

Department of Toxic Substances Control

Official Policy

LANGUAGE ACCESS POLICY

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Office of Civil Rights

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(Signature on file at 3/29/18 adoption date)

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Signature

Date Signed

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I. POLICY STATEMENT

The Department of Toxic Substances Control (DTSC) is committed to ensuring early, equal, and meaningful access to DTSC programs, services, activities, and information to persons with Limited English Proficiency (LEP).

II. PURPOSE

The purpose of this policy is to eliminate or reduce LEP as a barrier to accessing DTSC programs, services, activities, and information and ensure DTSC's compliance with federal and state civil rights laws, including Title VI of Civil Rights Act of 1964, Presidential Executive Order 13166, and the California Dymally-Alatorre Bilingual Services Act.¹

In developing this policy, DTSC considered many factors, including, but not limited to:

1. The need for language access in DTSC processes and the need to collect and assess data on the LEP needs of communities affected by the presence of hazardous waste facilities or contaminated sites.
2. The need for DTSC to develop a comprehensive action plan to address identified LEP needs.
3. Translation of vital documents, including executive summaries of decision documents and technical documents of substantial importance prepared by DTSC for permitting and cleanup decisions, including those prepared by DTSC pursuant to the California Environmental Quality Act (CEQA) (Cal. Pub. Res. Code, § 21000 et seq.)
4. Meaningful public participation through processes that comply with civil rights laws, regulations, policies, and guidance and have the following elements:
 - a. A clear prohibition on discriminatory practices, including practices of intimidation and hostile environments that prevent meaningful public participation, as well as practices which, in effect, inhibit full and equal access to DTSC's programs and services for LEP individuals.

¹ This policy and any internal procedures adopted for its implementation are intended solely as guidance. This policy does not constitute a rulemaking.

- b. As a recipient of federal and state funds, DTSC is required to comply with Title VI of the Civil Rights Act of 1964 and California Government Code Section 11135. These laws, among others, prohibit intentional discrimination and disparate impact discrimination.
- c. Scheduling and holding meetings and hearings at appropriate times and locations that facilitate the ability of members of the public to participate, and providing interpretation in public meetings and hearings held by DTSC and translation of accompanying visuals, handouts, and presentations.
- d. Preparation of 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.
- e. Accommodation of cultural, linguistic, and educational characteristics of communities affected by the presence of hazardous waste facilities or contaminated sites.

III. RELEVANT AUTHORITIES

The following is a list of key federal and state laws, regulations, and guidance documents related to this policy:

1. Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352 § 601 (July 2, 1964), 78 Stat. 252.)
2. Presidential Executive Order No. 13166, 65 FR 50121 (Aug. 11, 2000)
3. Dymally-Alatorre Bilingual Services Act (Gov. Code, § 7290 et seq.)
4. Gov. Code, § 11135
5. Health and Saf. Code, § 39711
6. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, (Presidential Exec. Order No. 13166, 69 FR. 35602 (June 25, 2004)).
7. U.S. Environmental Protection Agency, Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, Feb. 10, 2017, (Class. No. 1000.32)
8. U.S. Department of Justice, Title VI Legal Manual (Jan. 26, 2017)
9. U.S. EPA, External Civil Rights Compliance Toolkit (Jan. 18, 2017)

IV. POLICY IMPLEMENTATION

To further guide implementation of this policy, DTSC will include program- and service-specific language access procedures as elements within DTSC's Civil Rights and Language Access Implementation Plan, including, at a minimum, language access procedures related to hazardous waste facility permit decisions, enforcement, supplemental environmental projects, cleanup plans, grants, and other funding opportunities. The Department will phase in activities as described in its Civil Rights and Language Access Implementation Plan.

V. DEFINITIONS

For purposes of this policy, the definitions of the terms outlined below apply:

- a. Bilingual Person: A person who is fluent in two languages and proficient in both English and another language. (See also Cal. Govt. Code, § 7296.)
- b. Civil Rights and Language Access Implementation Plan (Implementation Plan): A document required by this policy and DTSC's Civil Rights Policy (DTSC-OP-0025 (03/29/2018)), which provides clear and concrete actions DTSC will take to ensure civil rights protections and equal language access in DTSC's programs and services.
- c. Discrimination: The unlawful denial of fair and equal access to a program or activity offered, conducted, administered, or funded (in whole or in part) by DTSC based on a protected characteristic. Discrimination includes both intentional discrimination, also referred to as disparate treatment, and disparate impact discrimination.²

² In its Implementation Plan, DTSC will outline how it will evaluate and address disparate impact discrimination in the implementation of its programs and activities, consistent with federal and state civil rights and environmental laws and guidance.

1. Intentional discrimination occurs when an individual or group of individuals is intentionally or purposely treated differently, or otherwise knowingly caused harm because of an actual or perceived protected characteristic. Being treated differently can include being denied participation in, or the benefits of, a program or activity. Intentional discrimination requires a showing that a challenged action, that subjects an individual or group of individuals to disparate treatment, was motivated by an intent to discriminate, but does not require a showing of bad faith, ill will, or evil motive.

2. Disparate impact discrimination occurs when a facially neutral procedure or practice causes an adverse and significantly disproportionate effect on members of a group identified by protected characteristic. Disparate impact discrimination is generally prohibited, regardless of intent, unless: (1) a substantial legitimate justification for the challenged procedure or practice exists; and (2) no comparatively effective alternative practices exist that would achieve the same legitimate objective but with less disparate impact.

- d. Interpret or Interpretation: The act of converting oral communication in one language to another while retaining the same meaning to ensure that LEP persons have meaningful access to the communication.
- c. Limited English Proficient (LEP) Person: A person with a primary language other than English who, due to limited English language proficiency, may communicate in that primary language to ensure a meaningful opportunity to participate effectively in and fully benefit from DTSC programs, services, activities, and information.
- d. Public Contact Position: A position determined by DTSC to be one that emphasizes the ability to meet, contact, and assist the public in the performance of DTSC's functions. (Cal. Govt. Code, § 7297.)
- e. Translate or Translation: The act of replacing or converting written text in one language with or to written text in another language to ensure that LEP persons have meaningful access to the text.
- f. Vital Documents or Information: Documents or information that convey information that critically affects the ability of the recipient of the information to make informed decisions regarding his or her participation in the program, service, or activity offered by DTSC. (U.S. Environmental Protection Agency, Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency.) Whether a document or information is vital depends on the importance of the program, information, or services involved and the consequence or impact to LEP persons if the document is not translated. A document may contain both vital information and non-vital information.

VI. LANGUAGE ACCESS PROCEDURES

DTSC will undertake the following actions, and provide services as described, to ensure early, equal, and meaningful access by LEP persons to DTSC programs, services, activities, and information:

- a. General LEP Services:
 - 1. Employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public in languages other than English, consistent with the requirements of the Dymally-Alatorre Bilingual Services Act, Gov. Code,

§ 7290 et seq.

2. Participate in the Biennial Language Survey to identify all non-English language needs and the primary languages of the individuals and communities served or affected by DTSC programs, services, and activities.
3. Ensure that DTSC's Public Participation Manual includes provisions to facilitate meaningful public participation by LEP persons related to DTSC programs, services and activities, including cleanup projects, hazardous waste facility permit decisions, and enforcement activities as appropriate.
4. Make language access information available to the public to inform LEP persons of DTSC's Language Access Policy and services, including the availability of interpreters and translated materials. This includes, but is not limited to: providing language access information in languages other than English in all DTSC's regional offices; developing language access outreach materials in languages other than English; working with community groups and organizations to inform LEP persons of language access assistance; and making language access information in languages other than English available on DTSC's website.
5. Incorporate federal and state language access requirements in all applicable DTSC policies, procedures, bids, assurances, grants, and contracts.
6. Disseminate federal and state language access requirements to all DTSC contractors, subcontractors, and beneficiaries of state and federal funding, and ensure their compliance with all such requirements.

b. Translation of Vital Documents and Information

DTSC will translate vital documents or information related to DTSC programs, services, activities, and information. Sometimes documents will contain both vital information and non-vital information, in which case DTSC may choose to only translate vital, and not non-vital, information. Vital documents and information are determined on a case-by-case basis, taking into consideration factors such as: (1) the number or proportion of LEP persons served or affected by the DTSC program, service, activity, or information; (2) the frequency with

which LEP persons come into contact with the DTSC program, service, activity, or information; (3) the nature and importance of the DTSC program, service, activity, or information to people's lives; and (4) the resources available to DTSC and costs associated with providing translation services.

Documents that may be considered vital or that may contain vital information may include, but are not limited to, documents that are necessary for the public to fully understand DTSC's programs, services, and activities, including technical and other documents related to DTSC decisions and activities related to hazardous waste facilities and contaminated sites. Examples may include, but are not limited to:

- Administrative forms
- Application forms
- Complaint forms
- Letters
- Newsletters
- Community updates
- Outreach and educational materials
- Permitting documentation
- Public notices and newspaper notices
- Fact sheets
- Technical documents
- Environmental documents prepared pursuant to the California Environmental Quality Act

The process of determining which documents and information qualify as 'vital' is further discussed in the Implementation Plan. Although DTSC will make all efforts to ensure that any differences between a translated document and its source are minimal, if the English version and the translated version of a document conflict, the English shall be the governing and prevailing version.

c. Access to Translated Documents:

1. DTSC will provide translated materials to LEP persons by mail, e-mail, or other communication medium consistent with the Department's public participation process and DTSC's Civil Rights and Language Access Implementation Plan.

2. DTSC will provide, as needed, information related to the Department's services, activities, and general forms of engagement open to the public in languages other than English.
3. Posters will be visible in all DTSC offices serving LEP clients, informing them in languages other than English of their right to request translated materials and interpretation services. A language identification tool will also be posted to assist an LEP individual in identifying their language for DTSC staff.
4. DTSC will provide access to translated public documents on DTSC's website.
5. DTSC will provide translated materials to LEP persons by mail, email, or other communication medium consistent with this policy and the Implementation Plan.

d. Interpretation Services:

DTSC will provide translation and/or interpretation services related to DTSC programs, services, activities, and information, including at DTSC-held public meetings, public hearings, and other public events. The need for interpretation services will be determined on a case-by-case basis, taking into consideration factors such as: (1) the number or proportion of LEP persons served or potentially affected by the DTSC program, service, activity, or information; (2) the frequency with which LEP persons come into contact with or are affected by the DTSC program, service, activity, or information; (3) the nature and importance of the DTSC program, service, activity, or information to public health, safety, or the environment; and (4) the resources available to DTSC and costs associated with providing interpretation services.

DTSC will ensure that interpreters used by DTSC are qualified and/or certified to perform the service requested for the non-English language(s) in which they are fluent. DTSC will ensure that interpreters:

- Demonstrate proficiency in and ability to communicate information in both English and in the other language, and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).
- Have knowledge in both languages of any specialized terms or

concepts particular to DTSC's programs, services, or activities and/or have knowledge of particularized vocabulary and phraseology used by LEP persons.

- Understand and follow confidentiality and impartiality rules to the same extent as DTSC employees and meet DTSC's expectations with respect to promoting and supporting a culture of respect and early, equal, and meaningful access.
- Understand and adhere to their role as interpreters.

e. Language Determination for Translation or Interpretation

The language a document is translated or interpreted into will depend on the LEP population served or affected by the DTSC program, service, or activity. This process will be outlined in the Implementation Plan.

f. Human Resources and Staff Training

DTSC will actively promote and support a culture of respect and early, equal, and meaningful access to DTSC programs, services, activities, and information through:

1. Ensuring DTSC considers language access needs in its recruitment, hiring, training and evaluation of staff, as appropriate to the specific duties of the position.
2. Providing access to information regarding bilingual certification exams and sustaining an accessible list of employees who are certified bilingual—including the language(s) in which the employee is certified.
3. Ensuring DTSC is consistent with civil service regulations and other applicable guidelines from the California Department of Human Resources (CalHR).
4. Providing training to DTSC staff in diversity and inclusion, civil rights and language access, including training in the identification of language needs and processes, tools, and resources available to meet those needs. Education and training will emphasize communication, understanding, partnership, and the skills and tools necessary for meaningful engagement.

VII. INQUIRIES AND COMPLAINTS

For questions and inquiries regarding this policy, please contact DTSC's Office of Civil Rights by telephone at (916) 324-3095 or by email at ocr@dtsc.ca.gov. You can also contact the Office of Civil Rights by facsimile at (916) 322-3111 or by writing to:

Attn: Office of Civil Rights
Department of Toxic Substances Control
1001 "I" Street, 12th Floor
Sacramento, CA 95814

If you believe DTSC has not been able to provide you with satisfactory language access services, you may submit a Communication Assistance Resolution Form (Form 1602) with DTSC's Office of Civil Rights. DTSC's Communication Assistance Resolution Form is available on DTSC's website at www.dtsc.ca.gov/PublicForms by calling DTSC's Office of Civil Rights at (916) 324-3095. You may also contact the State Personnel Board at (866) 889-3278 with any concerns you have regarding DTSC's language access services.

If you believe you have been subjected to behavior that violates this policy or other discriminatory treatment in violation of federal and state civil rights laws, you may file a complaint with DTSC using DTSC's Civil Rights Complaint Form (Form 1443), which is available on DTSC's website, or by calling DTSC's Office of Civil Rights at (916) 324-3095. For more information, please see DTSC's Civil Rights Policy, DTSC-OP-0025 (03/29/2018).

VIII. RESOURCES

- DTSC's Communication Assistance Resolution Form (Form 1602): www.dtsc.ca.gov/PublicForms
- DTSC's Public Participation Manual: www.dtsc.ca.gov/PublicParticipation