise funded by Chemical Waste Management, Inc.
2. Providing technical assistance to prepare and submit grant applications, and as appropriate, may apply or co-apply or provide assistance as a supporting agency.
3. Supporting, as needed, community education meetings including written notices of such meetings, in English and Spanish, that help to inform community members about what is being monitored, whether any issues have been identified, how such issues are being addressed, and whether there is progress toward addressing the issues.
4. Supporting community monitoring activities (separate from expert third-party monitoring) by working to identify potential sources of funding for monitoring activities and for a third-party expert to conduct an analysis of the community air monitoring data, providing technical assistance to prepare and submit grant applications, and as appropriate, may apply or co-apply or provide assistance as a supporting agency.

F. Public Health Assessments and Programs in Kettleman City. DTSC, in consultation with CalEPA, will use its best efforts to support and cooperate in the Complainants' efforts to develop the following public health assessment and programs in Kettleman City during the three years following the Effective Date of this Agreement. The Parties recognize that Complainants have limited capacity and that execution of the below activities can only occur if sufficient technical and financial support is provided:

1. A community-based participatory environmental health assessment that analyzes the human health effects in Kettleman City from exposure to pollution, including air pollution, hazardous waste, and other contaminants, as appropriate. This assessment will include the following:
 - a. Researchers with expertise working with community members, including from the University of California or other recognized experts in the field identified and approved by DTSC and Complainants. These expert partners will help to design the assessment, in conjunction with members from the Kettleman City community, and collect and analyze the relevant data in a participatory manner.
 - b. Biomonitoring of willing individuals from the Kettleman City community and employees of KHF. Researchers will collect and analyze, in a participatory way, information on the health indicators of the residents and employees, including the degree of exposure to toxic substances, and other substances that may pose health risks, and make that information available to the residents of Kettleman City and KHF employees in an accessible form. Biomonitoring activities shall comply with applicable legal obligations, including confidentiality requirements. The Parties agree that biomonitoring information could be submitted to DTSC during its consideration of any permit application by Chemical Waste Management, Inc. related to KHF, and that DTSC shall consider the data during its review and decision on any such permit.
 - c. Efforts to identify federal or state grants or funding from other sources. DTSC and CalEPA, as appropriate, may apply or co-apply or provide assistance as a supporting agency for such funding opportunities, with third parties such as community groups or a California university identified and approved by Complainants and DTSC, and

- provide technical assistance to these third parties to prepare and submit grant applications for public health assessments and bio-monitoring.
 - d. Materials, findings, and recommendations accessible to Kettleman City residents and prepared in both English and Spanish.
 - e. Regular evaluations of the progress of the assessment.
2. An asthma intervention program to help inform and address the asthma issues among the residents of Kettleman City after funding is secured and includes the following:
 - a. Researchers with expertise working with community members, including from the University of California or other recognized experts in the field identified and approved by DTSC and Complainants, with input from any individuals from the Kettleman City community who wish to provide input. These expert partners will help to design and implement the asthma intervention program in a participatory manner.
 - b. Federal or state grant funding, or funding secured from other sources with CalEPA and DTSC assistance.
 - c. Program design and implementation with the active, meaningful participation of the Complainants and individuals from the Kettleman City community.
 - d. Regular evaluations of the asthma intervention program's progress.
 - e. Regular reporting of the program's findings that are translated into Spanish and accessible to the residents of Kettleman City.

G. Clean Water for Kettleman City.

1. DTSC and CalEPA agree to consult with relevant agencies to provide updates to community residents on the status of the Kettleman City Community Services District's Surface Water Treatment Facility drinking water project.
2. DTSC and CalEPA agree to use their best efforts to request expedited review and implementation of the water project.

SECTION IV: PROGRAMMATIC AND REGULATORY TERMS.

- A. Civil Rights Compliance: Applicable state and federal civil rights requirements will be complied with during DTSC's permitting process for hazardous waste disposal facilities and during regulatory oversight of facilities under its jurisdiction.
1. Applicable civil rights requirements include (but are not limited to) the following:
 - a. The Civil Rights Act of 1964 including Title VI of that Act.
 - b. The Dymally-Alatorre Bilingual Services Act of 1973.
 - c. California Government Code 11135.
 2. DTSC will take into account and address as appropriate relevant civil rights guidance during its permitting process for hazardous waste disposal facilities, including:
 - a. U.S. EPA Title VI Limited English Proficiency Guidance, 69 Federal Register 35602.
 - b. U.S. Department of Justice Title VI Limited English Proficiency guidance, 67 Federal Register 41455.
 - c. DTSC Bilingual Services Policy.

- B. Civil Rights Policy. DTSC, in consultation with CalEPA and after public comment, will adopt and implement a policy that describes DTSC's compliance with civil rights requirements during DTSC's permitting processes for hazardous waste facilities. DTSC will publish a draft civil rights policy, including language access policies, no later than nine (9) months after the Effective Date of this Agreement and will adopt a final policy no later than eighteen (18) months after the publication of the draft policy. The draft policy circulated for public comment shall include the following elements:
1. The review of hazardous waste permit applications.
 2. Comments on such applications.
 3. The creation of environmental documents and hazardous waste permit decisions.
 4. Consideration of Petitions for Review to appeal a permit decision for alleged civil rights violations.
 5. In the event that non-compliance is found, a procedure to address civil rights complaints raised during public comment periods and in Petitions for Review of permit decisions.
- C. Public Participation and Language Access Policies. DTSC will, after receiving public comment, adopt and implement one or more policies to enhance public involvement using procedures that provide for early identification and integration of public concerns into permitting decisions, including concerns of communities identified pursuant to Health and Safety Code Section 39711. DTSC will draft a policy or policies on public participation and language access for DTSC processes no later than nine (9) months after the Effective Date of this Agreement and will adopt a final policy or policies eighteen (18) months after the publication of the draft policy or policies. In developing the policy or policies on public participation and language access DTSC will consider the following:
1. The need for language access in DTSC processes and the need to collect and assess data on the Limited English Proficiency (LEP) needs of the individual communities affected by DTSC's hazardous waste disposal permitting processes.
 2. The need for DTSC to develop a comprehensive action plan to address identified LEP needs.
 3. Translation of executive summaries of decision documents and technical documents of substantial importance prepared by DTSC for permitting decisions, including California Environmental Quality Act decision documents prepared by DTSC.
 4. Meaningful public participation through processes that comply with civil rights laws, regulations, polices, and guidance and have the following elements:
 - a. Clear prohibition on discriminatory practices, including practices of intimidation and hostile environments that prevent meaningful public participation.
 - b. Meetings and hearings at appropriate times and locations that facilitate the ability of members of the public to participate, including interpretation in public meetings and hearings held by DTSC and translation of accompanying visuals, handouts, and presentations.
 - c. Timely notices in English and any other appropriate languages, with the English and translated versions on the same page when feasible, for workshops, meetings, available drafts, comment periods, and related documents and publications.
 - d. Accommodation of cultural, linguistic, and educational characteristics of the affected communities.

- D. Senate Bill (SB) 673 Regulatory Reform and Community Vulnerability. DTSC will, no later than January 1, 2018, and consistent with SB 673's (Sen. Bill No. 673 (2015-2016, 1st Ex. Sess.) requirements related to hazardous waste facility permit decisions, adopt by regulation criteria for permit issuance. In developing these regulations, DTSC shall consider criteria that will include 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.
- E. Coordination and Communication with Other Agencies. DTSC will transmit notice of new regulations, policies, and guidance to other state and local agencies with jurisdiction over hazardous waste disposal permitting after the completion of the new policies described in Section IV of this Agreement.

SECTION V: DISPUTE RESOLUTION TERMS.

- A. Notification: 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.
- B. Resolution: The parties shall attempt to resolve any disputed issue(s) by informal means if Complainants disagree with DTSC or CalEPA's execution of any of the terms described in this Agreement and submit written notice of this disagreement as described above in paragraph A of this section. 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. The Parties may agree in writing to continue the 60-calendar day period for dispute resolution.
- C. Alternative Remedies: If DTSC, CalEPA and Complainants are unable to reach a mutually acceptable resolution of the dispute within 60 calendar days, or other mutually agreed upon period of time, then Complainants may terminate this Agreement by providing a written notification to DTSC and CalEPA. Thereafter, Complainants may reinitiate their Title VI complaint resolved by this Agreement and use any other means authorized by law to raise claims regarding compliance with Title VI.

SECTION VI: EFFECT OF AGREEMENT AND PUBLIC DISCLOSURE TERMS.

- A. The Parties have settled the Title VI Complaint (EPA File No. 09R-15-R4) filed by Greenaction and El Pueblo as of the Effective Date of this Agreement. This Agreement constitutes a full and final release among the Parties (except for the executory provisions hereof) of only the specific claims made in Complainants' Title VI Complaint (U.S. EPA File No. 09R-15-R4) about the May 21, 2014, permit modification. Complainants reserve any

and all rights, claims, demands, and causes of action which they might have against CalEPA or DTSC with respect to any matter, transaction, or occurrence which was not made in Complainants Title VI Complaint specifically about the May 21, 2014, permit modification.

- B. The Parties agree that signing this Agreement will result in the full resolution of the Title VI Complaint (U.S. EPA File No. 09R-15-R4) and understand that OCR will issue a letter closing the complaint upon receipt of the executed Agreement. The Parties further acknowledge that the mediator will provide a copy of the executed Agreement to OCR.
- C. This Agreement constitutes the entire agreement between DTSC, CalEPA and the Complainants regarding the matters addressed, and no other statement, promise, or agreement, made by any other person shall be construed to change any term of this Agreement, except as specifically agreed to by DTSC, CalEPA and the Complainants in accordance with the provisions of this Agreement.
- D. This Agreement does not constitute an admission by DTSC or CalEPA or a finding of any violations of 40 C.F.R. Part 7 in connection with the allegations in Complainants' Title VI Complaint.
- E. This Agreement does not constitute an admission or decision by any party that hazardous waste permits for KHF should or should not be approved or should or should not include any specific conditions.
- F. The Parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement creates any right or interest in any non-party or in any member of the public as a third-party beneficiary.
- G. Any party seeking to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to DTSC's or CalEPA's programs or authorities, or for other good cause, shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement executed by all Parties.
- H. This Agreement is a public document. A copy of this Agreement and any information contained in it can be made available to any person by DTSC, CalEPA or the Complainants on request under the Public Records Act or otherwise.
- I. This Agreement shall remain in effect for three (3) years from its Effective Date, except as provided in Section III (A), (B), and (D). Nothing in this Agreement, however, shall affect DTSC's and CalEPA's continuing responsibility to comply with Title VI and the U.S. EPA's implementing regulations for Title VI, and the consideration of relevant civil rights guidance documents, which are not subject to the time limit expressed in this paragraph. This includes compliance with all civil rights requirements in any future permit decision.

- J. The undersigned representatives of each party certify that they are fully authorized to consent to the terms and conditions of this Agreement. Signature on a counterpart or authorization of an electronic signature shall constitute a valid signature.
- K. The Effective Date and date of execution of this Agreement is the date by which all Parties have signed this Agreement. This Agreement can be signed in counterparts.
- L. Notifications in the Agreement shall be provided to the following entities using the following contact information:
 1. Notification from DTSC or CalEPA to the Complainants shall be directed to:

Maricela Mares-Alatorre
 El Pueblo Para El Aire y Agua Limpia
 de Kettleman City
 Email: alatmig@netzero.net
 Phone: (559)816-9298

Marisol F. Aguilar, Esq.
 Director, Northern Region
 Community Equity Initiative
 California Rural Legal Assistance,
 Inc.
 Email: maguilar@crla.org
 Phone: (209) 577-3811

Ilene J. Jacobs, Director of Litigation,
 California Rural Legal Assistance,
 Inc.
 Email: ijacobs@crla.org
 Phone: (530) 742-7235

Bradley Angel
 Executive Director
 Greenaction for Health and
 Environmental Justice
 Email: Bradley@greenaction.org and
 greenaction@greenaction
 Phone: (415) 447-3904 ext. 102

Tovah R. Trimming
 Graduate Law Fellow
 Environmental Law and Justice Clinic
 Golden Gate University School of Law
 Email: ttrimming@ggu.edu
 Phone: (415) 396-5340


Helen Kang
 Director
 Environmental Law and Justice Clinic
 Golden Gate University School of Law
 Email: hkang@ggu.edu
 Phone: (415) 442-6693

2. Notification from the Complainants to DTSC or CalEPA shall be directed to:

Matthew Rodriquez
Secretary for Environmental
Protection
Email:
sectyrodriquez@calepa.ca.gov
Phone: (916) 324-9214

Barbara Lee
Director
Department of Toxic Substances
Control
Email:
DTSCdirectorsoffice@dtsc.ca.gov
Phone: (916) 322-0504

On behalf of the California Environmental Protection Agency

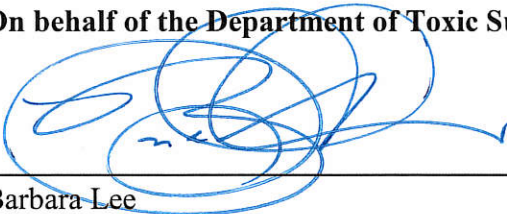


Matthew Rodriguez

8/9/16

Date

On behalf of the Department of Toxic Substances Control



Barbara Lee

8/9/16

Date

On behalf of Greenaction for Health and Environmental Justice



Bradley Angel

8/10/16

Date

On behalf of El Pueblo Para El Aire y Agua Limpia de Kettleman City



Maricela Mares-Alatorre

8/10/16

Date