Asamblea de Poder Popular de Gonzales; Ex. 6 / Ex. 7(c) - Privacy Complainants, v. Salinas Valley Solid Waste Authority, Respondents.	**COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000d 40 C.F.R, Part 7**

I. INTRODUCTION

This is a civil rights complaint by Asamblea de Poder Popular de Gonzales (hereinafter "Asamblea,") a community organization in Gonzales, California, and by Gonzales residents Ex. 6 / Ex. 7(c) - Privacy, under Title VI of the Civil Rights Act of 1964[1] against the Salinas Valley Solid Waste Authority ("SVSWA") for discriminating against Latinos/Hispanics ("Latinos") and Spanish speakers based on race, national origin, and ethnic group identification.

As a recipient of federal financial assistance, SVSWA is subject to Title VI of the Civil Rights Act and its prohibition against discrimination.

Gonzales is a predominantly Latino/Hispanic, Spanish-speaking community -- approximately 88.1 percent of residents are Latino/Hispanic ("Latino"), and 74.6 percent speak Spanish at home; of the Spanish speakers, approximately 54.5 percent spoke English less than "very well" and 25.8 percent did not speak English at all. Approximately 39.1 percent of residents are foreign born, of whom 95 percent are Spanish speakers; of the foreign-born Spanish speakers, 89.8 percent speak English "less than very well" and 47.2 percent speak English "not at all".

Complainants allege that SVSWA violated the Title VI prohibition on discrimination because:

1 Title VI of the Civil Rights Act of 1964 provides: "No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §2000d.

A. SVSWA's decision to select Gonzales, without adequate consultation with its residents, as the site of a proposed "conversion technology" facility, and to select Plasco's plasma arc gasification waste incineration project for advanced stages of consideration, has had and continues to have discriminatory and adverse impacts on Latinos because the project would emit hazardous and criteria air pollutants into the environment of Gonzales, a predominantly Latino community, as well as have other significant negative impacts;

B. SVSWA acted intentionally to create this adverse impact on Latinos in Gonzales, because it acted improperly to assure selection of the Plasco project, including through systematically limiting public notification and comment in violation of civil rights and public notice requirements, providing or facilitating misinformation about the project, failing to adequately consider or intentionally ignoring negative information about the health and environmental effects of the project, and exercising bias in favor of Plasco; and

C. SVSWA unlawfully and intentionally discriminated against, and continues to discriminate against, Latino and Spanish-speaking residents of Gonzales, through implementation of discriminatory procedures, including in the site selection, technology review, and the CEQA Environmental Review Process, which resulted in and continues to result in unequal access to participation.

The SVSWA's actions had and continue to have discriminatory impact on Latinos and Spanish speakers, as well as constitute intentional discrimination against them — both grounds for Title VI action.

These actions exacerbate disproportionate adverse impact on Gonzales residents that already exists due to the fact that Gonzales, despite being a small community of only around 8187 residents, have been forced to bear an excessive and disproportionate share of the region's environmental dangers and contamination by hosting the Johnson Canyon Landfill and a

hazardous waste collection facility. This has already resulted and continues to result in emission of hazardous pollutants and particulates in the air from diesel trucks, air and land emissions from the landfill, and threats to the groundwater.

Residents will be forced to bear an even greater proportion of this burden if the SVSWA's proposal to have the Canadian company Plasco build a plasma arc gasification garbage plant in Gonzales is implemented. The project is based on a dangerous, experimental technology that would emit a wide range of hazardous and criteria pollutants into the environment of Gonzales and would result in regional waste disposal continuing in Gonzales for decades to come.

II. THE COMPLAINANTS

Complainant Asamblea de Poder Popular de Gonzales ("Asamblea") is an unincorporated association of residents in Gonzales, California. Asamblea advocates for the well-being of the community, including environmental health and justice. Founded in 2006, its mission is to "Work to better the health and well-being of the farmworkers, their families, and the communities where they reside, through development of leadership and formation of strategic alliances."[2]

Complainant Ex. 6 / Ex. 7(c) - Privacy are Latina residents of Gonzales. Complainant Ex. 6 / Ex. 7(c) - Privacy is a Latino resident of Gonzales, who is a Spanish speaker who speaks virtually no English. He has lived there for 17 years. Ex. 6 / Ex. 7(c) - Privacy has lived in Gonzales for 3 years, and Ex. 6 / Ex. 7(c) - Privacy for 51 years.

Asamblea and other residents of Gonzales have been concerned about waste disposal and other projects within Gonzales that impact their health and environment. They have deep concerns about the SVSWA selection of Gonzales as the site for a new waste management facility based on "conversion technology", and approval for advanced consideration of the

[2] Spanish Original of Asamblea's mission: "Trabajando para mejorar la salud y el bienestar de los campesinos, sus familias y las comunidades donde residen por medio del desarrollo de liderazgo y la formacion del alianzas estrategicas."

Plasco plasma arc gasification waste incineration proposal. They are concerned both about the health and other threats posed by the proposed facility, and by the systematic exclusion of Latino, Spanish-speaking residents from meaningful participation in the decision-making process.

Asamblea and many other Gonzales residents only learned of the plasma arc garbage plant proposed for their community in late 2010 from Greenaction for Health and Environmental Justice ("Greenaction), a non-profit organization whose volunteers and staff conducted outreach in Gonzales to alert residents of the SVSWA consideration of the proposed Plasco project and the fact that SVSWA picked Gonzales for the project. Since learning of the Plasco plasma arc gasification project, Asamblea and its members, as well as other Latino residents of Gonzales, have sought to participate in the decision-making process but have been systematically denied full and equal access by SVSWA to public participation opportunities.

Complainant Asamblea de Poder Popular de Gonzales brings this Civil Rights Complaint on behalf of its membership who are Latino residents of the City of Gonzales, located in Salinas Valley, within Monterey County, California. Gonzales residents Ex. 6 / Ex. 7(c) - Privacy join in the civil rights complaint as Latino residents who have been disproportionately harmed and discriminated against by SVSWA in this process.

III. THE SALINAS VALLEY SOLID WASTE AUTHORITY

The Salinas Valley Solid Waste Authority (SVSWA) is "a joint powers agency made up of the following local governments: Monterey County (eastern half of the unincorporated county), and the cities of Gonzales, Greenfield, King City, Salinas, and Soledad." [3] It is the agency responsible for solid waste disposal of these local governments.[4]

The SVSWA is the government agency responsible for the discriminatory actions which are the subject of this complaint – it picked the Johnson Canyon Landfill immediately adjacent to Gonzales as the location for the proposed project, selected the Plasco project for advanced

3 SVSWA website, accessed February 14, 2012, at http://svswa.org/about.cfm
4 *Id.*

consideration in Gonzales, serves as the lead agency for the project, and is conducting the administrative processes which have denied Latinos and Spanish speakers equality of opportunity to participate in the decision-making processes.

SVSWA has a Board of Directors which consists of nine elected officials, only one of whom is from Gonzales, compared to three officials from the City of Salinas and two members from the County of Monterey.[5] It has a staff that is headed by Executive Director Patrick Matthews; its administrative offices are located in Salinas.[6]

The SVSWA is subject to Title VI of the Civil Rights Act which applies to "any program or activity receiving federal financial assistance", because the SVSWA receives federal financial assistance. For instance, SVSWA receives federal financial assistance. For instance, the SVSWA received $66,000 from U.S. Department of Agriculture (USDA) for the period September 27, 2011 to September 14, 2013, and $35,000 worth of technical assistance from U.S. Environmental Protection Agency (USEPA). [7]

IV. RIPENESS

This complaint is timely filed because the SVSWA's pattern and practice of discrimination against Gonzales residents is ongoing, including discriminatory actions that took place on February 22, 2012 at the SVSWA Scoping Meeting.

Among its most recent actions, the SVSWA discriminated against Latinos and Spanish speakers in preparation for and during a highly controversial CEQA scoping meeting held on February 22, 2012 to take public comment on the "Initial Study" for the Environmental Impact Report planned for the Plasco project. At that meeting, SVSWA violated the civil rights of Latino and Spanish-speaking residents by acts including:

- Failing to translate key documents into Spanish (including the Initial Study on the project

[5] SVSWA website, "Board of Directors", last accessed February 15, 2012, available at http://svswa.org/board_of_directors.cfm.
[6] SVSWA website, "Contact Us", at http://www.svswa.org/contact.cfm, last accessed February 14, 2012.
[7] See Exhibit 1. "Summary of Current & Previous State and Federal Grants as of February 2012", received from the Salinas Valley Solid Waste Authority on 2 February 2012 in response to a California Records Act Request by Greenaction.

that would provide the basis for the EIR and CEQA process, and is the basis for comments during the 30 day public comment period);

- Giving unequal notice to Spanish and English speakers (including that SVSWA excluded Spanish speakers from the initial notice for the February 22, 2012 scoping meeting, so that they eventually were notified only 1 week before the meeting, compared to English speaking residents who received notice over two and a half weeks prior to the meeting, and Plasco who received over one month prior notice),
- Refusing to provide adequate interpretation services between English and Spanish, by first failing to provide sufficient numbers of interpretation headsets for simultaneous translation, and subsequently, after agreeing at the beginning of the meeting to provide consecutive translation, repeatedly refusing to do so.
- Appearing to not intend to receive or record comments by Latino Spanish speakers on an equal basis as English speakers at the scoping meeting, as the meeting was conducted in English and was initially set up to provide only English to Spanish interpretation, and not Spanish to English interpretation, even though key officials including Patrick Matthews, Executive Director of SVSWA and the court reporter who was transcribing the proceeding, did not speak Spanish.
- Knowingly scheduling the scoping meeting on Ash Wednesday, the beginning of Lent, very important religious observances in a town where the majority of residents are Catholic, and the fact that the time of the scoping meeting (6:30pm) was in direct conflict with religious services in Gonzales (5:30 and 7:00 pm.)

These process and notification defects had adverse discriminatory impact against Latinos and Spanish speakers, making it impossible for Spanish speaking residents of Gonzales to meaningfully participate in the February 22, 2012 meeting. Many were so outraged that approximately 100 out of 120 residents walked out of the meeting. This constitutes discriminatory acts prohibited by Title VI, undertaken within the statutory period.

Other violations will be detailed in the next sections.

V. STATEMENT OF FACTS

A. The Community

Gonzales is a small city located in Salinas Valley within Monterey County, California. According to the 2010 U.S. Census, there are approximately 8187 residents, 88.1 percent of whom are Hispanic or Latino, with 84.3 percent being of Mexican heritage.[8] According to the 2006-2010 American Community Survey 5-year estimates, a vast majority of residents are Spanish speakers - 74.6 percent of residents speak Spanish at home[9]; of these persons, 54.5 percent spoke English "less than 'very well' ", and 25.8 percent spoke English "not at all".[10] Thus approximately 40.6 percent of the total population of Gonzales were Spanish speakers who spoke English less than "very well", and 19.2 percent of the total population of Gonzales were Spanish speakers who did not speak English at all.[11]

39.1 percent of the residents in Gonzales are foreign born.[12] Of the foreign born, approximately 95 percent are Spanish speakers, and of them, approximately 89.8 percent speaks English less than "very well" and 47.2 percent speaks English "not at all".[13] Thus of all foreign-

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[8] U.S. Census Bureau, "Profile of General Population and Housing Characteristics: 2010" for Gonzales City, California, from http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table (last visited February 3, 2012).

[9] "Selected Social Characteristics in the United States" for Gonzales, 2006-2010 American Community Survey 5-Year Estimates, at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP02&prodType=table, last visited February 14, 2012.

[10] According to "Nativity by Language Spoken at Home by Ability to Speak English for Populations 5 Years and Over" for Gonzales, CA, 2006-2010 American Community Survey 5 year Estimates, of 7293 persons surveyed: 5440 persons were Spanish speaking (2500 native born persons, and 2940 foreign born persons). Of these, 54.5% of spoke English less than "very well" (2960 out of 5440 persons). There were approximately 25.8% of Spanish speakers in Gonzales spoke English "not at all" (1402 persons out of 5440 persons)(15 native born persons and 1387 foreign born persons spoke English "not at all".) 19%were Spanish speakers who spoke English "not at all" (1387 out of 7293 persons).

[11] *Ibid.* 40.6% of Gonzales residents spoke English "less than very well" (2960 out of 7293 persons). 19.2% of Gonzales residents spoke English "not at all" (1402 persons out of 7293 persons)

[12] "Selected Social Characteristics in the United States" *supra* note 9.

[13] According to "Nativity by Language Spoken at Home by Ability to Speak English" for Gonzales, *supra* note 10: there were 3087 foreign born persons in Gonzales. 2940 out of 3087 foreign-born persons in Gonzales were Spanish speakers (thus 95% of foreign-born persons were Spanish speakers.) Of those, only 301 of them spoke English "very well". The remainder - 2639 persons -- were Spanish speakers who spoke English less than very well. (Thus

born persons in Gonzales, 85.5 percent were Spanish speakers who speak English less than "very well", and 44.9 percent were Spanish speakers who speak English "not at all". [14]

In contrast, only 55.4 percent of the residents of Monterey County as a whole are Hispanic or Latino.[15] Only 52 percent of Monterey County residents speak a language other than English at home; only 44.8 per cent of Monterey County residents speak Spanish at home, and of these, only 24.9 per cent speak English "less than 'very well'"[16]. Only 30.8 percent of Monterey County residents are foreign born.[17] Of the foreign born in Monterey County, only 76.5 percent are Spanish speakers, approximately 81.4 percent of whom speak English less than "very well", and 33 percent speak English "not at all". Of all foreign born persons in Monterey County, only 63 percent were Spanish speakers who speak English less than "very well" and only 25 percent speak English "not at all". Only approximately 8.2 percent of all Monterey County residents speak English "not at all".[18]

Gonzales is economically depressed, with the Latino population being particularly affected. The per capita income for Gonzales residents is only $16,212,[19] compared to $24,950[20]

89.8% of Spanish speakers spoke English "less than 'very well'" (2639 out of 2940 persons), and 47.2% spoke English "not at all" (1387 out of 2940 persons).

[14] According to "Nativity by Language Spoken at Home by Ability to Speak English" for Gonzales, *supra* note 10, 85.5% of all foreign born people in Gonzales were Spanish speakers who spoke English less than very well (2639 out of 3087 persons) and 44.9% were foreign born Spanish speakers who spoke English "not at all" (1387 out of 3087 persons).

15 U.S. Census Bureau, "Profile of General Population and Housing Characteristics: 2010" for Monterey County, California, from http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table (last visited February 3, 2012).

[16] "Selected Social Characteristics in the United States" for Monterey County, 2010 American Community Survey 1-Year Estimates.

[17] *Id.*

[18] According to "Nativity by Language Spoken at Home by Ability to Speak English for Populations 5 Years and Over" for Monterey County, 2006-2010 American Community Survey 1 year Estimates, there were 122,084 foreign born persons in Monterey, and 93,362 of them were Spanish speakers (thus 76.5% of foreign-born persons were Spanish speakers.) Of the foreign born Spanish speakers, 17,338 of them spoke English "very well". The remainder – 76,024 persons -- were Spanish speakers who spoke English less than very well. Thus 81.4% of foreign-born Spanish speakers spoke English less than very well (76,924 persons out of 93,362 persons). 33.2% of foreign-born Spanish speakers spoke English "not at all" (30,926 out of 93,362 persons). 63% of all foreign born persons were Spanish speakers who spoke English less than very well (76,924 persons out of 122,084 persons), and 25.3% of all foreign-born persons in Monterey were Spanish speakers who spoke English "not at all" (30,926 out of 122,084 persons). 8.2% of Monterey County residents spoke English "not at all" (30,926 out of 374,891 persons).

[19] "Selected Economic Characteristics" for Gonzales, 2006-2010 American Community Survey 5-Year Estimates, last accessed February 14, 2012, at

in Monterey County[21] and $27,353 for California as a whole[22]. For Hispanics and Latinos in Gonzales, the per capita income is even lower – it was estimated as only $14,603. [23]

Of those affiliated with a religious congregation, an estimated 77 percent of Gonzales residents are Catholic.[24]

B. The Salinas Valley Solid Waste Authority

The Salinas Valley Solid Waste Authority (SVSWA), formed in 1997, is a joint powers agency made up of the cities of Gonzales, Greenfield, King City, Salinas, and Soledad as well as the eastern half of unincorporated Monterey County.[25] It is the agency responsible for solid waste disposal of these local governments.

Its stated mission is "To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer service and education." [26]

It is the SVSWA that controls the future landfill siting or expansion.[27] It apparently owns four landfills, but of these, only the Johnson Canyon landfill in Gonzales is still operating. [28]

SVSWA has a Board of Directors which consists of 9 elected officials, only 1 of whom is from Gonzales, compared to 3 officials from the City of Salinas and 2 members from the County of Monterey.[29] It has a staff that is headed by Executive Director Patrick Matthews; its

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http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP03&prodType=table

[20] Selected Economic Characteristics (for Monterey County), 2010 American Community Survey1-Year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_DP03&prodType=tablelast accessed February 15, 2012, 2012.

[21] *Id.*

[22] *Id.* (for California)

[23] "Per Capita Income in the Past 12 Months (In 2010 Inflation Adjusted Dollars)(Hispanic or Latino)" (for Gonzales), 2006-2010 American Community Survey 5-Year Estimates, last accessed February 14, 2012, available a http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_B19301I&prodType=table

[24] City-data.com, citing Jones, Dale E., et al., 2002. Congregations and Membership in the United States 2000, at http://www.city-data.com/city/Gonzales-California.html, last accessed 22 February 2012.

[25] SVSWA website, accessed February 14, 2012, at http://svswa.org/about.cfm

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] SVSWA website, "Board of Directors", *supra* note 5

administrative offices are located in Salinas.[30]

The SVSWA has an operating budget of $15 million. 78.5 percent of its revenue is derived from tipping fees (amount charged per ton for solid waste delivered to the landfill for disposal.) 14.23 percent is from out-of-area waste. 5.77 percent is from investment earnings, and 1.5 from grants and other revenue.[31] SVSWA receives federal financial assistance. For instance, the SVSWA received $66,000 from USDA for the period September 27, 2011 to September 14, 2013, and $35,000 worth of technical assistance from USEPA.[32]

C. The Backdrop of Environmental Racism, and History of Disproportionate Burdens on Latinos in Gonzales for Waste Disposal of the Region

The phenomenon of disproportionately siting polluting industries and facilities in "minority" communities is well documented -- studies done by EPA and other organizations have documented from at least the early 1990's that Latinos and people of color bear a significantly disproportionate share of the country's environmental dangers.[33] This has often been called "environmental racism". A 2010 study confirms the continuance of this phenomenon: "Whether this pattern results from deliberate intent to discriminate, or results from decisions related to economic status (pollution is concentrated in poor and thus less politically powerful areas, and race in the U.S. is statistically correlated with income), people of color bear a disproportionate burden of environmental pollution and face disproportionate obstacles in effective enforcement of environmental laws or cleanup of pollution that threatens their health."[34]

The City of Gonzales fits this pattern. Gonzales, whose population is approximately 88.1 percent Latino (*supra* note 8), has long borne a disproportionate burden of the solid waste

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[30] SVSWA website, "Contact Us", *supra* note 6.
[31] Salinas Valley Waste Authority Handbook, page 5-2, available for download at http://svswa.org/about.cfm, last accessed 25 February 2012.
[32] See Exhibit 1, *supra* note 7.
[33] U.S. E.P.A., *Environmental Equity: Reducing Risk for All Communities*, Vol. 1, EPA 230-R-008, at 12 (June 1992); Commission for Racial Justice, United Church of Christ, *Toxic Wastes and Race in the United States* (1987); Luke W. Cole, "Empowerment as a Means to Environmental Protection: The Need for Environmental Poverty Law", 19 *Ecology L.Q.* 619, 622-28 (1992).
[34] Steven Bonorris, ed., *Environmental Justice for All* (Fourth Edition), February 15, 2010, citing Luke W. Cole & Sheila R. Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, Appendix A (NYU Press, 2001).

disposal in the region, because it is the site of a Johnson Canyon Sanitary Landfill, a regional landfill that receives a large amount of solid waste from cities throughout surrounding areas, despite Gonzales itself being a small town that produces a very small proportion of the garbage. Johnson Canyon Sanitary Landfill is the only functioning landfill operated by SVSWA. According to CalRecycle, in 2009 Gonzales sent only 5,646 tons of waste to the Johnson Canyon landfill, while Salinas sent 67,523 tons (close to 12 times more than Gonzales). The SVSWA allows garbage to be sent to Johnson Canyon landfill even from jurisdictions from outside the entire Salinas Valley (and thus outside the jurisdiction of the SVSWA) – for instance in 2009 Gilroy sent 19,479 tons (close to 3.5 times more than Gonzales), and unincorporated jurisdictions in Santa Clara County sent 12,935 tons (close to 2.3 times more than Gonzales).[35]

Because the population of Gonzales has a higher percentage of Latinos compared to the rest of Monterey County (88.1% of the population in Gonzales is Latino, while only 55.4% of the population in Monterey County as a whole is Latino, see *supra* Section V.A. Statement of Facts, The Community), this also means that Latinos are bearing a disproportionate share of the burden of solid waste disposal of the region.

This type of disproportionate impact on Latinos (and other communities of color) fits a common pattern in California (and elsewhere.) That discriminatory sitings are not unintentional is strongly suggested by documents like the Cerrell Report, a study commissioned by the California Waste Management Board to analyze the political difficulties in siting Waste-to-Energy projects. The Cerrell Report implicitly advised companies and governmental entities to site such projects in communities in low socioeconomic strata because they are relatively less able to resist, stating that "All socioeconomic groupings tend to resent the nearby siting of major facilities, but the *middle and upper-socioeconomic strata possess better resources to affectuate their opposition. Middle and higher-socioeconomic strata neighborhoods should not fall at least*

[35] CalRecycle, "Active Landfills Profile for Johnson Canyon Sanitary Landfill (27-AA-0005)", at http://www.calrecycle.ca.gov/Profiles/Facility/Landfill/LFProfile2.asp?COID=27&FACID=27-AA-0005, last accessed 21 February 2012.

within the one-mile and five-mile radii of the proposed site." [36]

D. SVSWA promotion of new "Conversion Technology" projects for waste management, and the selection of the Plasco Plasma Arc Gasification Proposal for advancement to the Environmental Impact Report stage (February 2005 to January 20, 2011)

In February 2005, the Board of Directors of the Salinas Valley Solid Waste Authority (SVSWA) began investigating alternatives to landfill disposal of solid waste. It approved a goal to achieve 75% Diversion from Landfills by 2015, and started to research emerging technologies.[37]

From April to November 2006, the Board discussed long term waste management scenarios, including "Intensive Source Reduction, Recycling and Education Programs," "non-combustion Conversion Technology", and combustion based waste-to-energy technology. It also discussed options for siting a "conversion technology project", including evaluating use of the Crazy Horse and Johnson Canyon Landfills, use of the Marina Landfill, and development of a new landfill along Highway 198. [38]

In December 26, 2006, the Board approved the final elements of the Long Term Waste Management Report, in which it approved use of the Crazy Horse and Johnson Canyon landfills (exploration of Long Valley sites as future landfills were suspended), and a non-combustion based "conversion technology", and Intensive Source Reduction, Recycling and Education Programs.[39]

On March 15, 2007, the Board established a four-member Conversion Technology Commission (CTC) to explore non-combustion based "conversion technologies" in accordance

[36] J. Stephen Powell, Cerrell Associates, Political Difficulties Facing Waste-to-Energy Conversion Plant Sitings", Report by Cerell Associates prepared for California Waste Management Board, p. 42-43. Emphasis added.
[37] SVSWA website, "About the Salinas Valley Solid Waste Authority" at http://svswa.org/about.cfm, last accessed 25 February 2012.
[38] Annual chronologies available on SVSWA website, from the "History" box on the page entitled, "Salinas Valley Solid Waste Authority History of Diversion Services Incorporating the Long Term Waste Management Report, Short Term Goals and the Conversion Technology Commission", at http://svswa.org/conversion_technology.cfm
[39] *Id.*

with the Long Term Waste Management plan.[40] The goal of the Conversion Technology Commission was to "identify the best and most effective "conversion technologies" applicable to Salinas Valley". [41]

The SVSWA defines conversation technologies as "sophisticated processes capable of converting post-recycled residual solid waste into renewable energy, green fuels, and other beneficial products."[42] It considers that the following can be considered to be conversion technologies: "biological processes such as aerobic and anaerobic digestion; thermal processes including gasification, pyrolysis, and plasma gasification; and chemical processes, such as fermentation, acid hydrolysis, and distillation."[43] However, environmental and environmental justice groups have pointed out that there has never been a plasma arc plant anywhere in the world that has generated significant energy, so they challenge the term "conversion technology."

On January 17, 2008, SVSWA issued a Statement of Qualifications calling for applications by vendors interested in submitting a proposal for the "Johnson Canyon Resource Management Park". [44]

In May 15, 2008, the Board approved a short list of four selected vendors, and released Request for Proposals to them. [45]

After receiving proposals responding to the RFPs (August 2008), the CTC met to determine criteria for evaluation of the proposals (June 1, 2009) and ranked the proposals (August 2009).[46] Of the submissions received, the SVSWA reviewed three proposals extensively and ranked them based on these goals and objectives: "Maximize diversion; Comparable gate fees; Reduce impact on climate change; Organics composting or Anaerobic digestion; Education

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[40] *Id.*
[41] SVSWA, "Salinas Valley Solid Waste Authority History of Diversion Services Incorporating the Long Term Waste Management Report, Short Term Goals and the Conversion Technology Commission", at http://svswa.org/conversion_technology.cfm (last accessed 3 February 2012), and SVSWA Annual Report 2010 – 2011, page 16 – 17, available for download from http://svswa.org/
[42] SVSWA, "Authority Facts", downloadable from http://svswa.org/conversion_technology.cfm from the "Q&A" box, last accessed February 25, 2012.
[43] *Id.*
[44] See SVSWA annual chronologies, *supra* note 38.
[45] *Id.*
[46] *Id.*

Center; Separate, recycle or reuse materials; Financially self-sustaining; Public-Private partnership."[47]

In November 2009, SVSWA approved the start of negotiation with two "top ranked" vendors, Plasco Energy and Urbaser S.A. to define proposed projects.[48]

SVSWA held its first "Stakeholders' Meeting" on the proposed projects on February 10, 2010, and also held a public workshop at Gonzales Council Chamber. [49] SVSWA subsequently made various presentations on the proposed projects in 2010.[50]

On January 5, 2011, the Conversion Technology Commission met to review projects to be selected for CEQA review.[51]

On January 20, 2011, the SVSWA Board held a meeting to debate and make a decision on the proposal by the staff to approve the Plasco gasification project to move forward to an Environmental Impact Review. Members of the Conversion Technology Commission and representatives of Plasco and Urbaser were invited to make presentations, and 20 persons (5 Gonzales residents and various persons representing organizations) commented on the proposal.

Within the official Minutes for this meeting, very little of the substance of comments by community members and organizations is included. Virtually none of the substance of comments in opposition of the project, including information about health and environmental risks of the plasma arc gasification and misrepresentations were included in the minutes.[52] The SVSWA staff presentation on January 20, 2011 included clearly incorrect statements about the Plasco technology, its emissions and energy generation.[53]

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[47] SVSWA, Annual Report 2010-2011, page 17, available on www.svswa.org
[48] See SVSWA annual chronologies, *surpa* note 38.
[49] *Id.*
[50] SVSWA made presentations to: San Juan Bautista Rotary (March 11, 2010); California Biomass Collaborative (May 10, 2010); National Conversion Technologies (August 19, 2010); Growers Shippers Association (August 24, 2010). See Chronologies, *supra* note 38.
[51] See Chronologies *supra* note 38.
[52] Minutes of January 20, 2011 meeting of the SVSWA Board of Directors, available for download at www.svswa.org (in Agenda packet for February 2011 meeting.)
[53] See Exhibit 2. Greenaction for Health and Environmental Justice, Untrue Statements and Key Omissions by the Salinas Valley Waste Authority in their Presentation to SVSWA Board Members Urging Approval of Moving Forward with Proposed Plasma Arc Facility", February 4, 2011.

The Board voted 6-3 to approve Plasco's plasma arc gasification technology to advance to the Environmental Impact Report stage.

F. Plasco and the plasma arc gasification waste incineration proposal

Plasco is a Canadian company that operated a pilot plasma arc plant in Ottawa, Canada that had dozens of exceedences of pollution limits and failed to generate significant energy.

The Plasco project that has been selected by the SVSWA for advanced consideration is based on plasma arc gasification, an experimental and two-stage incineration technology. Plasco's plasma arc technology first heats garbage, creating "syngas" that is then incinerated, resulting in the emissions of air pollutants.

Critics consider this a dangerous technology that will cause significant adverse impacts on the health and environment, because it will produce toxic emissions. There have been no successful commercial plasma arc waste treatment facilities in the world, and the only two commercial plasma arc waste treatment plants that existed in the U.S. closed after leaving stockpiles of untreated wastes and were unable to operate successfully. A report issued by Greenaction for Health and Environmental Justice and the Global Alliance for Incinerator Alternatives in June 2006 detailed the severe problems at the ATG plasma arc plant in Richland, Washington and the Hawaii Medical Vitrification Facility (the Hawaii facility subsequently closed).[54]

Other points of contention include claims that the proposed plasma arc gasification facility will generate significant energy (critics allege that there is no demonstrable proof of this, and Plasco's test facility in Ottawa has never demonstrated such results), as well as Plasco's track record (according to the Ottawa, Canada Ministry of the Environment, Plasco had dozens of exceedences of pollution limits at their pilot facility.)[55]

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[54] See Greenaction, Incinerators in Disguise Case Studies of Gasification, Pyrolysis, and Plasma in Europe, Asia, and the United States, at http://greenaction.org/incinerators/documents/IncineratorsInDisguiseReportJune2006.pdf
[55] See Exhibit 2, Untrue Statements, *supra* note 53

It is alleged that SVSWA has known or should have known of these problems, yet failed to fully divulge the truth about the problems with Plasco's pilot facility, and their inability to generate significant energy and the failure of other plasma arc plants in the US. [56]

G. Environmental Impact Review process of the proposed Plasco plasma arc gasification project (January 20, 2011 to present)

At its January 20, 2011 meeting, the SVSWA Board of Directors approved the Plasco plasma arc gasification proposal to advance to the Environmental Impact Report stage.

The Environmental Impact Report is an assessment that is conducted by a consultant on the environmental and other impacts of a proposed project. It is part of the environmental review and permit process under the California Environmental Quality Act (CEQA).

On March 8, 2011, SVSWA organized a public meeting at Gonzales High School to inform residents about the Plasco project.

On May 11, 2011, the SVSWA issued a Request for Proposals for the CEQA consultant to be selected to conduct the Environmental Impact Report process. It formed a Review Committee to evaluate the proposals, consisting of staff, HDR engineer, and a retired city planner from Gonzales. The Review Committee evaluated proposals received and selected Environmental Science Associates (ESA).[57]

On September 15, 2011, the SVSWA Board approved a Funding Agreement with Plasco for reimbursement by the company to the SVSWA for the cost of the Environmental Impact Report (estimated at $821,000.)[58]

On February 3, 2012, Gonzales community members received, with their utility bill, a notice in English and Spanish regarding for scoping meetings to solicit public comment on the

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[56] See Exhibit 2, Untrue Statements, *supra* note 53

[57] SVSWA, Report to Board of Directors: Monthly Progress Report on Environmental Review of Proposed Conversion Technologies in Accordance with California Environmental Quality Act, September 15, 2011. This document is contained within the Agenda Packet for the October 2011 meeting of the Board, which is available for download at http://svswa.org/board_of_directors.cfm.

[58] *Id.*, Monthly Progress Report of December 15, 2011. This document is contained within the Agenda Packet for the January 19, 2012 meeting of the Board, which is available for download at http://svswa.org/board_of_directors.cfm.

issues that should be addressed within the EIR that the SVSWA is planning. The English notice listed scoping meetings for February 22 and February 28, but the Spanish notice listed only the February 28 scoping meeting.[59]

Around February 6, 2012, the SVSWA issued the Plasco Salinas valley "Initial Study", a 56-page document prepared by Environmental Science Associates to "to encourage comments on what should be analyzed in the EIR" by residents and governments.

The Initial Study provided some (though not all) information about potential significant adverse health and environmental risks of the Plasco project – it stated that the Plasco project has "potentially significant impact" in the following dimensions:

- Emit toxic air contaminants from the flare and gas engine generators[60]
- Generate diesel particulate matter, which has been classified by the California Air Resources Board as a toxic air contaminant for cancer risk[61]
- Generate greenhouse gases from transportation, on-site uses, and generation of electricity[62];
- Transport various hazardous materials to and from the project site during construction, and during operation, emit airborne pollutants and other waste products that could contain hazardous chemicals[63]

The Initial Study stated that the Plasco plasma arc gasification proposal had significant risk of violating air quality standards (page 2-3), conflicting with existing air quality plans (page 2-3), having substantial adverse impact on special-status plants and animals species known to be present in the site, including the California tiger salamander (a state and federally listed threatened species), western spade foot toad, burrowing owl, vernal pool fairy shrimp, and others (Page 2-5); and could result in water quality degradation (page 2-18). Further, the Initial Study

[59] See Exhibit 3(a) & 3(b), SVSWA, "Public Information and Public Participation Opportunities Regarding a Proposal by Salinas Valley Solid Waste Authority to Develop a Plasma Arc Gasification Facility at the Johnson Canyon Landfill" (no identifiable date, but received by community members on February 3, 2012) (in English and Spanish)
[60] Environmental Science Associates (ESA), *Initial Study* (on Plasco Salinas Valley), page 2-4.
[61] *Id.*
[62] *Id.* at page 2-11.
[63] *Id.* at page 2-14.

stated that the proposal has risk of exposing people substantial adverse effects including risk of loss, injury or death linked to seismic-related ground failure, because it is in close proximity to the San Andreas fault (page 2-9).

On February 15, 2012, Asamblea and Greenaction sent an email to SVSWA to request cancellation of the meeting because of unequal notice and the conflict of the February 22, 2012 scoping meeting with the Catholic religious observances for Ash Wednesday (beginning of Lent).[64]

Around February 15, 2012, Gonzales residents received the notices in English and Spanish regarding the scoping meetings. This time, the Spanish notice listed both the February 22 and 28 scoping meetings.[65]

On February 16, 2012, 28th District Assemblymember Luis A. Alejo sent a letter to SVSWA requesting cancellation of the February 22 and 28, 2012 scoping meetings, because of concerns about transparency and failure to properly inform Spanish speakers.[66]

On February 16, 2012, Susan Warner of SVSWA responded to Asamblea and Greenaction's request for cancellation, denying the request to cancel the meetings due to the serious notice and scheduling problems.[67]

On February 22, 2012, SVSWA held the "scoping meeting". This meeting was highly controversial and 100 of the 120 members of the community present walked out.

H. February 22, 2012 scoping meeting

Because of the discrimination apparent prior to the scoping meeting (unequal and inadequate notice, failure to translate key documents, and conflict with Ash Wednesday and

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[64] See Exhibit 4 Letter from Asamblea Poder Popular de Gonzales & Greenaction to SVSWA of 15 February 2012.
[65] See Exhibit 5(A) & 5(B), Notice from SVSWA received by Gonzales residents on February 15, 2012 (containing similar information from the notice that arrived February 3, 2012, but with revised Spanish information that listed both the February 22 and 28, 2012 scoping meetings.) (A-ENGLISH; B-SPANISH)
[66] Exhibit 6. Letter from Assemblymember of 28th District Luis Alejo, on "Salinas Valley Solid Waste Authority's Failure of Appropriate Notice on CEQA Process to Gonzales City Residents" (requesting cancellation of scoping meetings), February 16, 2012.
[67] Exhibit 7. Copy of Email Response from Susan Warner, Diversion Manager of SVSWA, responding to Asamblea and Greenaction letter of February 15, 2012 which requested cancellation of the February 22 and 28, 2012 scoping meetings.

Lent), Asamblea had already sent a request on February 15, 2012 for SVSWA cancel the February 22 (and February 28) 2012 scoping meeting.

Upon refusal by the SVSWA, Asamblea organized a protest an hour before the scoping meeting on February 22, which was attended by approximately 60 persons.

Upon the start of the scoping meeting, Asamblea again requested cancellation of the scoping meeting, expressing concern regarding the additional discrimination against Latinos and Spanish-speakers that became apparent at the meeting itself (including the translation headsets had run out so a number of limited English Latinos were not able to understand the proceedings, no simultaneous Spanish to English translation was being provided even though key SVSWA officials and others in attendance did not speak Spanish, and the transcriptionist of the proceedings did not speak Spanish). The facilitator of the scoping meeting (Candace Ingram) stated that the scoping meeting would proceed, saying that consecutive translation would be provided between English to Spanish and Spanish to English, but later refused to allow time for the consecutive translation, which led to the walk out of approximately 100 out of the 120 residents attending the scoping meeting, and refusal of many who remained to give testimony because of the improperness of the proceedings.

According to Asamblea and other community members, there was severe discrimination at the meeting against Latinos and Spanish-speakers as well as Catholics in the meeting procedures, including:

- That SVSWA failed to translate key documents into Spanish (including the Initial Study on the project that would provide the basis for discussion at the meeting);
- That SVSWA gave unequal notice given to Spanish and English speakers (including that SVSWA excluded Spanish speakers from the initial notice for the scoping meeting, so that they eventually were notified only 1 week before the meeting, compared to English speaking residents who received notice over two and a half weeks prior to the meeting, and Plasco who received over one month prior notice),
- That SVSWA refused to provide adequate interpretation services from English to Spanish,

by first failing to provide sufficient numbers of interpretation headsets for simultaneous, and subsequently, after agreeing at the beginning of the meeting to provide consecutive translation, refusing to do so.

- That SVSWA obviously did not intend to receive or record comments by Latino Spanish speakers on an equal basis as English speakers at the scoping meeting, as the meeting was conducted in English and was initially set up to provide only English to Spanish interpretation, and not Spanish to English interpretation, even though key officials including Patrick Matthews, Executive Director of SVSWA, Paul Miller from ESA (the company that was chosen by SVSWA to conduct the Environmental Impact Assessment for the project) as well as the transcriptionist who was transcribing the proceeding, did not speak Spanish.
- That SVSWA knowingly scheduled the scoping meeting on Ash Wednesday, the beginning of Lent, a very important religious observance in a town where the majority of residents are Catholic, and the fact that the time of the scoping meeting was in direct conflict with religious services in Gonzales (5:30 and 7:00 pm.)

VI. ARGUMENT

Discrimination against people on the basis of race, color or national origin is prohibited under Title VI of the Civil Rights Act of 1964 which provides:

> No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving ederal financial assistance. 42 U.S.C. §2000d.

SVSWA receives federal financial assistance. For instance, the SVSWA received $66,000 from USDA for the period September 27, 2011 to September 14, 2013, and $35,000 worth of technical assistance from USEPA.[68]

[68] See Exhibit 1, *supra* note 7.

The SVSWA's decisions and procedures violate the authority's duty to administer all programs and activities in a nondiscriminatory manner. These violations include both actions that have caused and will cause significant adverse impact on Latinos and Spanish speakers in Gonzales on the grounds of race, color and national origin, as well as acts that constitute intentional discrimination against them on protected characteristics, all of which are prohibited by Title VI.

Specifically,

A. SVSWA's decision to select Gonzales, without adequate consultation with its residents, as the site of a proposed "conversion technology" facility and to select Plasco's plasma arc gasification waste incineration project for advanced stages of consideration, has had and continues to have discriminatory and adverse impact on Latinos because the project would emit hazardous and criteria pollutants into the environment of Gonzales, as well as have other significant negative impacts;

B. SVSWA intentionally acted to create this adverse effect on Latinos in Gonzales, because it acted improperly to pick Gonzales for the project site and assure selection of the Plasco project, including through systematically limiting public notification and comment in violation of civil rights laws and public notice requirements, providing or facilitating misinformation about the project, failing to adequately consider or intentionally ignoring negative information on the negative health and environmental effects of the project, failing to adequately consider the health and environmental effects of the project, and exercising bias in favor of Plasco; and

C. The SVSWA unlawfully and intentionally discriminated against Latino and Spanish-speaking residents of Gonzales by implementing discriminatory procedures during the site selection, technology review and the CEQA Environmental Review Process, which resulted in unequal access to participation.

These acts violate Title VI, and the SVSWA must take all appropriate action to end SVSWA's state civil rights law violations.

A. SVSWA's Decision To Select Gonzales, Without Adequate Consultation With Its Residents, As The Site Of A Proposed "Conversion Technology" Facility And To Select Plasco's Plasma Arc Gasification Waste Incineration Project For Advanced Stages Of Consideration, Has Had And Continues To Have Discriminatory And Adverse Impact On Latinos Because The Project Would Emit Hazardous And Criteria Pollutants Into The Environment Of Gonzales, As Well As Have Other Significant Negative Impacts

At its January 20, 2011 meeting, the Board of Directors of SVSWA adopted a decision to select Plasco's plasma arc gasification project to advance to the California Environmental Quality Act (CEQA) environmental review process.

The CEQA process including the preparation of an Environmental Impact Report (EIR) is a crucial and vitally important part of the environmental review and permitting process, and a proposed project that is selected to move forward to do an EIR has already gone through multiple preliminary screenings including site selection, review of the statement of qualifications of many vendors, and selection of a company to move the process forward with to environmental review under CEQA. It is well established that once a proposed project reaches this stage, it is almost never ultimately rejected even though it may have significant environmental and health impacts because EIRs almost never issue a negative assessment on a proposed project, or, even when some negative environmental impacts are identified in the EIR, it will state that those impacts can be adequately mitigated even if it is unlikely to be true. This is in part because EIR's are usually paid for by the company putting forth the proposal, who has an interest in receiving approval for the project, as is the case with SVSWA and Plasco.

In the case of the Plasco's proposal for plasma arc gasification in Gonzales, the SVSWA Board of Directors signed a Financial Agreement with Plasco in September 15, 2011 for the

company to reimburse the SVSWA for the cost of the EIR, which a Review Committee of SVSWA decided would be conducted by Environmental Science Associates (ESA), a company based in Sacramento. Based on past history, the Plasco project is very likely to be issued a favorable Environmental Impact Report, and advance toward final approval.

Unfortunately, the Plasco proposal, if implemented, will likely have adverse health, environmental and economic impacts, with a disproportionate burden falling on Latino populations in Gonzales, California. The Plasco plasma arc gasification project is based on a dangerous experimental and two-stage incineration technology. Plasco's plasma arc technology first heats garbage, creating "syngas" that is then incinerated, resulting in the emissions of air pollutants as was confirmed at their pilot plant in Canada where they had dozens of pollution exceedences.

The SVSWA has failed to adequately consider these adverse impacts into its decision-making, and has in fact on various occasions willfully ignored or even actively denied that they exist (this will be detailed in the next section.) However, even the "Plasco Salinas Valley Initial Study" of February 2012 prepared by ESA in order to start the EIR process, provided some (though not all) information about significant adverse health and environmental effects of the Plasco project – it stated that the Plasco project would:

- Emit toxic air contaminants from the flare and gas engine generators
- Generate diesel particulate matter, which has been classified by the California Air Resources Board as a toxic air contaminant for cancer risk
- Generate greenhouse gases from transportation, on-site uses, and generation of electricity;
- Transport various hazardous materials to and from the project site during construction, and during operation, emit airborne pollutants and other waste products that could contain hazardous chemicals[69]

[69] *Supra* notes 60 to 63.

The Initial Study acknowledged that the proposal thus had significant risk of violating air quality standards (page 2-3), conflicting with existing air quality plans (page 2-3), having substantial adverse impact on special-status plants and animals species known to be present in the site, including the California tiger salamander (a state and federally listed threatened species), western spade foot toad, burrowing owl, vernal pool fairy shrimp, and others (Page 2-5); and could result in water quality degradation (page 2-18). Further, the Initial Study states that the proposal has risk of exposing people substantial adverse effects including risk of loss, injury or death linked to seismic-related ground failure, because it is in close proximity to the San Andreas fault (page 2-9).

Thus the Plasco proposal could adversely affect the health and environment of Gonzales residents. Pollutants in the environment can also affect the agricultural sector in the region, which is an important employer for residents. All these would disproportionately affect Latinos, because Gonzales is predominantly Latino, and has a higher proportion Latinos than the rest of Monterey County. (See Section V.A. Statement of Facts, The Community)

B. SVSWA intentionally acted to create this adverse effect on Latinos in Gonzales, because it acted improperly to pick Gonzales for the project site, and to assure selection of the Plasco project, including through systematically limiting public notification and comment in violation of civil rights laws and public notice requirements, providing or facilitating misinformation about the project, failing to adequately consider or intentionally ignoring information on the negative health and environmental effects of the project, failing to adequately consider the health and environmental effects of the project, and exercising bias in favor of Plasco

The selection of the Plasco plasma arc gasification proposal, which would have significant adverse effects on Gonzales residents, is not accidental. The SVSWA staff, led by Executive Director Patrick Matthews, has demonstrated a pattern of bias in favor of the proposal,

that has included improper acts such as systematically limiting public notification and input in violation of the civil rights laws and public notification requirements, providing or facilitating misinformation about the project, and failing to adequately consider or willfully ignoring information about adverse impacts of the project on residents, while exercising bias in favor of Plasco.

1. Systematic limitation of public notification and input on the Plasco project

The SVSWA has acted systematically to limit public notification and input on the Plasco project. Among other acts, the SVSWA Board made decisions, all without adequate notification and comment, of important decisions including the selection of Gonzales as the site for a new "conversion technology" waste management project, without making efforts to make Gonzales residents aware of the project and to allow them meaningful opportunity for public comment; made a series of important decisions on the project without adequately informing residents about those decisions and giving them notice for opportunities for public comment; and when residents became aware of the project and expressed concerns, failed to assure adequate recording of the objections made to the project.

a. SVSWA chose the Johnson Landfill Site in Gonzales, without making Gonzales residents aware of the project and giving them opportunity for meaningful public comment. The Board had started exploration of possible "conversion technology" projects for waste management in 2005, and since then have made decisions in its meetings that clearly significantly impact Gonzales residents. It already decided in 2006 to site the future "conversion technology" in Gonzales at the Johnson Canyon landfill. This was done without efforts to make the Gonzales residents aware of the project, and allowing meaningful opportunity for public comment. SVSWA failed to conduct public outreach to inform them about proposals and about opportunities for public comment, and failed to translate notices, meetings or documents into Spanish. Thus, most residents in Gonzales had no idea that the Johnson Canyon landfill, which is

very close to the city center of Gonzales (it is just 2 miles from a school in Gonzales) was proposed for and selected as the site for a new waste management project. The earliest that Asamblea and most community residents heard of these developments was late 2010, when Greenaction and Salinas Valley residents organized volunteers to go door to door in Gonzales. Many others did not hear about the Plasco project until the first public meeting organized by SVSWA at Gonzales High School on March 8, 2011, long after SVSWA had already selected Gonzales as the site of new waste management facility.

The taking by a governmental authority of decisions that will have significant impacts on a community, in virtual secrecy without informing its residents and without public discussion, goes against principles of democracy, justice and governmental transparency and accountability. For instance, the California Brown Act (Ca. Gov. Code 54950-54963) which is aimed at transparency of local governmental authorities provides,

> "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." Ca. Gov. Code Section 54950.

When a governmental authority makes decisions that have disparate adverse effects on the health and environment of a low-income and/or community of color, in a process where there is no meaningful participation of the community, civil rights and environmental justice concerns are triggered.[70] This has clearly been the case with SVSWA actions towards Gonzales.

[70] See for instance, Executive Order No. 12898 (59 Fed. Reg. 7629 (Feb. 16, 1994), and U.S. Department of Justice, *Department of Justice Guidance Concerning Environmental Justice*, 1995.

b. SVSWA made numerous decisions which led to the selection of the Plasco project for advanced stages of consideration, without informing Gonzales residents of opportunity for public comment. Subsequent to selecting Johnson Canyon landfill area in Gonzales as the project site in a non-transparent manner, the SVSWA and its bodies made numerous decisions about the future "conversion technology" project, which eventually led to the selection on January 20, 2011 of the Plasco project for advanced stages of consideration, all without informing Gonzales residents of opportunity for public comment.

Among the important decisions that SVSWA has taken from 2006 to January 20, 2011 without public input are: that the SVSWA Board created the Conversion Technology Commission (CTC) in 2007, the CTC and the Board made critical decisions and recommendations including the screening and selection of vendors, drafting of the Request for Proposals, the development of the criteria for evaluation of the proposals received, and selection of finalists from the proposals received, and the Board approved these recommendations.[71]

Throughout this process, very little public information was provided to the residents of Gonzales on this process, and thus they had virtually no opportunity for participation and public comment until very advanced stages of the process. According to SVSWA's own information, it held its first "Stakeholders' Meeting" only in February 10, 2010.[72] Subsequently, it reportedly made 4 presentations about the project in 2010, but these were only to small groups and were not public hearings.[73] The first large public meeting it held was only on March 8, 2011. Detailed information on the discussions and decisions of the Board on this process are available on the

[71] According to the chronology in the SVSWA website, the Board created the Conversion Technology Commission in 2007. The Board appears to have made a decision in December 26, 2006 that Johnson Canyon and Crazy Horse landfill sites would be used. A Statement of Qualifications calling for applications by vendors interested in submitting a proposal for the "Johnson Canyon Resource Management Park" was issued last December 2007 or early 2008. In May 15, 2008, the Board approved a short list of four selected vendors, and released Request for Proposals to them. After receiving proposals responding to the RFPs (August 2008), the CTC met to determine criteria for evaluation of the proposals (June 1, 2009) and ranked the proposals (August 2009). The SVSWA Board approved the start of negotiations with two vendors (Plasco and Urbaser) on November 9, 2009.

[72] See Chronologies *supra* note 38. The SVSWA also made a presentation to the Gonzales City Council on the status of Johnson Canyon Resource Management Park on September 21, 2009, but this cannot be considered opportunity for public information and comment.

[73] SVSWA made presentations to: San Juan Bautista Rotary (March 11, 2010); California Biomass Collaborative (May 10, 2010); National Conversion Technologies (August 19, 2010); Growers Shippers Association (August 24, 2010).

SVSWA website only from 2010, and documents related to the Conversion Technology Commission are available only from 2008.[74] As stated above, Asamblea de Poder Popular de Gonzales, though it started operating in 2006, did not hear about this process until late 2010, when Greenaction and Salinas Valley residents organized volunteers to go door to door in Gonzales.

Members of Asamblea and many community members were extremely alarmed when they learned of the prospect of a new waste disposal facility in Gonzales, a small city that already bears a disproportionate burden of waste management in the region. See *supra* Section V.C. The Backdrop of Environmental Racism, and History of Disproportionate Burdens on Latinos in Gonzales for Waste Disposal of the Region. Residents were especially concerned about the likely negative health, environmental and economic impacts. They attended the SVSWA Board meetings January 20, 2011 to express their concerns, but by this time, the Board had already long selected Gonzales as the project site, had narrowed the potential vendors, had developed a Request for Proposals and determined the criteria for evaluation, and had narrowed the proposals to two. On January 5, 2011, the Conversion Technology Commission had already made a determination on which proposal it would recommend. In the January 20, 2011 Board meeting, despite comments from community members about the lack of information that had been given to the community about the process, that more community members should be informed, and concerns about the potential negative impacts, the SVSWA Board proceeded to select the Plasco proposal to proceed to the CEQA review and Environmental Impact Report stage.

In accordance with civil rights laws, principles of environmental justice recognized by state and federal agencies and many regional agencies, and requirements of the California Brown Act, community members had a right to notice and to participation and comment in all meetings of the SVSWA including its Board and committees from the beginning of this process.[75] Yet

[74] See SVSWA website, www.svswa.org

[75] The California Brown Act (Cal. Gov. Code §§ 54950-54962) requires that "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided..." Cal. Gov. Code §54953(a). The Brown Act requires transparency at meetings of local agencies, such as the SVSWA, including providing publication of agendas for meetings, mailing notifications of the agenda when requested, and allowing for public attendance and comment.

community members were not informed in any meaningful way, including that notice given (if any) about the meetings and discussion was not posted anywhere that seems to have caught the attention of community members, and they do not appear to have been provided in Spanish, despite the fact that approximately 74.6 percent of Gonzales residents speak Spanish at home, and of the Spanish speakers, 54.5 percent speak English less than "very well", and approximately 25.8 did not speak English at all. See *supra* Section V.A. Statement of Facts, The Community. Lack of Spanish translation excluded an even greater proportion of foreign-born residents -- for foreign born residents of Gonzales, who comprise around 39.1 percent of the community, 95 percent are Spanish speakers, 89.8 percent of whom speak English less than "very well" and 47.2 percent speak English "not at all". See *supra* Section V.A. Statement of Facts, The Community.

The lack of notice by the SVSWA becomes even more stark after January 20, 2011, when at least 111 Gonzales residents submitted written requests to the SVSWA to be informed about upcoming opportunities for public comment. 69 residents (62.1 percent) submitted the requests in English, and 42 residents (37.8 percent) submitted the requests in Spanish. [76]

Despite these requests, SVSWA continued to fail to adequately notify residents. For over one year it did not mail any notices to the 111 requesting residents of upcoming SVSWA Board meetings, which pursuant to the Brown Act must always integrate opportunity for public comment[77], and it failed to post notification on the Board meetings on the website in Spanish. Further, the SVSWA formed a Review Committee in May 2011 to draft a Request for Proposals to select the company to conduct the environmental review. The Review Committee drafted the Request for Proposals, analyzed proposals received, and selected Environmental Science Associates (ESA), all without adequately informing Gonzales residents or giving them opportunity for public comment. [78]

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[76] See Exhibit 8(A). (Partial) List of Gonzales, Ca. Residents Who Submitted Written Requests To Salinas Valley Solid Waste Authority On 20 January 2011 For Notice For "Any And All Opportunities For Public Comment On Waste Treatment Technologies And/Or Facilities Being Considered Or Proposed For The Salinas Valley" and Sample Request in English (8B) and Spanish (8C)
[77] See *supra* note 75.
[78] See Monthly Progress Report September 15, 2011, *supra* 57.

In 2012, when the SVSWA organized and scheduled the "scoping meetings" for February 22nd and 28th for the purpose of soliciting comment on the "Initial Study" for the CEQA review process, there were many flaws in the notification process, including that it omitted the February 22nd meeting from the initial notice to Spanish speakers (when the English notice listed both the February 22nd and 28th meetings). Though it sent a correction to Spanish speakers later, this did not remedy the situation because the disparate notices had caused confusion among residents, and Spanish speakers ended up getting much less notice than English speakers. This also constituted discrimination based on race, color and national origin prohibited by Title VI. More acts of discrimination will be detailed in the next section.

c. Lack of Meaningful Opportunities for Public Participation and Comment. Further, it is clear that the opportunities for public comment were not meaningful at all. There is a strong appearance that SVSWA is not actually interested in receiving or giving consideration to public comment. In addition to making decisions contrary to opinions and requests submitted, SVSWA has at least on two occasions, failed to assure adequate recording of comments public comments expressing opposition to the project.

After community members found out about the Plasco proposal, a number attended the SVSWA board meeting of January 20, 2011 at which the Plasco proposal was approved to advance to the CEQA environmental review process, including conducting an Environmental Impact Report. Subsequently, community members have continued to attend Board Meetings in which the Plasco proposal has been on the agenda.

At the January 20, 2012 Board Meeting, at least 20 persons and 5 residents of Gonzales attended and gave comments, in which at least 8 persons spoke about the need for more community outreach, at least 12 persons spoke for the need for further study of the project before approving the Plasco proposal to start the CEQA process, and at least 1 person spoke against the proposal. Board Vice President Fernando Armenta requested a postponement of 60 to 90 days because he felt the process has not been inclusive, regardless of city council and stakeholder

meetings.[79] Yet SVSWA Board still voted 6-3 to approve the Plasco proposal to advance to the next stage of review, the CEQA process including the preparation of an Environmental Impact Report, which is funded by the proposing company and almost always issues favorable results for the company seeking permit approval.

Even more shockingly, SVSWA has so far, in important occasions for public comment on the Plasco proposal, failed to adequately record public comments. In the January 20, 2011 Board meeting in which the Plasco proposal was selected, the minutes of the meeting did not record the substance of most public comments, including those made critiquing the safety of the technology, and alleging that Plasco made key misrepresentations about the project. For instance, Greenaction for Health and Environmental Justice, a San-Francisco based environmental justice organization working at the invitation of Gonzales residents, gave technical comments about how the information provided by the SVSWA was misleading and about Plasco's record of pollution excesses. Yet the substance of these comments are not reflected in the minutes – they merely note that Greenaction "Spoke in Opposition of the Proposed Project."[80]

At the February 22, 2012 scoping meeting held in Gonzales High School, one cause of outrage for the community was that they discovered that SVSWA executive director Patrick Matthews, Paul Miller the representative of ESA (the company contracted to conduct the Environmental Impact Report), and the transcriptionist did not speak Spanish, and had not taken interpretation headsets. Thus none of those people were prepared to understand comments made in Spanish, and those comments would not be recorded. After demands to cancel the meeting were denied, SVSWA stated it would provide consecutive translation of the discussions, because the meeting was obviously not set up to allow for simultaneous translation between English and Spanish, but subsequently refused to do so. This led to approximately 100 out of 120 residents to walk out of the meeting, and many that remained to refuse to give their testimony at that meeting in protest.

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[79] Minutes of January 20, 2011 meeting of the SVSWA Board of Directors, *supra* note 52.
[80] Minutes of January 20, 2011 meeting of the SVSWA Board of Directors, *supra* note 52.

All these actions indicate that SVSWA's systematic limitation of public participation and comment in the process that selected the Plasco project.

2. Misinformation and omissions by SVSWA regarding plasma arc technology, its combustion processes, emissions, health effects, and potential for energy generation

SVSWA has also acted intentionally to create a disproportionate impact on residents in Gonzales through selection of the Plasco project for environmental review, because it systematically provided or facilitated misinformation about the project in order to make it appear more attractive to the Board of Directors and the public.

The starkest example of this was at the January 20, 2011 meeting of the SVSWA Board, in which board members heard a lengthy presentation by the staff of the SVSWA that urged the Board to vote in favor of selecting the Plasco project to move forward to the CEQA process and Environmental Impact Report stage. After hearing the staff presentation, the Board voted 6-3 in favor of the staff's recommendation. Unfortunately, the SVSWA staff presentations included statements that were clearly untrue and which they knew or should have known were untrue, and also omitted key facts regarding the technology, emissions, health and environmental effects, potential for energy generation, and Plasco's track record. These include:

a. Misinformation that the Plasco plasma arc gasification project is based on a technology that does not involve combustion, and does not produce toxic emissions. The SVSWA has consistently issued information that was misleading, in order to paint plasma arc gasification technology as a technology that does not use combustion, and produces no emissions, and therefore would not present any risks to health. SVSWA staff acted improperly by accepting these false claims and repeating them to the Board and to the public. For instance:

- Plasco's proposal and subsequent materials and description of the project does not make clear in an understandable way that plasma arc gasification technology has two steps – heating of the waste into "syngas", and then combustion of the syngas. The information tends to skip over the details of the second process.

- At the January 20, 2012 meeting of the Board of Directors, the speaker introduced by Patrick Matthews during the staff presentation to talk about economic development said "nothing comes out" (there would be no emissions) from the proposed Plasco facility. This is simply, clearly not true as Plasco's own website confirms. SVSWA knew or should have known of this. Plasco clearly knew the statement was untrue, but said nothing.
- A member of the CTC spoke as part of the staff presentation and claimed that the CTC was not recommending companies that emit toxics into the environment. This statement was incorrect, because Plasco (and Urbaser, the other company being considered) would have toxic emissions.
- SVSWA's Director Patrick Matthews publicly denounced Greenaction for claiming that there would be a stack for emissions at a Plasco facility, and he alleged such a statement was false. In fact, Plasco now admits there would be not one, but two flare stacks, each 32 feet tall, at a facility if it was built in Gonzales. These stacks would have emissions of pollutants during start up and shut down of operations of the plasma arc facility.
- In the proposal submitted by Plasco to SVSWA in 2008, the drawing of the proposed facility shows no stack for emissions. In photos of the Plasco pilot plasma arc facility in Ottawa, Canada displayed by Plasco at the SVSWA's February 22, 2012 Scoping Meeting, 95% of the stack is cropped out.[81]

b. Failure by SVSWA to disclose environmental exceedences by Plasco at its test facility in Canada. Plasco has had dozens of instances of emissions exceeding regulatory limits for total organic compounds, NOx and sulpher dioxide, yet SVSWA failed to disclose this information during the Board meetings. The violations include:

[81] See Exhibit 9. Plasco, Drawing of proposed facility, submitted in 2008 to SVSWA in response to Request for Proposals. Source: Conversion Technology Commission, Agenda Packet for October 29, 2008.

- In July 2008, a test found sulpher dioxide emissions at the plant's flare to have exceeded the allowable limit
- On two occasions in January 2008, organic matter exceeded the maximum limit
- Activated carbon bed bypass non-compliance occurred February 1, 2009, 3 dates in December 2008, and five days in January 2009
- According to the Ministry of the Environment, in 2009 Plasco had dozens of exceedences;
- In 2010, Plasco had excess NOx emissions that exceeded regulatory limits
- According to the Ontario WHAT, Canada Ministry of Environment in 2010, Plasco's Ottawa facility "is struggling" with smog-causing emissions, and has not yet proven it can be successful.

c. Misrepresentation about the potential of Plasco to generate electricity, and thus qualify as a conversion technology. Further, misrepresentations about the potential of the Plasco project to generate electricity have been made by ESA and SVSWA. During the staff presentation at the SVSWA Board meeting on January 20, 2011, SVSWA's consultant Michael Greenberg from HDR told the SVSWA Board that Plasco generates twice as much electricity as Urbaser, a claim that was untrue and had no basis in actual reality. When Greenaction questioned consultant Michael Greenberg of HDR following the HDR portion of the staff presentation, he admitted that his statement about Plasco's supposed energy generation (1) was merely a "design concept" without actual experience generating that much electricity, and (2) that HDR was surprised that Plasco was not generating as much electricity as they expected. Unfortunately, HDR and SVSWA staff failed to divulge to the Board the truth about the lack of significant energy generation, leaving the impression that Plasco actually generates a lot of electricity when in fact that is simply untrue.[82]

[82] Exhibit 2. Greenaction, "Untrue Statements and Key Omissions by the Salinas Valley Waste Authority", *supra* note 53.

All this misinformation created by misrepresentations made or permitted by SVSWA, made the Board much more likely to select the Plasco project. When the SVSWA Board of Directors launched the exploration of "Conversion Technologies" in 2005, it mandated that the SVSWA search for alternatives to landfills by looking for "non-combustion" conversion technologies.[83] Thus the characterization of the Plasco project as a non-combusution technology that produces no emissions, and generates energy, was important. Unfortunately, the Plasco project would have emissions and Plasco has not succeeded in their goal of significant energy generation at their pilot plant.

3. The SVSWA has exercised insufficient concern for adverse effects on residents, while exercising improper bias and favoritism toward Plasco

The SVSWA has not, and does not plan to, give proper consideration to the health impacts of the Plasco plasma gasification proposal, which would disproportionately affect Latino residents in Gonzales, California.

The SVSWA Board had heard testimony about the misleading information about the Plasco project, including that it involved combustion, and would emit pollution into the air, at its January 20, 2011 meeting. Yet it decided to go ahead and approve the Plasco project.

The SVSWA, in its efforts to explore conversion technologies, issued a Statement of Qualifications and Request for Proposals. The list of criteria that the SVSWA adopted to evaluate the submissions did not include consideration for the impact and risks to the health of residents and the effect on the environment as a whole. A clear example is that the official criteria adopted to evaluate and rank proposals submitted in response to the Request for Proposals, did not include consideration of impact on health and environment for Gonzales residents (or of other areas.) Rather, it only listed the following as criteria: "Maximize diversion; Comparable gate fees; Reduce impact on climate change; Organics composting or Anaerobic digestion; Education Center; Separate, recycle or reuse materials; Financially self-sustaining; Public-Private

[83] See Chronologies *supra* note 38 and other SVSWA materials.

partnership." [84] It did not integrate for instance, "health and environmental impacts on surrounding community" into the list.

Meanwhile, the SVSWA has demonstrated an improper bias and favoritism toward Plasco. In addition to putting incomplete and misleading statements into the public record that favored the Plasco project, there were other instances of unequal advantages being given to Plasco. For instance, the SVSWA apparently informed Plasco of the dates of the scoping meetings of February 2012 by at least mid-January, yet Gonzales residents only received notice on February 3rd and/or February 15th. See *supra* notes 59 and 65 and accompanying text.

C. The SVSWA unlawfully and intentionally discriminated against the Latino and Spanish-speaking residents of Gonzales through language discrimination and flawed and unequal notification which resulted in unequal access to participation in processes related to the proposed Plasco plasma arc gasification project

The SVSWA intentionally discriminated against Latino and Spanish speaking residents in Gonzales by systematically limiting their participation in the decision-making process despite their protected status under Title VI.

Title VI prohibits not only discrimination based on race and color but also national origin. This protects language minorities, such as Spanish speakers, from unfair exclusion of the benefits afforded to non-minorities.

SVSWA discriminated against Latinos and Spanish speakers, including many foreign-born persons, including in failing to provide Spanish translations of key documents necessary to participate in the public comment process related to the Plasco proposal, as well as failing to make its website accessible to Spanish speakers; failing to provide adequate interpretation between English and Spanish at public meetings; failing to organize its meetings to be able to

[84] SVSWA Annual Report 2010-2011, *supra* note 41, at 17.

receive and records comments in Spanish; and failing to give equal notice and opportunity for Spanish speakers to participate in public meetings.

Failing to provide make information available in Spanish and allow for discussion between Spanish and English clearly has the effect of disproportionately disadvantaging and excluding Latino residents in Gonzales. As detailed in Section V.A, Gonzales is a predominantly Latino/Hispanic town (88.1 percent of residents are Latino), and 74.6 percent of residents speak Spanish at home. Of the Spanish speakers, approximately 54.5 percent speak English "less than 'very well' ", and 25.8 percent speak English "not at all". Foreign-born residents of Gonzales are even more disproportionately affected by lack of Spanish translation -- 95 percent of foreign born residents of Gonzales are Spanish speakers, of whom approximately 89.8 percent speaks English less than "very well" and 47.2 percent speak English "not at all". 39.1 percent of the residents in Gonzales are foreign born. See *supra* Section V.A. Statement of Facts, The Community.

Because the information related to the Plasco project is very technical, it is impossible for a person that does not speak English very well or does not speak English at all to be able to understand most documents and participate meaningfully in the entire process, unless translations are provided for notice, written documents and oral proceedings. Thus, failure to provide such translations in Spanish effectively excludes a significant proportion of the Gonzales community from meaningful participation in the government review and public participation process related to the Plasco plasma arc gasification (and any "conversion technology") proposal. This constitutes discrimination based on race, color and national origin violates Title VI.

SVSWA also violated Title VI by giving unequal opportunity and notice for opportunities of public participation to Spanish speaking residents.

1. Failing to provide Spanish translations of key information

While SVSWA has provided Spanish translation of a handful (approximately six) of documents related to the Plasco plasma arc gasification proposal[85], it has not provided and

[85] The SVSWA has provided English and Spanish versions of the following documents: "Authority Facts", a 4-page fact sheet about the SVSWA; Scoping Meeting Notice dated 1/30/2012 (community members received this in the

continues to fail to provide Spanish translation of key documents required for meaningful participation in the process. For instance, key documents required for meaningful participation in the current CEQA/Environmental Impact Report process (the purpose of which is to identify the issues that should be analyzed in the EIR) have not been translated into Spanish, including:

- SVSWA's "Plasco Salinas Valley Notice of Preparation", which gives notice of the undertaking of the EIR;
- SVSWA's Plasco Salinas Valley Initial Study, a 56-page document that gives detail on the proposed plan for the EIR, which "is provided to other governmental agencies and for the public to encourage comments on what should be analyzed in the EIR"[86].

The Initial Study document is the key document for the CEQA process to date, and the SVSWA's failure to translate this 56-page document effectively and unequivocally prevents Spanish-speaking residents and Limited English Speaking residents from participating equally in the process.

The notice for the February 22, 2012 meeting directed people to the SVSWA website, and the Spanish version of the Initial Study was not available as of the date of filing of this complaint.[87]

At the February 22, 2012 scoping meeting, the SVSWA had copies of the slides for Powerpoint presentation which was translated into Spanish. However, this document had only very general information about the Initial Study, and would not make it possible to read or key permit document, the Initial Study.

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mail with their utility bill around February 3, 2012, though there was a controversy because the initial Spanish that was sent omitted the February 22, 2012 scoping meeting, while the English listed the February 22 and 28 scoping meetings); SVSWA Staff Report to the Board of 12/15/11; SVSWA Staff Report to the Board of 11/17/11; SVSWA Staff Report to the City of Gonzales of 9/19/11; SVSWA Press Release 9/19/11.

[86] Se Exhibit 3, SVSWA notice received by residents on February 3, 2011, *supra* note 59.

[87] In English: "A copy of the Notice of Preparation and Initial Study can be obtained from the Authority's website at www.svswa.org, Gonzales City Hall or Monterey County Library at 851 Fifth Street." In Spanish, "Una copia del Aviso de Preparación y Estudio Inicial se puede obtener en www.svswa.org, City Hall o Libreria del Condado de Monterey ubicada en 851 de la Calle 5. From scoping meeting notices received February 3, 2012, *supra* note 59.

The Public Comment card, which a member of the public is supposed to fill out to mail his or her comments to the SVSWA about issues that should be addressed in the EIR, was made available in Spanish at the February 22, 2012 scoping meeting, but is not available on the SVSWA website as of the date of this complaint.

(Further, there are also problems with access by Spanish speakers to documents on the website, which will be discussed below.)

All this clearly restricts the ability of Spanish speakers to participate equally and meaningfully in the commenting process for the EIR, and constitutes systemic exclusion of Spanish speakers from meaningful participation in the process. Both the English and Spanish notices for the scoping meetings state that there would be a 30 day comment period to submit comments on what should be analyzed in the EIR , and that the Notice of Preparation and Initial Study would be made available around February 6, 2012[88]. The English version of these documents was made available around that date, but Spanish versions have never been provided as of the date of this complaint. Yet SVSWA set the deadline for comment as March 7, 2012.

Further, other key documents that have not and are not being provided in Spanish include:

- Notice and agendas for upcoming board meetings
- Documents to be discussed at SVSWA Board Meetings, related to the Plasco proposal
- Minutes of Board meetings

As detailed in Section VI.B. above, the SVSWA staff and Board have been making decisions that have and will significantly affect Gonzales residents since at least 2006, when it decided to site the new "conversion technology" facility at Johnson Canyon landfill. Upcoming Board meetings will do the same.

[88] Both the English and Spanish notice states that the Notice of Preparation and the Initial Study would be made available around February 6, 2012, and there would be a 30 day comment period. From scoping meeting notices received February 3, 2012. The English version of these documents was made available on the SVSWA website as stated, but the Spanish versions were not.

It is an aggregious violation of civil rights for a governmental entity to fail to provide Spanish translation of information related to its acts that can have a significant adverse affect on the residents, in a community where 74.6% speak Spanish at home, and approximately 40.6 percent of the population are Spanish speakers who spoke English less than "very well", and 19.2 percent do not speak English at all. See *supra* Section V.A. Statement of Facts, The Community. This constitutes discrimination based on race and cultural identity; further, the lack of Spanish translation has an even more discriminatory effect on the foreign born – 85.5 percent of foreign born residents are Spanish speakers that speak English "less than very well", and 44.9 percent speak English "not at all". See *supra* Section V.A. Statement of Facts, The Community.

SVSWA must translate documents that are necessary for equal opportunity of participation by all Gonzales residents in current and upcoming public comment opportunities. Within the EIR process, there should have been translation of the Notice of Preparation and the Initial Study that is required to participate meaningfully in the current public comment process on the Environmental Impact Report (which SVSWA has scheduled to close on March 7, 2012) as well as translation (and issuance) of the notice and agenda of meetings of the SVSWA Board that address issues that relate to the Plasco project, and the relevant documents that the Board will be discussing.

2. Failure to make the SVSWA website accessible in Spanish

SVSWA clearly uses its website as one of the principal distributors of information to the public. As stated above, the notice on the February 22 and 28, 2012 scoping meetings directed persons to the website to download the Notice of Preparation for the EIR, and the Initial Study. Further, the notice stated, "For more information on the CEQA process, visit the Authority website at www.svswa.org or call (831) 776 3000." [89]

However, as of the date of this complaint, the SVSWA website is inaccessible to limited English speakers and monolingual Spanish speakers, because the entire website and its

[89] From scoping meeting notices received February 3, 2012, *supra* note 59.

navigation menus are in English. Thus a limited English or monolingual Spanish speaker would not even be able to know how to navigate to the six documents that are made available in Spanish. Websites that properly intend to provide information to limited English speakers always have a link in the home page that makes clear what other languages are available, and then has navigation options in those languages.

3. Failing to provide adequate interpretation in Spanish at key public meetings.

Further, the SVSWA failed to provide adequate interpretation services at meetings discussing the Plasco plasma arc gasification proposal.

According to Asamblea which sought to attend all meetings of the SVSWA Board of Directors since at least March 2011, if it became aware that Plasco was on the agenda, only two of the meetings have provided Spanish interpretation, the meeting of September 15, 2011 and the meeting of January 19, 2012. At all meetings that Asamblea has attended of the SVSWA Board of Directors, no written materials were provided in Spanish.

At the February 22, 2012 scoping meeting, English to Spanish interpretation was supposed to be provided, but SVSWA did not provide a sufficient number of headsets. SVSWA appeared to have only between 30 and 50 headsets, when approximately 120 residents attended the meeting, and at least some limited English speakers and monolingual Spanish speakers, and limited or non-Spanish speakers (including SVSWA Executive Director Patrick Matthews, ESA representative Paul Miller, and the court reporter doing the transcription of the proceedings), did not receive headsets.

SVSWA knowingly and intentionally refused to provide adequate interpretation at the scoping meeting on February 22, 2012. At the start of that meeting, members of Asamblea and other residents pointed out to the facilitator and SVSWA officials that interpretation headsets had run out, and requested cancellation of the meeting because limited English Spanish and monolingual Spanish speakers would not be able to understand, and, because many English speakers also did not have headsets. Patrick Matthews, SVSWA Executive Director, was asked

publicly at the meeting asked by a community member whether he spoke Spanish, and he stated he did not. A resident stated at the meeting that he asked the court reporter whether she spoke Spanish and she did not. Neither had headsets. Paul Miller from ESA also did not have a headset and it is suspected that he does not speak Spanish. There were also other limited Spanish speakers and monolingual Spanish speakers that did not get translation headsets because they ran out.

Asamblea and other residents protested vociferously for approximately 20 minutes and repeatedly requested cancellation of the meeting, but Candace Ingram, the facilitator selected by SVSWA, and SVSWA officials, refused. Ingram stated that the meeting will proceed, but at one point stated that consecutive translation will be provided. Some consecutive translation was provided, but this was sporadic, and the presentation made by SVSWA Executive Director Patrick Matthews was not translated into Spanish through consecutive interpretation, and when residents pointed this out, SVSWA said that the meeting will proceed regardless, and did not provide consecutive translation of most subsequent discussions. This led to the walk out in protest of approximately 100 to 120 residents who had been in attendance, and the refusal to give testimony by a number of persons that remained.

This entire fiasco clearly had the effect of limiting meaningful participation by Spanish speakers in the discussions about the environmental review process for the Plasco plasma arc gasification proposal. Aside from the Spanish speakers being denied equal opportunity to participate at the February 22, 2012 scoping meeting, the overall impression that these processes were not welcoming or meaningful for Spanish speakers may discourage Spanish speakers (and Latinos) from seeking to participate in future opportunities.

4. Failing to institute procedures that would allow for genuine participation of Latinos and Spanish speakers, by assuring that comments can be received in Spanish.

Astoundingly, at the February 22, 2012 scoping meeting, the SVSWA did not even appear to genuinely intend to receive or record comments by Latino Spanish speakers, as the

meeting was conducted in English and was initially set up to provide only English to Spanish interpretation, and not Spanish to English interpretation.

Shockingly, key officials including Patrick Matthews, Executive Director of SVSWA did not speak Spanish but made no effort to take an interpretation headset, even though he arrived early to the meeting. Further, the court reporter who was transcribing the proceedings also did not speak Spanish but was not given an interpretation headset, so obviously could not understand or transcribe comments made by Spanish speakers, including requests at the beginning of the meeting to cancel the meeting because of inadequate translation. It is suspected that Paul Miller from ESA (the company that was chosen by SVSWA to conduct the Environmental Impact Assessment for the project) also did not speak Spanish, though he also did not have a headset.

Obviously, the participation by Spanish speakers in the meeting would not be meaningful, if their comments would neither heard by the authority with decision making power, nor recorded so they could be accessible to anyone else.

As noted above, residents pointed these flaws out at the beginning of the meeting, and requested cancellation of the meeting. SVSWA refused to do so.

5. Failure to provide equal notice and equal opportunity for Spanish speakers to participation in public comment processes

For the reasons stated above, SVSWA has denied equal opportunity to Spanish speakers to participate in discussions related to conversion technology and the Plasco plasma arc gasification proposal. SVSWA has consistently failed to provide adequate notice to Spanish speakers about upcoming meetings where public comment could be made. As discussed above, SVSWA has made very few efforts generally to notify Gonzales residents of public opportunities for comment on the conversion technology discussions and the Plasco project, including those residents who submitted written requests for notice on January 20, 2011.

Of the notices and documents issued, very few were translated into Spanish, and Spanish speakers systematically have had (and currently have) unequal notice and access to information

about almost all meetings and opportunities for public comment.

Even written notices provided by the SVSWA has had many flaws and inequalities. For the scoping meetings for February 22 and 28, 2012, SVSWA's "notice" in English and Spanish was flawed and unequal, resulting in inequality for Spanish speakers. Gonzales residents received a notice of these meetings, in English and Spanish, in the mail with their utility bill on February 3, 2012. However, the English and Spanish notices were not the same-- the "Notice" in English notified residents who read English about both the February 22 and 28 scoping meetings, yet the Spanish language "Notice" only mentioned the February 28 scoping meeting. Regardless of whether this failure to notify Spanish speaking residents about the February 22nd Scoping Meeting was intentional or accidental, it constituted unequal and improper and discriminatory notice. Gonzales residents did subsequently receive a revised notice (on February 15, 2012), in which the Spanish copies now listed both the February 22 and February 28 meetings. This did not remedy the inequality, however, as it caused confusion in the community, and had disparate adverse impacts – Spanish speakers ended up having only about one week of notice to prepare for the scoping meeting, while English speakers had 19 days.

Because of this defect, on February 15, 2012 Asamblea and Greenaction sent a letter to the SVSWA by email and calling for the cancellation of both meetings due to the defective and unequal notices (and also due to the fact that SVSWA scheduled the February 22, 2012 Scoping Meeting on an important Catholic religious observance, Ash Wednesday and the beginning of Lent.)[90]

On February 16, 2012, Susan Warner of SVSWA responded with an email rejecting the request for canceling the Scoping Meetings due to the notification issue, though she acknowledged the discrepancy and called it "regrettable'.[91] SVSWA's response also acknowledged the fact that they were aware that key religious observances would occur in Gonzales at the same time as the Scoping Meeting on February 22nd (religious services were

[90] See Exhibit 4. Letter from Asamblea Poder Popular de Gonzales & Greenaction to SVSWA, see *supra* note 64.
[91] Exhibit 7. Copy of Email Response from Susan Warner, Diversion Manager of SVSWA, of February 16, 2012, *supra* note 67.

scheduled for 5:30 and 7:00 in the evening, while the scoping meeting was scheduled for 6:30pm.) Despite acknowledging these problems, SVSWA decided to proceed with the scoping meetings even though it is clear many residents would have to attend their important religious observance instead of the scoping meeting.

For all these reasons, SVSWA instituted a pattern of practices, some of which were knowing and intentional, that limited the opportunities available to Spanish speakers to participate equally and meaningfully in the decision-making process. Thus the SVSWA has violated Title VI by intentionally discriminating against Gonzales residents on the basis of their race, color and national origin, thus denying the people most affected by the proposed project the ability to fully participate. This far exceeds the showing of disparate impact necessary to find a violation of Title VI.

VII. REMEDIES

For all the reasons above, SVSWA violated Title VI by engaging in discrimination based on race, ethnic identification, and nationality.

Complainant requests that the U.S. Department of Agriculture and the U.S. Environmental Protection Agency conduct an investigation to determine whether the Salinas Valley Solid Waste Authority violated Title VI of the Civil Rights Act of 1964 due to the violations and discriminatory actions described in this complaint.

In order to provide effective remedies for the discrimination set forth in this Complaint, the USDA and USEPA should require as a condition of continuing to provide state financial assistance to the SVSWA that the Authority:

(1) Immediately cease the CEQA review of the Plasco proposal, that was selected through improper procedures, and is currently being conducted in a discriminatory and biased manner, including the EIR process that is being conducted by a vendor that was chosen in a closed process that Gonzales residents were effectively and systematically excluded from;

(2) Reverse its decision of January 20, 2011 to select the Plasco plasma gasification project, and begin the entire "Conversion Technology" review process from the beginning with full opportunities for meaningful participation of all residents, including examination of varied options for locations to site conversion technology projects;

(3) Require that all Gonzales and Salinas Valley residents receive equal and adequate notice, in English and Spanish, for all future meetings on any waste disposal, waste management and/or waste treatment projects being considered, reviewed or evaluated by the SVSWA, including but not limited to the proposed Plasco Plasma Gasification project; this includes meetings of the SVSWA Board at which the Plasco proposal, or any other discussion affecting Gonzales, will be discussed. Residents who request it should also receive the agenda and documents for discussion for these meetings,

(4) Cease language discrimination by:

- Translating all key documents related to the discussions on "conversion technologies" that would affect Gonzales and all communities in the Salinas Valley into Spanish, including documents such as "Notices of Preparation" and " Initial Studies", and notices and agendas for meetings of the SVSWA board and documents to be discussed that are relevant to the Plasco project or any other issue that affects Gonzales or other Latino, Spanish-speaking communities in the SVSWA jurisdiction; SVSWA Board minutes; and other relevant documents from other bodies that are critical for meaningful participation by Spanish speakers on the "conversion technology" discussions;

(5) For any official comment period, assure that Spanish speakers have equal time to submit comments as English speakers, counting the date that Spanish translation of the required documents are made available to the public;

(6) Translate the SVSWA website into Spanish, or as a minimum provide navigation tools for Spanish speakers to be able to find the Spanish documents on the website. During the period

that this has not completed, SVSWA should provide a Spanish speaking contact to the community, through which residents can ask for Spanish copies of documents.

(7) Provide simultaneous translation between English and Spanish for all participants in public meetings that are open to public participation and comment on the Plasco proposal (and other projects that will affect Gonzales and the Salinas Valley), including relevant scoping meetings, meetings of the SVSWA Board, and other meetings. This should assure both that Spanish speakers can understand English, and English speakers can understand Spanish;

(8) Ensure that the comments made by the public, in both English and Spanish, through comment periods, public meetings of the SVSWA and other relevant bodies, are recorded adequately and faithfully, so that it serves as a meaningful and accurate record of the comments;

(9) Cease siting waste management and other polluting facilities in a discriminatory fashion that disproportionately affect communities of color and immigrants, such as Gonzales.

(10) Respect environmental justice principles, and develop a SVSWA Environmental Justice Policy in compliance with state and federal environmental justice principles, in consultation with communities within the SVSWA jurisdiction;

(11) Assure full compliance with the Brown Act in providing transparency in proceedings, notification, copies of documents.

(12) Provide complainants with copies of all correspondence to or from the SVSWA throughout the course of the investigation, deliberation and disposition of this Complaint.

VIII. CONCLUSION

SVSWA is a local authority subject to Title VI of the Civil Rights Act of 1964 because it receives federal financial assistance, but violated its provisions by engaging in both actions that will cause significant adverse impact on Latinos and Spanish speakers in Gonzales on the basis of race, color and national origin, as well as acts that constitute intentional discrimination against them on protected characteristics.

We call on the USDA and USEPA to investigate these actions, and seek enforcement of the requested remedy.

DATE: February 28, 2012

Respectfully submitted,

Roberta Ruiz-Camacho, on behalf of
Asamblea de Poder Popular de Gonzales
Ex. 6 / Ex. 7(c) - Privacy
Gonzales CA 93926

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Gonzales, CA 93926

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Gonzales CA 93926

Asamblea Poder Popular de Gonzales Complaint Against Salinas Valley Solid Waste Authority Under Title VI of Civil Rights Act
February 28, 2012

LIST OF EXHIBITS

EXHIBIT 1. "Summary of Current & Previous State and Federal Grants as of February 2012", received from the Salinas Valley Solid Waste Authority on 2 February 2012 in response to a California Records Act Request by Greenaction

EXHIBIT 2. Greenaction for Health and Environmental Justice, "Untrue Statements and Key Omissions by the Salinas Valley Waste Authority in their Presentation to SVSWA Board Members Urging Approval of Moving Forward With the Proposed Plasma Arc Facility", February 4, 2011

EXHIBIT 3(A) & 3(B). SVSWA, "Public Information and Public Participation Opportunities Regarding a Proposal by Salinas Valley Solid Waste Authority to Develop a Plasma Arc Gasification Facility at the Johnson Canyon Landfill" (no identifiable date on the text, but community members received it with their utility bill on February 3, 2012) (A – ENGLISH; B – SPANISH)

EXHIBIT 4. Letter from Asamblea Poder Popular de Gonzales & Greenaction for Health and Environmental Justice on "Fatal Defects in SVSWA Notice of Scoping Meeting & Request to Cancel Scoping Meetings of February 22 and 28, 2012", February 15, 2012

EXHIBIT 5(A) & 5(B). Notice from SVSWA received by Gonzales residents on February 15, 2012 (containing similar information from the notice that arrived February 3, 2012, but with revised Spanish information that listed both the February 22 and 28, 2012 scoping meetings.) (A-ENGLISH; B-SPANISH)

EXHIBIT 6. Letter from Assemblymember of 28th District Luis Alejo, on "Salinas Valley Solid Waste Authority's Failure of Appropriate Notice on CEQA Process to Gonzales City Residents" (requesting cancellation of scoping meetings), February 16, 2012.

EXHIBIT 7. Copy of Email Response from Susan Warner, Diversion Manager of SVSWA, responding to Asamblea and Greenaction letter of February 15, 2012 which requested cancellation of the February 22 and 28, 2012 scoping meetings.

EXHIBIT 8(A), 8(B) & 8(C).
8(A) (Partial) List of "Gonzales, Ca. Residents Who Submitted Written Requests To Salinas Valley Solid Waste Authority On 20 January 2011 For Notice For 'Any And All Opportunities For Public Comment On Waste Treatment Technologies And/Or Facilities Being Considered Or Proposed For The Salinas Valley'"; and
8(B) - Sample Request in English and
8(C) – Sample Request in Spanish

EXHIBIT 9. Plasco, Drawing of proposed facility, submitted in 2008 to SVSWA in response to Request for Proposals. Source: Conversion Technology Commission, Agenda Packet for October 29, 2008