



2009 Environmental Justice Enforcement Initiative Report



California
Department of
Toxic Substances Control

Preface

For the first time in history, the Enforcement and Emergency Response Program staff of the California Department of Toxic Substances Control (DTSC) produced a separate report to chronicle its environmental justice activities. The DTSC Environmental Justice Enforcement Initiative (the “Initiative”) Report is not only a report card on the Initiative. It is a statement about what we have learned since the Initiative’s inception in mid 2007. As you will see, we have learned a lot about what can make government more effective, efficient and transparent while addressing environmental harms and ensuring fair, consistent and uniform environmental enforcement in California.

This publication is unlike a traditional report because it describes our efforts at developing a timely and relevant community-based environmental enforcement model that taps both new technology and the knowledge of our citizens to improve the environment and keep Californians healthy. The model shows how government resources can be optimized to tackle environmental problems. We know there really is a “belly of the beast” – where some of the worst environmental harms and health risks exist in our state. We know there is power and strength in partnership and collaboration; enforcement can be more effective and efficient when community-based predictive policing is employed.

We also know that too many Californians have lost confidence in government and its ability to solve problems. Thus, the Initiative helps restore public trust by working with communities in developing meaningful performance measures for reducing environmental harms. As this report points out, it is all about embracing innovation and transparency while establishing community trust.

DTSC, and especially our Enforcement and Emergency Response Program staff and dedicated Initiative personnel, are indebted to the great partners from communities, academia, government and industry who contributed to this report, to our activities and to the success of the Initiative. We couldn’t do this work without them.



**Gale Filter, DTSC Deputy Director,
Enforcement and Emergency Response**

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Provide the highest level of safety, and protect public health and the environment from toxic harm.



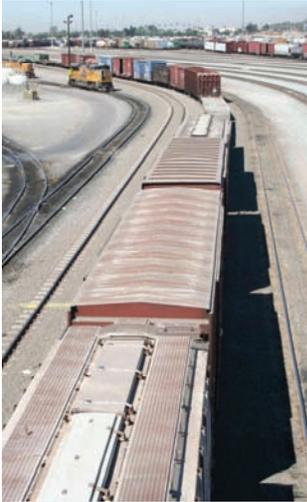
**“Pick important problems,
and fix them.”**

- Malcolm K. Sparrow,
author and professor,
John F. Kennedy School of Government
at Harvard University

**“Enforcement is a sometimes
over looked aspect of
environmental regulation,
since it is carried out
quietly by federal and
state agencies ... But
adequate enforcement is
critical to achieving the
objectives of our environ-
mental laws, particularly
in environmental justice
communities where so
many polluting facilities
are located.”**

- Clifford Rechtschaffen,
author and professor,
Golden Gate University
School of Law

Environmental Enforcement Is 'Thin Green Line'



Unknown to most Americans, there is a 'thin green line' of environmental enforcement protecting them from toxic harm.

The reasons stem, in part, from years of eroding resources, an inability for government to act swiftly to adopt and implement new technology that can better monitor and measure environmental damage and a history of government failing to develop partnerships.

Unfortunately, the future of environmental enforcement, even in environmentally conscious California, is not looking upbeat. California's state budget crisis forced state enforcement staff to take 26 furlough days in 2009, which basically provided polluters with five weeks when state environmental enforcement staff weren't on the job.

In 2010, proposed state salary reductions and benefit cuts threaten to stretch the thin green line even more as experienced environmental enforcement staffers take early retirement, find better paying jobs or move to other agencies. Already, California lacks sufficient staff to inspect more than a fraction of regulated facilities, let alone unregulated facilities, and resources to pursue more than a small percentage of violations are limited.

Yet, as the thin green line gets thinner, there are rising numbers of environmental and public health threats. Additionally,

the public is demanding greater accountability, responsibility and transparency in environmental enforcement.¹ But California regulators have great latitude in choosing whether to handle a violation administratively, civilly, criminally, or not at all.

Indeed, environmental enforcement traditionally has been carried out by state, local and federal agencies outside the glare of the public spotlight. Enforcement decisions, such as which agency is going to do an inspection, which facilities get inspected and when, where to allocate resources, what level of fine to impose, etc., are left to the discretion of each regulatory agency and typically aren't reviewed by the public for consistency and fairness.

Failure to enforce environmental laws and regulations on a consistent basis means, among other things, that deterrence is under-

¹ For example, see Public Policy Institute of California's 2007 survey, "Latino Attitudes and the Environment": 49% of all Californians say that state government is not doing enough to protect the environment as compared to 72% of Californian African Americans and 58% of Latinos. At http://www.ppic.org/content/pubs/jtf/JTF_LatinoAttitudesEnvironmentJTF.pdf.



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mined, and neither the public nor government has an accurate history of noncompliance for facilities in subsequent permit or enforcement proceedings.

It should come as no surprise that environmental justice (EJ) communities bear greater burdens since there tends to be a greater concentration of polluting facilities located in EJ neighborhoods than elsewhere in the state. No wonder, then, that EJ residents cry out for vigorous environmental enforcement.

For government to meet the demands for greater accountability, responsibility and transparency, especially in EJ communities, three objectives must be achieved:

- Reduction of environmental harms and health risks through targeted enforcement actions of the “worst offenders” identified by EJ communities.
- Minimization of arbitrariness by establishment of fair, consistent and uniform enforcement actions.
- Democratization of the decision- and policy-making environmental enforcement processes by opening enforcement to the public. Together, the community and government must develop and implement government strategies and performance measures for environmental enforcement.

The EJ Enforcement Initiative of the California Department of Toxic Substances Control (DTSC) provides a blueprint for change. It is, simply, a new model for environmental enforcement. Sean Hecht, former California Deputy Attorney General and now Director of the Environmental Law Center at The University of California, Los Angeles, Law School, notes that there is a need for “citizen regulators” because “government agencies are limited in their enforcement capacity.”²

² Lyndsey Layton, “Citizen Regulators’ Take Toy Safety Testing Into Their Own Hands,” Washington Post (December 26, 2009) at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/25/AR2009122501674.html>.

There also is a critical need to rethink how we measure success in our environmental enforcement programs. Traditional enforcement metrics invariably measure the number of inspections conducted, violations issued, cases opened and closed, settlements negotiated, monetary penalties and convictions obtained. Such measures can distort the efficacy of enforcement.

In contrast, the DTSC EJ Enforcement Initiative focuses on outcomes rather than outputs. In fact, the Initiative emphasizes effective and efficient enforcement by mandating that the work revolve around identifying and reducing environmental harms and health risks.

**Environmental Justice-Related
Strategic Plan Goals
Dept. of Toxic Substances Control
2009-2014***

- ⇒ **Maximize protection of human health and the environment, and the restoration of communities impacted by toxic harm.**
- ⇒ **Be a leader in the institutionalization of community policing to identify and reduce toxic harms.**

***Goals as of July 1, 2009**

Launched in mid-2007 by the California Environmental Protection Agency’s DTSC with a shoestring budget and minimal staffing, the Initiative is novel because it brings together government entities that partner with EJ communities to “spot and squish” environmental harms using today’s laws and regulations.

At DTSC, the Initiative is a fundamental level of enforcement work that compliments and strengthens our traditional environmental enforcement processes. The Initiative also is a key element of DTSC’s Strategic Plan.

This report tells the story of the Initiative’s activities in calendar 2009.

Collaboration and Ongoing Partnership Are Key To Effective Environmental Enforcement



EJ community members work with DTSC and other government staff as well as academia to solve environmental harms.



The DTSC Environmental Justice Enforcement Initiative brings a new and unconventional approach to environmental enforcement.

It was designed to address complaints about environmental enforcement in California, particularly the lack of enforcement in EJ communities. The Initiative also furthers DTSC's compliance with California's Environmental Justice law, which marked its 10-year anniversary in 2009.³

Environmental enforcement authority in California is decentralized, compartmentalized and fragmented. It's not unusual for state and local environmental agencies to employ different enforcement priorities and strategies. As a result, there are variations in programs, which impact the enforcement of environmental and health laws. A clear result of this fragmentation is that violation rates have been found to be higher in some areas than others, and "hot spots" of unlawful environmental conduct exist in the state.

³ California became the first state in the nation with an environmental justice law following passage and signing of SB 115 (Solis) in 1999. Government Code Section 65040.12 defines environmental justice in the state as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and **enforcement** of environmental laws and policies." (Emphasis added)

These hot spots are invariably found in EJ communities.⁴

The Initiative measures success by looking at enforcement work in specific EJ communities. But we don't just count cases opened and cases closed. We share the innovative enforcement tools that were employed in the enforcement work and the benefits obtained for the communities.

On one hand, we emphasize the effectiveness of partnering with EJ communities to help enforcement staff identify and reduce toxic harms efficiently. On the other, we examine the extent that EJ communities have been empowered and how a focused, coordinated effort at the community level contributes to specific improvements in the daily lives of the families that work, live and play in environ-

⁴ For example, see Natural Resources Defense Council (NRDC), "An Uneven Shield: The Record of Enforcement and Violations under California's Environmental, Health, and Workplace Safety Laws" (October 2008) at <http://www.nrdc.org/legislation/shield/shield.pdf> Also see Marianne Lavelle and Marcia Coyle, "Unequal Protection: The Racial Divide in Environmental Law," National Law Journal, September 21, 1992, S1-S12.



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mentally damaged geographical areas. The development and refinement of meaningful performance measures to track our EJ enforcement activities is an ongoing process and a priority.

Many of today's serious environmental and health challenges are rooted in our past. As early as three centuries ago, the United States experienced grave environmental problems as it tried to accommodate its rapidly expanding urban populations. Sewage and garbage disposal, noxious facilities, polluted water and air were urgent problems in many U.S. cities. America's urbanization was accompanied by social stratification and racial and class tensions. By the early 1900s, zoning laws began to formalize the separation of races, reduce animus and protect public health.⁵ Meantime, people of means could and did move away from the environmental problems.

Today, our water is more likely to be contaminated with pesticides and toxic chemicals than sewage and trash. Modern transportation has given rise to global warming and discovery of unhealthy air pollutants such as ultrafine particulates. Solid waste, which now includes plastics, chemicals, electronics and other toxic components, is a major problem as landfill space fills up



In Wilmington, a community near the Port of Los Angeles, it is common to see lines of diesel semitrailers. The rigs have been spotted a block from an elementary school, parked and idling, without drivers inside, as diesel emissions spew into the air.

⁵ Dorceta E. Taylor, *The Environment and the People in America Cities, 1600s – 1900s: Disorder, Inequality and Social Change*, Duke University Press (2009) pp. 381-404.

and EJ communities oppose new facilities. Today, noxious facilities are found in both urban and rural EJ communities. The politics of locating or expanding dumps and noxious facilities, or zoning that puts new developments next to dumps and noxious facilities, are major EJ issues, especially in a populous state like California. The state already has the highest concentration of minorities living near hazardous waste facilities in the United States.



In San Bernardino County, the rear yard of a day care center backs up to an unfenced cement facility, above, where dust and debris can affect toddlers' health. Vibrations from the facility have shaken tiles off bathroom walls at nearby homes.

California's EJ communities continue to bear an inequitable proportion of environmental burdens and health risks. Simply stated, many of the state's worst environmental harms and health risks are found in the "belly of the beast" -- the EJ communities that don't have strong, consistent environmental enforcement.

But the situation is different now than it was historically. We can no longer move away from communities with the worst environmental problems and be assured we are safe from toxic harm. Science tells us that today's environmental harms — such as air pollutants and contaminated water — are not confined by geographic boundaries. Nor, for that matter, can they be easily exported to foreign countries. Our serious environmental problems and the public health problems that they can cause can reach us all.



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That said, it has been shown that the people who are closest to the environmental harms – adults and children in EJ communities, for example, -- are the first to suffer ill effects from exposure to environmental toxins. And theirs are not one-time injuries. They often are forced to live with impaired health. Their environment, health, quality of life and even life span in California are decidedly different from that of other Californians.⁶

In 2009, DTSC enforcement staff did Initiative work in Imperial County, East Oakland, Pacoima, Wilmington, Maywood, San Bernardino/Riverside and the Fresno area. Each community has unique environmental burdens and health risks.

Imperial is the southernmost county in California and has the state's highest rate of childhood asthma hospitalizations. Nearly 85% of these hospitalizations involve Latino children.⁷

The community of Wilmington is adjacent to the Port of Los Angeles, and residents have complained for years about air pollution and respiratory illnesses. A study received in 2009 from the DELTA Group at the University of California in Davis showed the presence of lead and very fine metal particles in the air in Wilmington nearby a metal shredder that operates in the port.⁸ Lead is known to affect intellectual development in babies and

⁶ For example, see the Bay Area Regional Health Inequities Initiative's 2008 report, "Health Inequities of the Bay Area" which states: "Most experts agree that health care contributes only 10%-15% to health outcomes and life span. Where you live is probably a bigger determinant of your health than whether you have health insurance. People who live in West Oakland ... can expect to live on average 10 years less than those who live in the Berkeley Hills."

⁷ Border Asthma & Allergies Study Final Report at http://www.ehib.org/projects/BASTA_FINAL_Sept2009.pdf.

⁸ UC-Davis DELTA Group's "Final Report: Deposition of Coarse Toxic Particles in Wilmington, CA" April 4, 2009, at <http://www.dtsc.ca.gov/HazardousWaste/upload/Terminal-Island.pdf>.

DTSC EJ Enforcement Initiative Locations



children, and medical studies show toxic elements, especially very fine iron, can damage lungs of adults and children and contribute to high blood pressure and heart ailments.

San Bernardino County, home to major rail operations, has a densely populated neighborhood near a rail yard where the cancer risk is more than 2.5 times higher than for similarly situated neighborhoods in the state.⁹

The Elmhurst neighborhood in East Oakland is a predominantly African-American area of small, older homes mixed with industry, auto repair shops, abandoned business sites and freeways. East Oakland, as well as two adjacent zip codes close to the Port of Oakland, has the highest heart disease death rate of the Bay area.¹⁰

Despite the rural character of Fresno County and its neighboring communities in California's Central Valley, air pollution is a key

⁹ California Air Resources Board Health Risk Assessment for the BNSF Railway San Bernardino Railyard, June 11, 2008.

¹⁰See Oakland Tribune's "Shortened Lives: Where You Live Matters," published December 12, 2009, at <http://www.insidebayarea.com/life-expectancy>.



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concern. In 2009, Fresno ranked among the top seven U.S. cities in both year-round and short-term particle pollution and fourth in ozone pollution, according to the American Lung Association's State of the Air report. The rate of asthma among children in Fresno County is 50% higher than the statewide rate.¹¹

Meantime, with Fresno County at the heart of the state's largest agricultural production region, the state Department of Pesticide Regulation reports the amount of pesticides applied in the county increased to more than 27 million pounds in 2008, the latest year for which figures were available.¹²



EJ community residents open their homes and backyards to show environmental hazards that they live with daily.

Pacoima is a low-income, multi-cultural, working class community in the northeast San Fernando Valley of Los Angeles. There are at least 300 industrial sites in the area near residents' homes, and automotive dismantlers also have become an environmental concern.

A key part of the DTSC EJ Enforcement Initiative is predictive policing. It is a new enforcement paradigm for environmental protec-

tion that enables government and EJ communities to anticipate, prevent and respond to environmental harms more effectively.

Using predictive policing, DTSC environmental enforcement staff worked with community residents to identify hot spots of unlawful conduct in all of the EJ communities in which we have worked. We have found that Bill Gallegos, Executive Director of Communities for a Better Environment, is correct in saying, "If you want to save the environment, you must start with where it's at its worst." A disproportionate number of egregious environmental violations do exist in EJ communities.¹³

We also learned through the Initiative that EJ communities develop their own intelligence (often referred to as "ground truthing") and are extremely adept at identifying the environmental harms and health problems in their neighborhoods. By building trust with EJ communities and tapping this intelligence, government's environmental enforcement can become more efficient and better utilize enforcement resources.

In fact, DTSC intends to apply and share the Initiative's lessons to two U.S. EPA grant programs that were announced in November 2009. In the first grant, DTSC was among five state agencies sharing an \$800,000 award to support state efforts to work with disproportionately impacted communities in addressing local environmental and public health issues. In the second grant, DTSC will be among the entities participating in one of 10 EPA "showcase" grant programs. The money will support work with an EJ collaborative in Los Angeles.

DTSC's Initiative is consistent with U.S. EPA's "Proposed National Priority: Environmental Justice," released in December 2009, where EPA envisions geographic-based enforcement that partners with EJ communities.

¹¹ The Relationship Between Air Pollution and Lung Function in Asthmatic Children, California Air Resources Board presentation, Oct. 23, 2008, at <http://www.arb.ca.gov/research/health/healthup/octo8.pdf>.

¹² "Pesticide Use Up in Fresno County," The Fresno Bee, Jan. 7, 2010, <http://www.fresnobee.com/2010/01/07/1772879/pesticide-use-up-in-fresno-co.html?storylink=mirelated>.

¹³ Clifford Rechtschaffen, et al, *Environmental Justice: Law, Policy and Regulation*," pp. 35-71.

Toxic Bus Tours Are Just The Start Of Ongoing EJ Enforcement Task Forces



Once trust is established, government can find that EJ residents have lots of information about environmental and health problems.

Since the Initiative’s inception, we have learned and demonstrated the effectiveness of community intelligence in predicting, identifying, stopping and cleaning up environmental damage in an expeditious manner.

The Initiative uses bus tours guided by EJ community members to visit multiple sites in each community where environmental hazards are suspected. This kind of community-based predictive policing is complimented by a government-imposed deadline to return to each community within 100 days to share information and report on enforcement activities after each tour. Subsequent to each 100-day get-together, government and community residents establish ongoing community-based environmental task forces to maintain responsiveness, accountability, responsibility and transparency in addressing environmental hazards.

While the idea of “toxic bus tours” and workshops is not unique,¹⁴ the implementation, followup and transparency of DTSC’s Initiative is unprecedented in environmental enforcement. DTSC built the Initiative around

the concepts of community-based predictive policing and prosecutions. This is a hybrid of widely accepted law enforcement methods that DTSC applies to environmental violations in order to solve ongoing environmental hazards and public health risks.

Through the Initiative, we now know there must be a nexus of community policing, prosecution and environmental justice to produce consistent and effective environmental



Worried parents in EJ communities often speak about their fears for their children’s health.

¹⁴ For example, U.S. EPA Administrator Lisa Jackson used bus tours for “enforcement sweeps” when she was Commissioner of the New Jersey Department of Environmental Protection from 2006 to 2008.



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enforcement. Professor Malcolm K. Sparrow, faculty chair of the Executive Program on Strategic Management of Regulatory and Enforcement Agencies at Harvard University's John F. Kennedy School of Government, refers to community policing as "a police department striving for an absence of crime and disorder and concerned with, and sensitive to, the quality of life in the community. *It perceives the community as an agent and partner in promoting security rather than as a passive audience.*"¹⁵

James Q. Wilson and George L. Kelling coauthored the seminal work, "Broken Windows," that posits if a window in a building is broken and left unrepaired, the remaining windows will soon be broken. In other words, environmental problems left unattended do not go away; they become worse and environmental violations increase. The public expects government to provide public safety, to protect it from



Like other Californians, this San Bernardino resident looks to government to safeguard her environment and protect against health hazards.

environmental harm and health risks.¹⁶ The idea, as Wilson and Kelling put it, is to foster health rather than treat illness.¹⁷

Community-based policing means that "the function of the police is to solve problems that have law enforcement consequences in a way that is based on a genuine partnership with the neighborhood in both the venting of the problem and the discussion of the solution." "Identifying . . . problems and discussing solutions for them will be a collaborative effort." "The technique that police use – within broad limits – is almost irrelevant to the argument. The point is that it is to be proactive, problem-oriented, and neighborhood based."¹⁸

¹⁵Malcolm K. Sparrow, "Implementing Community Policing," *Perspectives on Policing*, No. 9, November 1988, National Institute of Justice, U.S. Department of Justice, and the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University. (Emphasis added.) Sparrow points out that other areas of enforcement are effectively using new policing models: There is a "new pattern of behavior emerging. . . . Increasingly, we see police agencies, environmental agencies, occupational safety, and even customs officials focusing deliberately on specific, carefully identified problems. They are learning to spot very specific patterns of hazard or risk concentrations, whether these "knots" are crime problems, or specific environmental issues, occupational hazards, or patterns of drug-smuggling. *What these agencies are learning to do – and which they find organizationally quite awkward – is to spot specific issues, study their structure, and devise tailor-made interventions. When they act in that way, the solutions they invent usually represent substantial departures from their agency's business-as-usual. When they do this well, you see these almost surgical interventions producing significant reductions, sometimes the complete disappearance of a specific pattern of harm – all as a result of this type of disciplined thinking, consciously focused on subcomponents of some general class of harm.*" *Controlling Risk* (June 5, 2008) <http://www.hks.harvard.edu/news-events/publications/insight/management/malcolm-sparrow> (Emphasis added).

¹⁶ See Public Policy Institute of California's 2007 survey, "Latino Attitudes and the Environment" at http://www.ppic.org/content/pubs/jt/f/JTF_LatinoAttitudesEnvironmentJTF.pdf and the Institute's 2009 survey "Californians and the Environment" at <http://www.ppic.org/main/publication.asp?i=906>

¹⁷ James Q. Wilson and George L. Kelling, "Broken Windows," *Atlantic Monthly* (March, 1982) at <http://www.theatlantic.com/doc/198203/broken-windows/2>.

¹⁸ <http://www.reason.com/news/printer/29620.html>.



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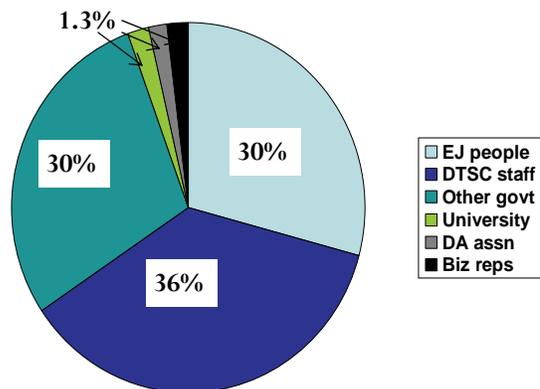
In 1998, Kelling and Catherine M. Coles coauthored *Prosecution in the Community: A Study of Emergent Strategies*, a pioneering work that describes the community prosecution model.¹⁹ For Kelling and Coles, the model is an emerging and new prosecution strategy. Prosecutors set new priorities in their cases that reflect determinations by citizens as to which offenses are most serious and which are of greatest significance to the local community. Outcomes change and broaden to include improved quality of neighborhood life, management of environmental problems, lowered levels of fear and greater citizen empowerment, confidence and satisfaction.

Working with the community is a goal in itself. This activity naturally shapes the development of tactics, organizational modes and desired outcomes. “Community prosecutors, in particular, make it a regular practice to report back to representatives of local neighborhoods on the outcomes and progress of specific cases of interest.”²⁰

The Initiative is a hybrid of the above-referenced models. It is most effective when the community, enforcement agencies and local prosecutors work collaboratively to address and reduce existing environmental harms and understand potential harms as well as the patterns of harms.²¹

DTSC is unique as the only department, board or office in California’s Environmental Protection Agency that employs sworn peace officers. Like cops in other areas of en-

Who Joins In DTSC’s EJ Enforcement Initiative?*



*Average distribution of attendees across all events.

forcement, the DTSC peace officers have the powers of arrest and search and seizure and thereby bring to EJ communities the ability to conduct criminal investigations of environmental violations when warranted. The most effective deterrent to egregious environmental violations is criminal enforcement.

One reason the Initiative has been successful: It draws on the expertise of criminal investigators and the specialized staff and enforcement personnel from local, state and federal government agencies. Indeed, we have found that the work of our criminal investigators in EJ communities has led to multi-media investigations and prosecutions. The Initiative facilitates the multi-media investigations by connecting people who live closest to environmental harms directly with investigators and regulators in California’s complex environmental enforcement structure.

DTSC has partnered with other agencies, including local police and fire departments, code enforcement officers and district attorney investigators, to conduct “enforcement strikes” in which multi-media enforcement teams are sent into heavily impacted neighborhoods identified by the community. Officials conduct broad-based, multi-agency inspections that result in compliance and cleanup of contaminated sites.

¹⁹ Catherine M. Coles and Kelling, George L. (with the assistance of Mark H. Moore), *Prosecution in the Community: A Study of Emergent Strategies, A Cross Site Analysis*, September 1998, Program in Criminal Justice Policy and Management of the Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University, 79 John F. Kennedy Street, Cambridge, MA 02138.

²⁰ *Ibid.*

²¹ Malcolm K. Sparrow, *The Character of Harms: Operational Challenges in Control*, p. 11.



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“... We must be sensitive to the burdens pollution has placed on vulnerable sub-populations, including children, the elderly, the poor and all others who are at particular risk to threats to health and the environment. We must seek their full partnership in the greater aim of identifying and eliminating the sources of pollution in their neighborhoods, schools and homes.”

- Lisa Jackson,
administrator,
U.S. Environmental Protection Agency
in a memo to employees
on January 23, 2009

Improving East Oakland: DTSC Joins With EJ Community, Police, Fire, Building Services



Government staffers from local, state and regional organizations are working together to help resolve environmental issues that have been raised by residents in East Oakland's Elmhurst area.

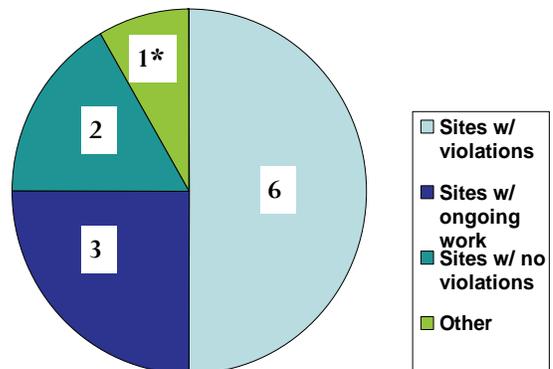
In the Elmhurst area of East Oakland, a group of determined residents has been working on blight issues and cleanup and development of sites since 1994.

DTSC Enforcement staff joined with the group, called the Elmhurst Blight Committee, in 2009 and quickly learned that environmental concerns in East Oakland run the gamut from auto repair shops with suspect handling of toxic materials to questions about thorough cleanup of old industrial sites and reports of “blood water” coming from a metal recycling facility. Jacquee Castain, head of the Elmhurst Blight Committee, was forthright about the issues and made sure DTSC returned in 100 days, as promised, to tell community members what had been done to address the issues pointed out during a May 8, 2009, bus tour.

DTSC and other government entities have been returning to the area ever since. The East Oakland effort is notable for the breadth of city government entities that are actively involved. It is the first DTSC EJ Initiative location that includes the local police department, which has helped roust prostitutes and curtail drug dealing in the vicinity of the environmentally suspect repair shops. The East Oakland bus tour was the first DTSC EJ Initiative that saw the shutdown, during the

tour, of a business. It was an illegal automotive paint shop operating without air pollution control equipment, which meant toxic car paint fumes were being released next to homes. There also was no visible evidence of worker safety equipment, and a guard dog was seemingly passed out on the pavement.

Of The Sites Of Community Concern, Only 2 Were Free Of Environmental Violations



* Local organic farmers provided raised beds and clean soil for a garden that the community wanted to establish on the site of a former battery factory.



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The Elmhurst Blight Committee was the first group in DTSC’s EJ Initiative to hold monthly meetings to stay abreast of inspections and other activities and ensure that troubled sites weren’t forgotten or shunted to the back burner. And the East Oakland effort was the first where a criminal investigator from DTSC became the department’s primary enforcement liaison to an EJ community. Investigator Tiffany Chavez participated in inspections, conducted reviews of permits and licenses, coordinated sampling support and interviewed people to get information about the community’s environmental concerns.

The East Oakland EJ community was adept at spotlighting environmental harms in the neighborhood. Of the initial 12 sites that were shown to regulators on the bus tour, all but two were found to have environmental violations. Some of the violations were not major, such as not keeping a hazardous materials business plan up to date. But other environmental issues, such as improper or lax management of toxic materials, posed an immediate potential health risk to nearby homes and residents. In one case, the inspection led to the discovery of faulty wiring that could pose a fire hazard.



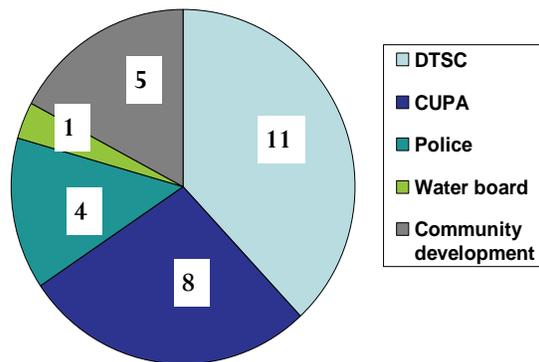
At one East Oakland auto repair shop, workers were using an Oriental rug to cover the floor under the vehicles. Part of the rug was near spilled fluid (below). A worker said the red liquid was water, but the Oakland Building Services official on the EJ bus tour informed the worker that the rug, especially if soaked with car fluids, was a fire hazard and could not remain. The facility was cited for several environmental violations.



Types of Environmental Violations Found At Sites Of Community Concern

- ⇒ Failure to take proper measures to keep contaminants going into the storm drain
- ⇒ No hazardous materials business plan or had an outdated hazardous materials business plan
- ⇒ No active EPA ID
- ⇒ Facility had faulty wiring
- ⇒ Hazardous waste drums were not labeled correctly, not properly sealed and/or in poor condition
- ⇒ Did not have proper permits to operate

Government Agencies And The Number Of Sites Where They Did Work



Community Story: Plating Shop By Preschool Had Exhaust Vents Facing Toward School



Exhaust vents from Van Nuys Plating Inc. , far left, were found to face toward the nearby Child Resources Center Head Start Preschool, left. The community alerted government to the odors, which led to the discovery of several environmental violations.

The call came in August 2009 from California Safe Schools, an organization that works to safeguard the youngest and most vulnerable in our state.

Safe Schools was worried about odors and emissions around a Head Start Preschool that was next to a plating company in Los Angeles County.

Hazardous substances scientists from the Department of Toxic Substances Control went to the school, noticed industrial odors in the area and met with school staff to assess the situation. With the help of several environmental enforcement agencies including the South Coast Air Quality Management District (SCAQMD), DTSC then pieced together the enforcement history of the facility and researched permits and other legal documents.

Some two weeks later, DTSC inspectors joined SCAQMD officials to inspect Van Nuys Plating Inc. and discovered several violations, including unauthorized treatment of hazardous waste and failure to maintain buffer zones or protective distances between the plating operation and adjacent properties. DTSC also cited the incompatible mixing and storage of acids and cyanide waste at the

facility. (Cyanides, which can be acutely poisonous, are used to help clean and prepare metal surfaces. Acids help clean metal and treat plating hazardous wastes.)

Because of the violations that were cited, the shop was forced to stop treating its plating waste at the site and must use an authorized waste handler, instead. The company is redesigning operations to reduce the hazardous waste generated and was ordered to change the orientation of its exhaust ducts. SCAQMD was working on monitoring the air.

Van Nuys Plating, which is next door to a home and down the street from apartments, was cited in 2005 by the U.S. EPA for violating federal hazardous waste laws.



Just yards from a preschool, Van Nuys Plating uses caustic chemical baths, left, to treat metal. DTSC found chemical spillage on the floor.



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“... (I)t makes me wonder why no one has done it before. Sit down with EJ advocates. Listen. Learn. Get out into the community. Look around. Investigate complaints. Take enforcement action where merited. Report back to the community. Repeat.”

- Joe Lyou,
member,
South Coast Air Quality
Management District
Governing Board
and Executive Director,
Environmental Rights Alliance
in an e-mail to CalEPA Secretary
Linda Adams on November 30, 2009

Community Story: Bus Tour Airs Complaints, Leads To Discovery Of Environmental Violations



El Monte was one of the stops on the first DTSC EJ bus tour. After hearing complaints of odor and soot reportedly emanating from a local Gregg Industries plant, DTSC investigated and found violations, including disposal of hazardous waste to the air and ground, left. The facility, which generated hazardous waste during its manufacture of iron castings, closed in 2009, six months after issuing a press release about a decline in customer orders.

It was the very first Department of Toxic Substances Control-sponsored bus tour that led enforcement personnel to check on a facility manufacturing iron castings in El Monte.

People living nearby the Los Angeles County site of Gregg Industries Inc. told government officials on the bus in 2007 about soot and odors.

DTSC inspectors later visited the site and cited the company for several environmental violations, including illegal disposal of hazardous waste, failing to minimize releases, having open, rather than covered containers of waste, and storing a 300-gallon container in a yard without proper labeling and documentation about how its contents accumulated. (DTSC later analyzed the contents and found isopropylbenzene, toluene and naphthalene -- all of which can be dangerous to human health.)

The story doesn't end there, however. DTSC shared its inspection information with the South Coast Air Quality Management District (SCAQMD), since DTSC inspectors had noticed emissions at the site. SCAQMD personnel visited the site and issued citations for odors and other violations that included

operating equipment in violation of the conditions in the facility's air pollution permits.

In 2008, Gregg Industries settled with the air district for \$4.7 million and agreed to take steps to reduce the environmental and potential health impact of its operations. Among the steps called for were the hiring of an independent environmental observer as well as the hiring of a full-time environmental engineer at the facility to provide technical expertise on environmental regulatory requirements. Gregg also was to phase out the use of resins with a high organic content, which had been blamed for creating odors. The company also needed to submit a plan to the SCAQMD on how it would use fume and dust control equipment. In a press release that year, Gregg noted the investments would make the El Monte facility "the cleanest foundry in North America."

But six months later, Gregg announced the closure of the foundry, so the environmental improvements were never completed.

DTSC Brings Together EJ Group, Business Group Over Shared Auto Dismantler Concerns



No one knew where it would lead when DTSC Deputy Director for Enforcement and Emergency Response Gale Filter introduced the Environmental Justice group Pacoima Beautiful to the State of California Auto Dismantlers Association.

But one thing was sure: The two groups shared common concerns.

Working to make the environment and health better for working class residents of the EJ community of Pacoima in northeast San Fernando Valley, Pacoima Beautiful had zeroed in on a section of town that was densely packed with auto dismantlers. The organization worried that environmental regulations were not well known among the workers and might even be ignored outright by dismantlers who might not be properly licensed. (Dismantlers are hazardous waste generators and need to properly manage and handle such toxic items as car batteries, antifreeze, Freon, oil, tires and the like in order to avoid environmental contamination.)

Meantime, the auto dismantlers association, which represents licensed dismantlers in California, alerted DTSC to unlicensed dismantlers and said they're unfair competition to legitimate businesses that follow environmental and licensing regulations. So DTSC facilitated a working group to explore the issues. Besides Pacoima Beautiful and SCADA, the Los

Angeles Certified Unified Program Agency (CUPA) and the Department of Motor Vehicles (DMV) joined in.

Discussions led to the first-ever meeting of state agencies, non-profit organizations and auto dismantler business operators to discuss dismantler issues. Convening the May 29, 2009, session in Pacoima was California Assembly Member Felipe Fuentes, D-Pacoima. The session set the stage for action.

Soon after, the DMV Lincoln Park District Investigations Office targeted unlicensed dealer operations in the Pacoima, Arleta and Sylmar areas and issued 51 misdemeanor citations for unlicensed activity, made two felony arrests for possession of counterfeit documents and identity theft and impounded 37 vehicles. Additionally, legislation proposed by SCADA and carried by Assemblyman Felipe Fuentes (AB 805) was signed by Gov. Schwarzenegger on October 11, 2009. It requires the DMV to investigate, within the department's statutory 120-day period, whether a DMV dismantler applicant has the necessary permits, numbers and plans mandated by law.

Heart-Wrenching Stories Of Illness In San Bernardino, Riverside



Susana Negrete, a mother of four in San Bernardino, calls the youngsters in her community “the innocents,” and she and other parents fear they are being exposed to toxins daily.

Susana’s 9-year-old son suffers frequent, unexplained nose bleeds. Their home is 300 yards from a rail yard.

Another resident of California’s Inland Valley described his shock when a doctor examining his teen-age daughter asked how many cigarettes she smoked. When the father and daughter informed him that she had never smoked, the doctor explained his question arose because the young girl had lung cancer. She died at age 16, and the grieving father blames polluted air for her cancer.

The poignant stories of illness and even death came during a DTSC EJ Enforcement Initiative bus tour in San Bernardino and Riverside Counties on Aug. 27, 2009. Penny Newman, executive director of the Center for Community Action and Environmental Justice (CCA EJ), and her staff designed the tour route, selected sites and enlisted residents to speak firsthand about what’s happening to their environment and health.

The day after the tour, everyone returned for an all-day workshop. By the time it was over, CCA EJ and DTSC were co-chairs of an ongoing Inland Valley EJ Task Force that

Includes residents as well as many government agencies. The task force met again in October, and a prioritized list of sites — seven in San Bernardino and three in Riverside where residents believe environmental harms exist — had been assigned to specific task force members for further investigation.

Among the task force participants are the California Air Resources Board, San Bernardino fire department/CUPA, Riverside County District Attorney’s Office, California Attorney General’s Office, U.S. EPA, South Coast Air Quality Management District and the DELTA Group at the University of California at Davis.

The Inland Valley is changing swiftly. Long an agricultural area, San Bernardino and Riverside now are becoming a goods management and movement “hub” that’s inland from the crowded Los Angeles and Long Beach ports. Already, huge warehouses have sprung up, and diesel semitrailers making or taking deliveries have followed. Major railroad operations spew emissions, too. As of 1997, area residents suffered with the fourth-worst particle pollution in the world, according to the World Health Organization.

Imperial County Struggles With New River, Air Pollution, Pesticides



California's Imperial County is the poorest in the state, with at least one of every four workers unemployed; median income of those who have jobs ranks last among the state's 58 counties.

Known for farm fields and hot weather, Imperial is the southernmost county in California. It borders Mexico and Arizona and lies east of San Diego County. Agriculture and border patrol/immigration provide major jobs, and at least 75% of the 164,000 people in the county are Hispanic. Imperial also is a young area, with nearly a third of residents being age 18 or younger.²²

Environmental issues in the county center on three areas:

- Air quality and how it affects rising rates of asthma in the area.
- Water quality of the New River (that flows northward from Mexico into California) and the related health effects from the polluted water.
- Exposure to pesticides from historic and current pesticide use on farm fields.

²² U.S. Census Bureau, "State and County Quick Facts," 2009, at <http://quickfacts.census.gov/qfd/states/06/06025.html>.

The environmental justice and health advocacy group Comité Cívico del Valle notes the region of Imperial and its neighboring Baja California, Mexico, city of Mexicali have grown significantly in recent years. According to the U.S. Census Bureau, the population in Imperial County grew 15.2% from 2000 to 2008, while the population increase for California as a whole was just 8.5%.

This means more people than ever are being exposed to "one of the worst particulate matter pollution problems in California, and arguably the most contaminated river (the New River) in the U.S.," says Jose Luis Olmedo, executive director of Comité Cívico. (*emphasis added.*)

"Most of Imperial Valley is below sea level, including all of its major population centers," he continued. "Due to this fact, a lot of dust and other airborne pollutants hover in the air and do not move out of the valley. The dust, pesticides and smog from burning (agricultural) fields lead to increased risk of asthma and cancer in the local residents."



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The Department of Toxic Substances Control (DTSC) came to Imperial County in March 2008 for an EJ Enforcement Initiative bus tour and workshop. Several EJ organizations participated, including Comite Civico. Government agencies also attended, including the local air quality management district. The EJ community in the county directed the bus to sites where environmental damage and health hazards were suspected. The sites ranged from an electric generation facility to an abandoned airfield near a school.

The bus tour led to 18 cases being established for further government investigation. By the end of 2009, 15, or 83% of the cases had been addressed, and one case resulted in a \$28,000 penalty imposed for environmental violations.

Also notable is the fact that more than a third of the cases were resolved *without* government having to take enforcement action. For example, several empty acres that had become a longtime dumping ground in the county were shown to government officials on the bus. Community members complained that people came with their trucks to dump tires, cans and other hazardous materials at the site. DTSC inspected the site and found used oil filters, too, which are classified as hazardous waste in California. DTSC called the landowner, who made it a point to not only clean up the site but grade it and make it presentable. Because of the landowner's cooperation, no official action was taken. But the work that DTSC did at the site and the resolution with the landowner were shared with the community.

It's important to note that DTSC plays a unique role in Imperial County. In 2005, DTSC became responsible for implementing California's Certified Unified Program Agency or "CUPA" program in the county. Imperial is one of only two counties in the state that does not maintain its own local CUPA program. DTSC Imperial CUPA is responsible for implementing



The New River enters California from Mexico and is known as the most severely polluted river of its size in the United States.

all six elements of the CUPA program:²³

- Hazardous waste generator and tiered permitting
- Aboveground tanks
- Underground tanks
- Accidental release program
- Hazardous materials inventories
- Business plans.

DTSC's Imperial CUPA maintains an office in the county seat of El Centro. With five inspectors, an analyst and a supervisor, the CUPA regulates more than 700 facilities in the county, investigates complaints and responds to emergencies, along with the county fire department and other assisting agencies.

Pursuant to statute, the DTSC Imperial CUPA inspector has more authority than a regular DTSC inspector has. This is advantageous from a regulatory perspective. For example, during a routine hazardous waste generator inspection, the DTSC inspector cannot cite violations of the Hazardous Materials Business Plan statutes. But a DTSC CUPA inspector can, plus cite violations of DTSC regulations, thereby streamlining the response to environmental hazards.

DTSC's EJ Enforcement Initiative in Imperial has the makings of a unique EJ program.

²³ Regulatory authority for these programs can be found in California Health and Safety Code Chapter 6.11.



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“... “(I)t is almost impossible to protect oneself from environmental hazards because individuals have virtually no control over the quality of the air they breathe, the food they eat, or the water they drink. They are almost completely dependent on someone else to protect them from environmental hazards.”

- Harvey L. White,
author,
Race, Class and Environmental Hazards

Beset By Unemployment, Fresno Faces Environmental Concerns, Too



By nearly every economic indicator, Fresno County is mired in a low-wage economy with a large pool of unskilled, uneducated residents, which leads to a high poverty rate.

This discouraging assessment comes from Amy Chubb, Executive Director of Fresno Works for a Better Health Advocacy Center.²⁴ Latinos account for half of Fresno County's population, and air pollution is the issue for Latinos living in California's Central Valley. For example, 45% of Latinos in California surveyed in 2007 by the Public Policy Institute of California said air pollution is a big problem, especially in Los Angeles and the Central Valley. More than two-thirds of California Latinos said air pollution poses a larger health threat in lower-income areas than in wealthier areas, and just over 40% of Latinos said they are likely to report respiratory problems in their household. It's not just their opinion. In 2009, the American Lung Association gave Fresno an "F" grade for air quality.

Yet, maintaining an EJ Enforcement Task Force has been a struggle, too. A bus tour in the area in October 2008 was facilitated by the Latino Issues Forum in Fresno.

²⁴ Amy Chubb, "A Study of Income Inequality in the Fresno County and Metropolitan Statistical Area" (2008) p. 12 at http://www.csufresno.edu/cerecc/documents/Fresno_Income_Equality1.pdf.

But in June 2009, the group closed its office, let go its staff and suspended operations. The poor economy was blamed. DTSC's personnel assigned to EJ work in the area also faced constraints as state government instituted furlough days — mandatory days off without pay — starting in 2009.

Still, several issues highlighted by EJ residents have seen resolution. The EJ task force coordinated a meeting about a proposed power plant that was to be located down the road from an elementary school, and in October 2009, the application for certification of the plant was withdrawn. An abandoned chemical site shown on the bus tour now is secured by a fence, and DTSC staffers who learned about problems with lead paint in older homes in the area have joined other EJ groups in a lead prevention group. Meantime, a proposed household hazardous waste collection site planned for an EJ part of the city of Fresno was rejected by the city planning commission.

Starting in late 2009, the Fresno EJ Enforcement Initiative Task force began meeting monthly to better keep up with activities and environmental concerns.

Researchers And Science Ready To Help EJ Communities



DTSC staff and the DELTA Group of UC Davis invited Jesse Marquez, far left, seated, of the Wilmington EJ community to help install an air monitor atop a local building. Left, Prof. Thomas A. Cahill and David Barnes of DELTA listen as an EJ resident talks about air pollution..

In May 2009, DTSC formed a contractual partnership with the DELTA Group of the University of California-Davis to research the deposition of hazardous waste particulate matter.

DELTA is a leader in the collection, identification and study of aerosols, especially those containing ultra-fine particles that can embed in the human body and damage health. And its founder, Professor Thomas A. Cahill, worked with UC-Davis scientists to analyze World Trade Center air after the Sept. 11, 2001, terrorist attack and detailed the toxic contents and potential health impacts.

These days, the DELTA Group is committed to reducing adverse human health impacts caused by the emission, transport and deposition of harmful particles and uses advanced sampling and analysis to track particles back to the source via identification of a distinctive “chemical signature.”

DELTA joined DTSC in the San Bernardino/Riverside counties bus tour in August 2009. Since the formation of the Inland Valley Task Force and in response to community concerns, DELTA has made a commitment to do the following:

- Evaluate if toxic particle deposition is a problem by conducting sampling during the 2009-2010 winter at two locations,

- both within close proximity to a rail yard. Both sites will include sampling of coarse particles in air, which will deposit on surfaces, which can then be directly transferred to people by contact.
- Design and test a Green-Air-System at UC Davis and then field test the system at a local residence to prove out the technology. The intent is to create clean air by removing particulates and use of “green” conditioning systems to create cooled or warmed air as required. The resulting air would then be used to create a positive pressure of clean air that will keep the external contaminated air from infiltrating due to normal air exchange.
- Evaluate mitigation options which have quick implementation timelines. Some technological solutions have longer implementation times because of replacement schedules while other mitigation methods can be implemented upon approval, such as vegetative barriers, setbacks, and scheduling changes.

This report was prepared by



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We dedicate this report to Marissa, a 2-year-old San Bernardino resident with asthma whom DTSC staffers met during a 2009 EJ bus tour. Marissa's friend helped bring along and show the air compressor nebulizer that Marissa uses for respiratory problems. Marissa's grandmother spoke eloquently about the health hazards that California's youngest residents face.

