



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

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Edmund G. Brown Jr.
Governor

May 6, 2016

Mr. Gideon Kracov, Chairman
Independent Review Panel
Department of Toxic Substances Control

ENFORCEMENT PRIORITIES RELATED TO ENVIRONMENTAL JUSTICE AND HEALTH RISK

Dear Mr. Kracov:

The Independent Review Panel (IRP) requested on January 28, 2016 that the Department of Toxic Substances Control (DTSC) report on "how environmental justice and health risk is prioritized in enforcement under Assembly Bill (AB) 1329, particularly Health & Safety Code Section 25180.2, including identification of planned environmental justice enforcement initiatives" in the IRP *Initial Report to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f)*.

The attached document provides a summary of projects DTSC is implementing that assist in prioritizing enforcement efforts in California's most vulnerable communities.

If you have any questions please contact Christopher Law at (916) 322-0513 or via Christopher.Law@dtsc.ca.gov.

Sincerely,

Elise Rothschild, REHS
Deputy Director
Hazardous Waste Management Program

Attachment

DTSC-EERD's Response to IRP Request

IRP's Request

The Independent Review Panel (IRP) requested on January 28, 2016 that the Department of Toxic Substances Control (DTSC) report, by May 1, 2016, on "how environmental justice and health risk is prioritized in enforcement under Assembly Bill (AB) 1329, particularly Health & Safety Code Section 25180.2, including identification of planned environmental justice enforcement initiatives" in the IRP *Initial Report to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f)*.

Background

AB 1329 (Perez, Chapter 598, Statutes of 2013) requires DTSC to prioritize enforcement actions affecting communities that have been identified by the California Environmental Protection Agency (CalEPA) as being the most impacted environmental justice communities.

Health & Safety Code Section 25180.2 states that "the department shall prioritize an enforcement action authorized by this chapter affecting communities that have been identified by [CalEPA] as being the most impacted environmental justice communities."

DTSC's Response

Management and staff in DTSC's Enforcement and Emergency Response Division (EERD) and Office of Criminal Investigations (OCI) are responsible for protecting Californians and the environment from exposure to hazardous waste through the effective enforcement of hazardous waste laws and regulations. DTSC is committed to implementing program improvements including those specifically related to community participation, transparency, and ensuring that all communities are protected, particularly those most impacted.

More than 40% of all DTSC inspections, complaint investigations, and enforcement actions take place in areas most burdened by multiple pollution sources (based on data obtained from CalEnviroScreen and EnviroStor). DTSC uses tools such as CalEnviroScreen, an environmental health screening tool developed by CalEPA and Geographic Information System technology to help identify communities in California that are most burdened by pollution from multiple sources. This information allows DTSC to prioritize its inspection and enforcement actions.

The following is a summary of projects that DTSC is implementing that assist in prioritizing enforcement efforts in California's most vulnerable communities:

1. **Metal Recycler Initiative**

Using additional resources appropriated beginning July 1, 2015, DTSC is conducting a targeted initiative, the Enhanced Enforcement Initiative in Vulnerable Communities, to address serious environmental violations being committed by metal recyclers located in California's most vulnerable communities. The initiative is led by OCI, and will be coordinated with other state and local environmental agencies and prosecuting agencies to address multi-media violations and impacts. Under the initiative, DTSC is using Graphical Interface Systems to identify and map locations of metal recycling; conduct metal recycling inspections and related enforcement actions; process and analyze samples; develop interim and permanent operating standards; conduct outreach to affected communities; and develop regulatory language to oversee the metal recycling industry. As of March 31, 2016, DTSC completed seven inspections and plans to complete forty-two inspections by December 2017.

2. **Implementation of SB 1249**

Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014) became law on January 1, 2015. It requires the Department of Toxic Substances Control (DTSC) to evaluate the risks and threats posed by metal shredding facilities and the management of metal shredder waste. Based on the findings of its evaluation, SB 1249 authorizes DTSC to either develop alternative management standards for metal shredding facilities, if those alternative standards are determined to be protective of human health and the environment, or to require the facilities and the waste to be subject to full hazardous waste management requirements. SB 1249 also authorizes DTSC to collect an annual fee from metal shredding facilities to reimburse its costs to carry out the requirements of the bill. DTSC has until January 1, 2018 to complete its analysis and, if justified, adopt alternative management standards.

Metal shredders are often found in proximity to California's most vulnerable and impacted communities. After Jan 1, 2018, these facilities will be consistently regulated under uniform statewide standards that ensure protection of human health and the environment - especially the vulnerable communities around those facilities. Additional information related to the implementation of SB 1249 can be found in the response to the IRP's request for a report on the regulatory status of SB 1249.

3. **CalEPA Environmental Justice Initiative**

In 2004, CalEPA adopted California's first environmental justice interagency strategy to promote public participation, integrate environmental justice into its

policies and actions, improve research and data collection, and encourage coordination and accountability. DTSC continues to work collaboratively with CalEPA and the other boards, departments, and offices to identify regulated entities, conduct target inspections, and pursue enforcement actions.

CalEPA created the Environmental Justice Compliance and Enforcement Working Group in June 2013 to coordinate the compliance and enforcement work of its boards and departments in areas that contain multiple sources of pollution and are disproportionately vulnerable to the effects of pollution. The Working Group includes CalEPA and its boards, departments, and offices, as well as the California Air Pollution Control Officers Association, the California Conference of Directors of Environmental Health, the California Agriculture Commissioners and Sealers Association, the Certified Unified Program Agencies Forum Board, and local enforcement agencies. Its mission is to facilitate the use of environmental justice considerations in compliance and enforcement programs and enhance communications with community members to maximize benefits in disproportionately impacted areas.

In 2013, the Working Group selected a portion of the City of Fresno and its surrounding unincorporated area for its first initiative, with the goal of increasing compliance with environmental laws in this area. The initiative included three components: community consultation, compliance assistance for regulated industries and businesses, and coordinated multi-agency compliance sweeps designed to address environmental issues in the community.

The Working Group is building upon its efforts in Fresno and is currently conducting a Compliance Assistance and Enforcement Initiative in the Boyle Heights and Pacoima neighborhoods of Los Angeles.

CalEPA will continue to lead an agency-wide working group dedicated to increasing compliance with environmental laws in communities that have relatively higher environmental burdens.

4. Identifying Violations Affecting Neighborhoods (IVAN) Program

Identifying Violations Affecting Neighborhoods (IVAN) is an innovative program of environmental monitoring, reporting, and enforcement in California. It is intended to improve health and conditions of well-being in disadvantaged communities where residents face high levels of environmental hazards and low levels of the economic, political, and social resources needed to address them. The IVAN program resembles an environmental version of a neighborhood watch. Through the use of mobile applications, smart phones, multilingual and 24/7 online access, community residents can report problems they experience or observe to public agencies that have the mandate and capacity to investigate and resolve them.

Community members can quickly and anonymously submit environmental complaints and incident reports directly to IVAN. Complaints can be submitted by phone, text, email, or online.

The program ultimately seeks to transform the process of environmental reporting and enforcement from being reactive to proactive. It does so by fostering partnerships between public agencies and the community (i.e., individuals and organizations).

The partnerships are based on regular dialogue and collaborative problem solving at monthly meetings. The IVAN model is therefore more akin to community-oriented policing, which is "based on genuine partnerships with the neighborhood in both identification of environmental impacts and the discussion of solutions. Each IVAN task force is able to view location and patterns of complaints to help guide agency resources.

The IVAN platform currently supports 7 communities (Imperial Valley, Coachella, Wilmington, Bayview Hunters Point, Kern County, Fresno, and Kings with Sacramento coming soon). Each environmental report can be viewed online including a pin-point map location of where the incident occurred, images to support the claim, any action taken, and the outcome of an investigation.

5. **Implementation of AB 1071 and New Supplemental Environmental Projects Policy (SEP)**

DTSC's SEP policy was finalized on 5/5/16. The policy prioritizes the use of SEPs in communities where a violation has occurred and in environmental justice communities. DTSC is the first of the CalEPA boards, departments, and offices to develop a SEP Policy that meets all the requirements mandated by AB 1071 (Atkins 2015), which include: benefiting disadvantaged communities, allowing up to 50% of fines and penalties to be allocated to SEPs, and providing a public process and list of approved projects to CalEPA annually. This policy will be implemented by EERD in 2016. SEPs are environmentally beneficial projects that a Defendant voluntarily agrees to undertake in settlement of an administrative or civil enforcement action. In return, DTSC agrees to reduce the monetary penalty that would otherwise apply as a result of violations(s). DTSC believes it is important that its programs and funding are appropriately directed toward improving the environmental health and economic vitality of impacted communities. The SEP policy specifies that DTSC will prioritize compliance and enforcement actions affecting disadvantaged communities and give preference to proposals that benefit them.

7. CalEPA Complaint System

On April 21, 2016, CalEPA launched a new complaint system. The new website takes the user through the process of reporting an environmental problem, whether it's related to air or water pollution, hazardous or solid waste, or pesticides. The system can identify the user's location using GPS and allows them to upload photo, video and other documentation of the suspected hazard. The website is available in English and Spanish. When a report is submitted, it is routed to the appropriate state or local agencies. CalEPA, along with its boards and departments, works with more than 400 state and local agencies to enforce environmental laws and regulations. If users provide an email address, they will receive an update when their complaint is referred and again when the complaint is closed. Users can also file anonymous reports. The new website serves as an early warning system, alerting enforcement agencies of potential environmental violations, and providing witness accounts and documentation for investigations. DTSC will utilize the enhanced On-line Complaint System to improve inter-agency coordination and help prioritize enforcement actions.

8. Creation of the Enforcement Performance Management Branch

DTSC received a budget augmentation to conduct a thorough assessment of DTSC's inspection and enforcement program. The primary objective is to implement program improvements to increase efficiency, effectiveness, and consistency in enforcing hazardous waste laws and regulations. This includes developing a work plan, establishing work load standards, developing and updating all pertinent regulations, developing and updating policies and procedures, and developing and implementing a comprehensive training program. As part of this effort, DTSC will embed environmental justice goals and objectives into the enforcement program, and will establish clear metrics to evaluate and track performance. Additionally, DTSC seeks to increase program transparency and public accessibility.