El Pueblo Para El Aire y Agua Limpia; Greenaction for Health and Environmental Justice Complainants, v. Department of Toxic Substances Control and California Environmental Protection Agency Respondents.	**COMPLAINT UNDER TITLE VI OF THE UNITED STATES CIVIL RIGHTS ACT OF 1964**

I. INTRODUCTION

This is a civil rights complaint by El Pueblo para el Aire y Agua Limpia ("El Pueblo") and Greenaction for Health and Environmental Justice ("Greenaction"), under Title VI of the United States Civil Rights Act and its implementing regulations against the Department of Toxic Substances Control and California Environmental Protection Agency (collectively "DTSC/CalEPA") for discriminating on the basis of race in approving the expansion of the Chemical Waste Management Kettleman Hills Hazardous Waste Facility through use of flawed, defective and racially discriminatory procedures, studies and permit processes.

Title VI prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. 42 U.S.C. § 2000d – 2000d-7. Title VI has two major provisions, section 601, which has been held to require discriminatory intent, and section 602, which has been interpreted to allow agencies to promulgate regulations prohibiting agencies receiving federal funding from taking action that have a discriminatory effect, regardless of intent. See 42 U.S.C. § 2000d - 2000d-1.

Under the authority of section 602, U.S. EPA's implementing regulations for Title VI prohibits agencies funded by U.S. EPA from actions that are either intentionally discriminatory or that have discriminatory impacts. 40 C.F.R. Part 7. More specifically, a

recipient of federal financial assistance "shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination" and "shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination." 40 C.F.R. § 7.35 (b) & (c).

The DTSC/CalEPA's decision on May 21, 2014 to approve the permit modification for the hazardous waste dump expansion at the Kettleman Hills Facility (KHF) and its actions on October 13, 2014 issuing the "California Environmental Quality Act Notice of Determination," the "Findings of Fact and Statement of Overriding Considerations," and the Order denying the Petitions for Review filed by El Pueblo and Greenaction have a prohibited discriminatory, negative impact on a protected class of persons that DTSC/CalEPA in fact acknowledges to be true. We attach and incorporate Greenaction and El Pueblo's Petition for Review, the DTSC Permit Decision including Statement of Overriding Considerations, and declarations of residents into this complaint.

This complaint documents that DTSC/CalEPA's actions have a prohibited disparate impact on a protected class of persons. In addition, DTSC/CalEPA intentionally discriminated against protected classes of persons by knowingly and intentionally using and relying on Kings County's studies and processes that were done and approved through the use of racially discriminatory procedures and rules and police actions and intimidation of Latino and Spanish-speaking residents.

DTSC/CalEPA receives federal funding from the United States Environmental Protection Agency. DTSC is the permitting authority for hazardous waste landfills in California. An operator cannot build a hazardous waste landfill or receive hazardous waste without a RCRA hazardous waste permit, issued by DTSC. By approving the KHF expansion, it is directly responsible for the facility's impacts on nearby residents.

As acknowledged by permit documents including the Statement of Overriding Considerations, the project will have significant, adverse, disproportionate and unavoidable impacts.

The expansion would add up to 400 trucks transporting hazardous waste near or through Kettleman City each day. The 400 diesel trucks will add to the significant air quality burdens in the area and will exacerbate the high levels of asthma in Kettleman City. Residents will be at greater risk of toxic exposures than other areas of the State due to routine and accidental hazardous waste releases from the trucks or the disposal site. The close proximity of the hazardous waste landfill and constant threat of routine and accidental toxic releases negatively impacts residents' mental health and sense of safety and well-being. The close proximity of the hazardous waste landfill and the presence of trucks constantly carrying hazardous waste negatively impact property values in the town. The project's significant and unavoidable air quality impacts impact nearby Latino and Spanish-speaking residents to a greater degree than other populations.

According to the 2010 U.S. Census, Kettleman City is 96 percent Hispanic or Latino; Kings County is 52 percent Hispanic or Latino; and California is 38 percent Hispanic or Latino. Using this Census data, it is readily apparent that DTSC's approval of the KHF expansion would have a disparate and prohibited impact based on race when compared to the rest of the state.

In addition to the project approval's discriminatory impact, DTSC/CalEPA *intentionally discriminated* against Latino and Spanish speaking residents by relying on Kings County's Environmental Impact Reports and related documents that were adopted through the systematic use of racially discriminatory methods and police intimidation that limited and rendered meaningless their participation in the decision-making process. Most Kettleman City residents' first language is Spanish, and a high percentage are monolingual Spanish

speakers. In spite of Kettleman City residents' continued request and demand for documents in Spanish, the County's entire process including hearings and the environmental review documents were provided in an English-only format. EIR documents were adopted through the use of these racially discriminatory procedures and by a large scale and intimidating police presence including police dogs. DTSC/CalEPA's reliance on Kings County's permitting process and environmental review documents is thus intentionally discriminatory and had a clear discriminatory impact—two separate grounds for Title VI action.

DTSC/CalEPA approved the permits, and rejected Petitions for Review from El Pueblo and Greenaction, despite significant flaws in the permit process and decision.

In addition, DTSC/CalEPA's issuance of the permit through the use of a Statement of Overriding Consideration despite the agency's acknowledgement that the project would have a significant negative impact on a class of people already highly at risk from pollution and social vulnerabilities and who are protected under state and federal civil rights laws, is a violation of these civil rights laws.

II. TITLE VI OF THE UNITED STATES CIVIL RIGHTS ACT

TVI of the United States Civil Rights Act of 1964 and its implementing regulations prohibit discrimination on the basis of race, color or national origin under any program or activity th at is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Intentional discrimination as well as discriminatory impact are both prohibited.

III. COMPLAINANTS

Complainant El Pueblo Para El Aire y Agua Limpia/People for Clean Air and Water ("El Pueblo") is an unincorporated association of Kettleman City residents. El Pueblo's

primary interest is in protecting the health of Kettleman City residents and in preserving and enhancing the environment and promoting justice in Kettleman City and other similar communities. El Pueblo was founded in 1987 by residents concerned about the impact of a proposed hazardous waste incinerator on the community. Membership in the organization mirrors the demographics of Kettleman City, which are predominantly Latino. El Pueblo and its members submitted written and oral comments during DTSC/Cal EPA's permit process.

Complainant Greenaction for Health and Environmental Justice is an incorporated non-profit organization based in Kettleman City and San Francisco, California. Kettleman City residents were founding board members of Greenaction, one resident currently serves on its Board of Directors, and many residents are members and supporters. Greenaction was founded in 1997 by residents living in low income and working class communities, including Kettleman City, impacted by pollution, health threats and environmental racism and injustice.

Complainants El Pueblo and Greenaction bring this Civil Rights Complaint on behalf of their Latino and Spanish-speaking members and residents living in Kettleman City in Kings County, California.

IV. RESPONDENTS

The Department of Toxic Substances Control (DTSC) is a department of the California Environmental Protection Agency (Cal EPA). The mission of DTSC "is to protect California's people and environment from harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products."

Cal EPA's mission "is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality." Cal EPA is mandated to fulfill its mission by developing, implementing and enforcing the state's environmental protection laws

that regulate clean air, clean water, clean soil, safe pesticides and waste recycling and reduction.

DTSC/Cal EPA issued the approval of the B-18 Hazardous Waste Facility Landfill expansion permit modification on May 21, 2014, relying in significant part on flawed and defective studies including environmental review studies that were adopted through the use of blatantly and well-documented racially discriminatory permit processes. DTSC adopted a Statement of Overriding Consideration to justify approving the expansion despite significant negative impacts they acknowledge would occur as a result. On October 13, 2014 the DTSC/Cal EPA issued their Order Denying Petition for Review filed by both Greenaction for Health and Environmental Justice and by El Pueblo

V. RIPENESS

This complaint is ripe because on October 13, 2014, DTSC/Cal EPA issued the "California Environmental Quality Act Notice of Determination" and the "Statement of Overriding Considerations" for approval of the hazardous waste landfill expansion permit modification on the same day they improperly denied the complainant's Petitions for Review of the permit decision issued on May 21, 2014. DTSC's denial of the Petitions for Review constituted the final act of approval of the permit by the agency, the final agency action that has now allowed the controversial and harmful expansion of the hazardous waste landfill to proceed immediately.

VI. FINANCIAL ASSISTANCE

The DTSC and Cal EPA are subject to and must comply with Title VI because they receive funding from the United States Environmental Protection Agency.

VII. STATEMENT OF FACTS

PROVING CIVIL RIGHTS VIOLATIONS BY DTSC/CALEPA

A. The Chemical Waste Management Kettleman Hills Hazardous Waste Facility:

The DTSC/CalEPA permit has now permitted CWM to expand its hazardous waste landfill B-18 both vertically and laterally– the expansion will increase the footprint of the landfill from 53 acres to 67 acres, and increase the volume of the landfill from 9.7 million cubic yards to 15.6 million cubic yards. CWM plans to add another hazardous waste landfill (B-20) at the site once the B-18 expansion is complete.

The new and expanded landfills would accept approximately 2,900 tons of hazardous waste daily. A combined maximum average of 400 trucks per day may transport waste to the B-18 Landfill or B-20 Landfill, a massive and dramatic increase in truck traffic and diesel pollution as there have only been a handful of trucks entering the facility carrying hazardous waste for the last few years.

After all feasible mitigation measures have been imposed, the project would significantly increase ozone, particulate matter ("PM10") and fine particulate matter ("PM2.5") emissions, result in a significant and unavoidable cancer risk at the KHF property boundary, significantly increase traffic impacts, and contribute to cumulatively considerable and significant greenhouse gas emissions.

CWM's facility is already the largest hazardous waste landfill in the western United States. Regulatory agencies have repeatedly fined the facility for chronic and serious violations of hazardous waste laws and regulations. For example, the U.S. Environmental Protection Agency ("EPA") and DTSC records show that over the years, CWM has repeatedly failed to report toxic spills, improperly disposed of PCBs and other hazardous waste, and failed to conduct required monitoring. CWM has demonstrated a pattern and

practice of chronic and repeated violations at KHF, some spanning a period of several years. Remarkably, just months before DTSC issued this permit and despite operating at 1 or 2% of capacity, KHF violated the terms of its permit yet again.

B. The Community:

Kettleman City is a rural, unincorporated community of 1500 residents. According to the 2010 U.S. Census, Kettleman City is 96 percent Hispanic or Latino; Kings County is 52 percent Hispanic or Latino; and California is 38 percent Hispanic or Latino. Using this Census data, it is readily apparent that DTSC's approval of the KHF expansion would have a disparate and prohibited impact based on race when compared to the rest of the state. A significant percentage of Kettleman City residents are employed as farm workers. Kettleman City residents are predominantly language minority. Eighty-eight percent of Kettleman City residents are primarily Spanish-speaking, and 61 percent are monolingual Spanish-speaking.

Kettleman City is economically depressed. Residents have few resources available to cope with the cumulative exposures to environmental stressors such as pesticides applied on nearby fields, diesel trucks on Interstate 5 and Highway 41, sewage sludge applied on nearby agriculture land, and contaminated drinking water. Residents of Kettleman City also have less occupational and residential mobility, less access to health care, lower income and less political power than other sectors of the Kings County population. In 2000, the per capita income for Kettleman City was $7,389—one third of California's average of $22,711. Thirty-eight percent of families and 43.7 percent of Kettleman City residents were below the poverty line in 2000.

Beginning in September 2007, Kettleman City's residents experienced a sudden and unexpected increase in birth defects. At least 11 babies were born with defects, many of them with cleft palette and various heart and brain defects. Three of the infants died from

complications stemming from those birth defects. Residents estimated that the affected children represented nearly a quarter of Kettleman City births.

The Chemical Waste Management (CWM) facility is located approximately 3.5 miles southwest of Kettleman City. Diesel trucks carrying hazardous wastes and PCBs to the facility travel just yards from residential areas and near the Kettleman City School. According to the U.S. Census, some 96% of Kettleman City's population is Hispanic or Latino, and the per capita income of that population is $15,081. People living in the communities near the facility are already living with significant respiratory health problems as the Central Valley, including Kings County, has worse air quality than any other region in the Nation. Kings County is in extreme nonattainment of current 8-hour and 1-hour ozone standards, and is in non-attainment of 24-hour and annual average fine particulate matter (PM 2.5) standards.

DTSC/Cal EPA permit documents confirm that approval of the KHF expansion adds to the already disproportionate burden of toxic pollution that Latinos in Kettleman City shoulder, which is why these state agencies issued a Statement of Overriding Considerations in an attempt to justify their permit decision. Kings County produces less than three percent of the waste stream dumped at the Kettleman facility and Kettleman City produces none of that waste.

C. Disparate and Negative Impact of Permit and Landfill Expansion:

The facility has, and an expansion would have, a disproportionate and adverse impact on nearby residents. As acknowledged by the EIR and other permit documents, the project would have significant and unavoidable impacts.

The expansion would add up to 400 trucks transporting hazardous waste near or through Kettleman City each day. The 400 diesel trucks would add to the significant air quality burdens in the area and will exacerbate the extremely high levels of asthma in

Kettleman City. Residents would be at greater risk of toxic exposures than other areas of the State due to accidental hazardous waste releases from the trucks or the disposal site. The close proximity of the hazardous waste landfill and constant threat of accidental toxic releases negatively impacts residents' mental health and sense of safety and well-being. The close proximity of the hazardous waste landfill and the presence of trucks constantly carrying hazardous waste through town would negatively impact property values in the town. The project's significant and unavoidable air quality impacts would impact nearby Latino and Spanish-speaking residents to a greater degree than other populations.

D. State's CalEnviroScreen Confirms Kettleman City is At-Risk and Vulnerable Community:

DTSC's permit approval makes a mockery of the state's own CalEnviroScreen tool that was designed to gather information about pollution and the vulnerability of affected populations and then to use that information to help reduce cumulative impacts. While the DTSC decision quotes from and references CalEnviroScreen's information that documents the vulnerability of Kettleman City residents, it's permit is based on a Statement of Overriding Consideration in order to justify adding pollution to a population that the state itself admits is already highly vulnerable due to pollution and other social factors.

DTSC extensively cited CalEviroScreen's findings about Kettleman City in the permit decision document entitled "Environmental Justice Review" which on pages 18-19 states:

> "CalEnviroScreen identifies which portions of the state have higher pollution burdens and vulnerabilities than other areas. It examines indicators related to exposures, environmental effects, sensitive populations, and socioeconomic factors. The **Kettleman City census zip code is identified as in the top 10% highest** scoring census zip codes in the state based on these indicators, which **indicates a**

comparatively high level of pollution burden and vulnerability.

For the purposes of this analysis, we compared Kettleman City to two neighboring communities, Lemoore and San Miguel, examining the raw data identified by CalEnviroScreen for their respective pollution burden and population characteristics indicators. The table on the next page provides CalEnviroScreen data for the Kettleman City zip code, a nearby zip code in Kings County, and a nearby zip code in a community to the southwest of Kettleman. The indicators show how residents of Kettleman City compare to the other communities across the 18 CalEnviroScreen indicators.

The pollution burden indicators show that residents of Kettleman City may experience comparatively higher impacts. Although some indicators are not present or show lower burdens, other indicators show high burdens. The ozone indicator shows that the portion of the daily maximum 8 hour ozone concentration over the federal standard is about 0.11. The average PM2.5 air pollution is 14.1 and exceeds US EPA's standard for ambient PM2.5 concentration. Use of pesticides filtered for hazard and volatility in the area is much higher than the two comparison zip codes, with 3,706.2 pounds reported. In addition, hazard-weighted pounds of chemicals from toxic releases are 39,120,229.

Unlike the two comparison zip codes, CalEnviroscreen does not identify impacts from cleanup sites or groundwater threats for the Kettleman City zip code.

The population characteristics indicators show that residents may be more vulnerable to the effects of pollution. The educational attainment indicator shows that 57.2% of the population has less than a high school education. **This percentage is significantly higher than the two comparison zip codes.**

The linguistic isolation indicator measures the percentage of households where no one

speaks English "very well," and identifies 23.6% of households in Kettleman City as in this category. **This percentage is also significantly higher** than the two other comparison zip codes. Kettleman City is also high on the tool's measure of poverty, with 39.8% of the population living below twice the federal poverty level. The percent low birth weight in Kettleman City, 6.03%, is comparable to the two comparison zip codes. Finally, **CalEnviroScreen identifies 96.27% of the population of Kettleman City as non-white or Hispanic/Latino, significantly higher than the two comparison zip codes."** (**emphasis added**).

E. DTSC Improperly Failed to Perform a Cumulative Impact Analysis:

Even though DTSC acknowledges that Kettleman City residents face a cumulative risk from multiple pollution sources, it failed to conduct a serious analysis to identify the nature of those impacts or address them. DTSC's entire cumulative impact analysis consists of listing new or proposed projects that have emerged since Kings County certified its EIR for the project and summarizing any existing CEQA documentation for the new projects. DTSC did not analyze the combined impact of multiple environmental stressors in the area, and certainly individual sites.

The failure to conduct a comprehensive cumulative impact study of the potential impacts of expanding the toxic waste landfill combined with existing and other proposed pollution sources in this community already suffering high rates of serious health problems has resulted in inadequate analysis of the potential and real impacts of the expansion.

F. DTSC/Cal EPA's Issuance of Expansion Permit Despite Well-Document History of Violations Places Residents at Increased Risk:

It is a matter of public record, and an undeniable fact, that Chemical Waste Management has a long track record of serious, repeat and chronic violations of their permits regarding handling and disposal of hazardous wastes and PCBs at the Kettleman Hills Facility. In the last few years alone, Chem Waste has been cited for violations including years of illegal disposal of hazardous wastes and PCBs, years of failing to conduct some of the required monitoring, failing to report 72 spills of hazardous waste over a four year period, and faulty laboratory results. These chronic violations clearly are grounds for a permit denial, yet the state's decision to issue a permit sends a message to polluters that they can violate their permit dozens of times as Chem Waste has, yet still get new permits.

Agencies have fined Chemical Waste Management millions of dollars for violations at KHF since it was built, and violations continued. In 1984, EPA fined Chemical Waste Management $2.5 million for a total of 130 violations. In 1985, EPA and Chemical Waste Management's parent company, Waste Management, Inc., agreed to a consent decree involving $4 million in fines for failing to adequately monitor ground water and for mishandling hazardous waste, including PCBs, at the Kettleman Hills landfill. In 2005, EPA and Chemical Waste Management entered into a consent decree for extensive monitoring violations. The California Department of Health Services fined Chemical Waste Management $363,000 for eleven administrative and operational violations at the Kettleman dump. On April 8, 2010, EPA issued Chemical Waste Management a letter outlining that the company was engaged in improper disposal and improper handling of highly toxic materials. And, on May 27, 2010, EPA Region IX issued a Notice of Violation to Waste Management stating that, "the data quality control system at the KHF Laboratory is not adequate to ensure reliable analytical results," and "should not be used for decision making." On March 2013, DTSC fined Chemical Waste Management $311,194 for 72 violations for failing to report hazardous waste spills on its property during a four year period between 2008 and 2012.

Health & Safety Code, Section 25186 authorizes DTSC to deny or revoke a permit based on violations of or noncompliance with environmental protection statutes and regulations, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety of the environment. Moreover, Title 22 of the California Code of Regulation, Section 66270.43 authorizes DTSC to revoke or deny a permit for noncompliance by the applicant with any condition of the permit. DTSC/Cal EPA have ignored the serious and repeat violations by issuing a permit for a massive landfill expansion, thus putting residents at increased risk.

G. DTSC/Cal EPA Significant Reliance on Kings County's Racially Discriminatory Permit Process and Documents in the DTSC Permit Process Had a Discriminatory Impact and also Constitutes Unlawful and Intentional Discrimination:

DTSC/Cal EPA extensively relied on the environmental review documents prepared and approved by Kings County in a blatantly and unequivocally racially discriminatory process. These documents provided a significant basis for DTSC/Cal EPA's decision and were incorporated as part of the permit decision.

Title VI prohibits discrimination based on race and also on national origin. This protects language minorities, such as Spanish speakers, from unfair exclusion of the benefits afforded to non-minorities.

Kings County knowingly and intentionally discriminated against Latino residents by systematically limiting their participation in the decision-making process despite their protected status under state and federal civil rights laws. Kings County excluded Latinos from meaningful participation in the Local Assessment Committee process, deprived Latinos access to permit information and documents due to the County's refusal to translate, denied Latinos access to the public hearings by setting hearings on inconvenient dates and times and

in inaccessible locations, and routinely denied Spanish speakers equal time to testify as non-Spanish speakers. Also, the County stifled participation from the Latino residents of Kettleman City through systematic county-initiated police harassment, intimidation and violence. The County used unnecessarily heavy police and canine presence during the public hearings which had the effect and, likely, purpose of intimidating Kettleman City residents, many of whom have uncertain immigration status. Kings County contracted for over 40 police officers and sheriffs to patrol the hearings, in addition to its normal security staff. The clear excess in police presence and force had the effect of limiting the public participation of Latinos and Mexican immigrants, both protected classes under state and federal civil rights laws.

Despite repeated requests from residents, Kings County consistently refused to translate permit documents or public hearings into Spanish, denying the people most affected by the proposed project the ability to fully participate. When translators were present, they were provided by Chem Waste (FSEIR at 3-200), an interested and biased party in the proceeding. (Kings County Planning Commission, Meeting Transcript, October 5, 2009, 2:00pm PST).

Kings County further blatantly discriminated against language minorities during the permit hearing when Spanish-speakers were allowed only half the time to testify as whites. While English speakers were allotted a full five uninterrupted minutes to testify, the County allowed the Spanish-speaking Latinos only 2 ½ minutes to testify – using the other 2 ½ minutes to have the translators paid for by the toxic waste company translate the testimony into English. Meeting Transcript at 152:16-19.

When Spanish-speaking residents objected at the hearing to being given only half the time to testify, County officials and police threatened them with removal from the hearing. During the hearing, one resident who is a citizen and senior citizen was physically removed

by the police for continuing to object to the discriminatory rules. The County officials' warnings to the resident were in English, and his requests for translation of the warning were ignored. The county also brought police dogs in a K-9 unit squad car parked near the entrance to the following hearing in an attempt to intimidate residents and others opposing the landfill expansion.

H. DTSC/Cal EPA Relied on Flawed, Biased and Unscientific Studies:

The permit decision relied on numerous state and federal studies and documents that were flawed and unscientific:

- The DTSC cites the " US EPA KHF PCB Congener Study", yet this study allowed a toxic polluter with a serious record of violations, including failing to report spills and failing to conduct some of the required monitoring, to conduct most of the testing;
- DTSC's "review" cites the "Cal EPA Kettleman City Community Exposure Assessment" ordered by Governor Arnold Schwarzenegger in January 2010 which directed Cal EPA to assess possible environmental contaminants in the air, groundwater and soil that may have contributed to the increase in birth defects in the Kettleman City community since 2007. DTSC failed to point out that the pollution and waste disposal activities at the landfill were reduced by over 95% at the time the study took place compared to the full operations taking place several years earlier when the spike in birth defects took place – and CWM knew they were being tested by many agencies at the time.
- DTSC/CalEPA cites the state's birth defect study, but omits key information including the clear fact that the state knowingly and intentionally understated and withheld the true number of birth defects. DTSC/CalEPA's "review" also failed to mention the state agencies had refused to investigate until the Governor ordered an investigation in the wake of major national news coverage.

I. DTSC/CalEPA's "Environmental Justice Review" Used to Justify the Permit Was Flawed, Inadequate and Biased Towards CWM:

One of the main DTSC/CalEPA permit documents used to justify its decision to approve the landfill expansion is entitled "Environmental Justice Review." DTSC claims it "…prepared this Environmental Justice Review to identify and address environmental justice concerns related to the Kettleman Hills Facility operated by Chemical Waste Management, Inc. (Applicant). The Environmental Justice Review also assesses the potential harmful offsite impacts from the facility as well as existing environmental burdens on the people in the community….. Finally, this document reviews authoritative and voluntary actions taken by DTSC, local government, federal government, and the Applicant to address impacts on the people in the community from the facility or from the multiple impacts of other activities. This review is informed by the policies set forth in Government Code section 11135, Public Resources Code sections 71110-71113, California Environmental Protection Agency (Cal/EPA) Environmental Justice Action Plan (2004), and DTSC's own policies for environmental justice."

However, DTSC's so-called "Environmental Justice Review" is in reality a document that promotes environmental racism due to inaccurate analysis, the omission of key information that should have been analyzed, and the unethical and inappropriate use of certain information. Specific inaccuracies and defects in DTSC's "Environmental Justice Review" include:

- This review failed to identify or address environmental justice concerns related to the Kettleman Hills Facility, and in fact no concerns were addressed by DTSC;
- Contrary to DTSC's claim, this review does not include an assessment of Cumulative Impacts, and the assessment of "potential harmful offsite impacts from the facility as well as

existing environmental burdens on the people in the community" that DTSC claims is in the review is simply not in this document;

- Even if the information about assessing harmful impacts was in this review, a real Cumulative Impact Assessment and analysis would include the toxic waste facility, other existing environmental hazards, proposed environmental hazards and existing and recent health and environmental quality information – this DTSC "Environmental Justice Review" failed to analyze these issues cumulatively;
- It was completely improper, and a biased attempt to justify dumping more hazardous waste and PCBs on Kettleman City, for this document to review "…authoritative and voluntary actions taken by DTSC, local government, federal government, and the Applicant to address impacts on the people in the community from the facility or from the multiple impacts of other activities." These voluntary actions are irrelevant to a permit decision that should be based on facts and the law, not on a giant corporation using its vast wealth to greenwash their polluting operations and attempt to win the support of residents;
- DTSC improperly cites various incentive programs and the US Environmental Protection Agency Environmental Justice Small Grant that was given to Greenaction to reduce diesel pollution from illegal truck idling in Kettleman City - and DTSC improperly mentions this grant as grounds to support granting Chem Waste its permit. As the State says it wants to provide more funding for highly impacted communities to remediate past disparities based on the CalEnviroScreen tool, this cannot be used as grounds to permit additional disproportionate impacts. The goal of the tool and of those who participated in its creation is to reduce and not increase impacts in these highly impacted communities;
- DTSC's claim that "To address the issue of air pollution, the Applicant has agreed to an enforceable plan to reduce diesel truck emissions …" is absurd and Orwellian, as the DTSC/CalEPA permit allows a massive increase in diesel truck traffic and diesel emissions;

Diesel truck trips carrying hazardous waste will increase from the current level of approximately one per day to about 400 per day. Using cleaner, but not clean, diesel vehicles will in no way "address the issue of air pollution" as DTSC claims and will not result in cleaner air and less diesel emissions. The only way to truly reduce diesel emissions is to reject the expansion, and make sure that there are not 399 more diesel truck trips per day than have occurred for the last several years;

- DTSC's claim that they are addressing the long-standing issue of water quality and the lack of a safe drinking water supply for Kettleman City residents is also absurd, as DTSC knows very well that the people of Kettleman City drink, bathe and wash in toxic contaminated water every day and have done so for decades;
- The discussion of air quality in this "review" focuses on air monitoring requirements, but fails to mention anywhere the undeniable and well-documented fact that CWM has violated some of its permit requirements on monitoring, including for years at a time. Essentially the DTSC details a wishful thinking, make-believe world where CWM complies with its permit and does all the required monitoring and reporting;
- The "review" mentions US EPA's Air Emission Study on KHF Ponds, which despite being based on a one day (November 12, 2010) inspection , allegedly indicated "… that the Kettleman Hills Facility did not appear to be a significant source of the measured compounds at the time of inspection." The use of a one day inspection to conclude that the facility was not a significant source of measured compounds at the time of inspection is not a representative sample to make any conclusions;
- The DTSC "review" cites the " US EPA KHF PCB Congener Study", yet this study allowed a toxic polluter with a serious record of violations, including failing to report spills and failing to conduct some of the required monitoring, to conduct most of the testing;

- DTSC's "review" cites the "Cal EPA Kettleman City Community Exposure Assessment" ordered by Governor Arnold Schwarzenegger in January 2010 which directed Cal EPA to assess possible environmental contaminants in the air, groundwater and soil that may have contributed to the increase in birth defects in the Kettleman City community since 2007. DTSC failed to point out that the pollution and waste disposal activities at the landfill were reduced by over 95% at the time the study took place compared to the full operations taking place several years earlier when the spike in birth defects took place;
- DTSC's "review" cites the state's birth defect study, but omits key information including the clear fact that the state knowingly and intentionally understated and withheld the true number of birth defects. DTSC's "review" also failed to mention the state agencies had refused to investigate until the Governor ordered an investigation in the wake of major national news coverage;
- DTSC included in its so-called "Environmental Justice Review" actions proposed to be taken by a giant corporation that has repeatedly violated its permits to essentially buy off and sway public opinion. These include paying for a walking track, soccer field lighting, pavilion, and parking lot at the Kettleman City Elementary School. Children's ability to participate in sports should not be dependent on money from a company that dumps hazardous wastes and PCBs next to their town and has a terrible compliance history;

- DTSC's permit decision that refers to funds that may be provided by Chem Waste (if they received their permit) to help pay off the water service debts of the Kettleman City Community Services District is improper, as many now believe that the only way Kettleman City will get a new and safe water supply is if the dump expands. This is an unethical way to garner support for a toxic waste landfill, essentially sending a message to residents that if you want clean water for your family and babies, you must allow more toxic waste to be disposed

of in your town. This approach by DTSC in fact divided residents and caused great conflict and harm in the community;

J. DTSC/CalEPA's Statement of Overriding Considerations Erroneous, Improper and an Admission of Negative Impact on Vulnerable Protected Class of Persons:

When an agency seeks to approve a project with significant environmental effects that will not be avoided or substantially lessened, it must adopt a statement that, because of the project's overriding benefits, it is approving the project despite its environmental harm. 14 CCR § 15043.

DTSC/CalEPA's final permit decision issued May 21, 2014 included a Statement of Overriding Considerations that states clearly that there are significant unavoidable impacts of the

> "DTSC specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible (including the incorporation of feasible mitigation measures) and finds that the remaining significant unavoidable impacts of the Project, which are described above, are acceptable because the benefits of the Project set forth below outweigh it."

DTSC/CalEPA thus clearly and unequivocally acknowledges that their approval of a landfill expansion will have negative, significant and unavoidable impacts on a community they have confirmed is vulnerable and at risk to pollution. DTSC/CalEPA's Final Decision including the Statement of Overriding Considerations is attached and incorporated into this complaint.

In addition, when issuing a Statement of Overriding Considerations, the agency must set forth the reasons for its action based on the final EIR or other information in the record. Pub. Res. Code § 21081(b); 14 CCR § 15093(a). The Statement of Overriding Considerations must be supported by substantial evidence in the record of the agency's proceedings. 14 CCR § 15093(b); see also Sierra Club v. Contra Costa County (1992) 10 Cal. App.4th 1212, 1223 (statement of overriding considerations should be treated like findings and therefore must be supported by substantial evidence.). A statement is legally inadequate if it does not accurately reflect the significant impacts disclosed by the EIR and mischaracterizes the relative benefits of the project. See Woodward Park Homeowners Ass'n v. City of Fresno (2007) 150 Cal. App. 4th 683, 717.

DTSC/CalEPA found that specific economic, legal, social, technological and other anticipated benefits of the Project outweigh the significant and unavoidable impacts to justify project approval. DTSC/CalEPA specifically relies upon six alleged benefits to make this finding. Most of the stated "benefits" concern the need for added hazardous waste disposal capacity within the state. However, nowhere in the permitting process has DTSC provided a useful review or consideration of the needed state capacity for hazardous waste disposal in California. State law required DTSC to provide this analysis in a statewide hazardous waste management plan beginning in 1991 and updated every three years. See Health & Safety Code § 25135.9. However, DTSC has never prepared the requisite analysis. Without this analysis, DTSC has no way of knowing whether the state needs additional hazardous waste disposal capacity and no way to support its finding of an overriding project benefit.

DTSC cites an increase in hazardous waste generation in California from 1997 through 2002 as the only evidence supporting its statement of overriding considerations. However, 13 year old data about increased hazardous waste generation is not evidence supporting DTSC's argument that the state needs additional capacity today. DTSC does not disclose or analyze

how much waste is currently generated and how much capacity remains at existing hazardous waste facilities in California. Without providing any information on the state's supply and demand for hazardous waste disposal options, DTSC has no evidence demonstrating that the project will achieve any of the stated benefits.

In fact, if DTSC meets its goals of reducing hazardous waste disposal in the state, the state may not need the additional 5 to 19 million cubic yards of capacity at Kettleman Hills. The expansion of landfill capacity will reduce the costs of disposal and actually act as a disincentive to reaching the state's 50% hazardous waste reduction goal. Rather than benefiting the state, the expansion will undermine statewide hazardous waste goals.

DTSC also explains that one of the project benefits is to receive hazardous waste generated by U.S. businesses with facilities in Mexico. However, DTSC also acknowledges that the facility only receives the equivalent of half a truckload of waste per year from Mexico. Existing facilities have sufficient capacity for this very small amount of waste. DTSC does not provide any evidence that demonstrates that the KHF expansion is needed to provide capacity for waste from Mexico.

Because DTSC has no support for its findings of overriding considerations, and is unable to demonstrate that the facility provides any benefit, DTSC should not approve the expansion permit.

K. DTSC/CalEPA's Order Denying Petition for Review of Permit Modification Decision is factually flawed, non-responsive and without merit:

1. <u>DTSC's claim that violations of civil rights are not properly raised in an appeals process is without merit and a violation of environmental justice:</u>

DTSC/CalEPA's states in their Order Denying the Petition for Review (page 7) that "…this appeals process is not the right forum to address civil rights matters." DTSC/CalEPA's claim that civil rights matters are not properly raised in an appeals process is without merit and a violation of civil rights and environmental justice.State and federal civil rights laws do not provide an exemption to DTSC/CalEPA to allow them to violate civil rights laws or to claim their permit decisions are somehow beyond the scope of civil rights laws. DTSC further mischaracterizes our civil rights allegations by focusing on the issue of the siting of all three of the hazardous waste landfills in Latino Spanish speaking communities. In fact our comments on the draft permit and in our appeal/Petition for Review set forth numerous violations of civil rights by the DTSC/CalEPA including their significant reliance on Kings County's EIR documents that were adopted through the systemic use of racially discriminatory rules and procedures including English-only documents, providing the Spanish speaking residents only half the time to speak as English speakers, and the use of police intimidation and violence the presence of police dogs.

2. <u>DTSC/CalEPA's Order and Response to Comments is Flawed and Inaccurate:</u>

A review of the DTSC/CalEPA Order and Response to Comments clearly shows in many instances they mischaracterized complainants' comments and were non-responsive to many issues raised in our comments during the public comment period and appeals process.

3. <u>DTSC/CalEPA's Appeal's Process Was Biased and Unfair and Inadequate:</u>

The DTSC staffer appointed as the appeals officer has a long history of conflict with complainant Greenaction and other community and environmental justice groups. Greenaction and community groups were in intensive conflict with this appeals officer since the late 1990's due to concerns about perceived lax oversight of toxic cleanup and

contamination sites in the low income communities of color in Midway Village and West Oakland. DTSC/CalEPA's use of this staff person in a role that should be devoid of even the perception of bias is unacceptable and tainted the integrity of the appeals process.

VII. CONCLUSION

People of color and non-English speakers are entitled to be protected from unlawful discrimination in state-funded activities and programs, yet the DTSC and CalEPA continue to ignore and violate state and federal civil rights laws. Discrimination against minority populations is prohibited under Title VI of the US Civil Rights Act

Section 601 of Title VI of the Civil Rights Act of 1964 states that "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." Section 602 of Title VI states: "Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity …is authorized and directed to effectuate the provisions of section 601"

Section 602 prohibits recipients of federal funds to engage inactivities that result in discriminatory effect or disparate impact against individuals, groups of people, or whole communities of a certain race, color, or national origin. The discriminatory effect / disparate impact can occur when an inaction or action by a recipient of federal funds that may appear neutral on its face and is not accompanied with any intent to discriminate, but nevertheless negatively affects an individual, groups of people, or a whole community of a certain race, color, or national origin, without any substantial legitimate justification, violates Title VI.

DTSC and Cal EPA, as recipients of federal funding, have violated Title VI through their decision to approve expansion of the Chem Waste hazardous waste facility adjacent to

Kettleman City, relying on flawed and defective studies and a discriminatory process and approving the expansion despite confirming that this expansion would have a negative, disparate impact on the environment of a Latino, Spanish-speaking low-income and heavily polluted community the agencies themselves acknowledge is highly vulnerable and at-risk.

DTSC/Cal EPA's decision to permit the expansion of the Chem Waste Hazardous Waste Facility adjacent to Kettleman City violates their statutory and regulatory duty to administer all programs and activities in a nondiscriminatory manner. The DTSC/Cal EPA's action exacerbates existing adverse environmental and social impacts in Kettleman City and creates a substantial adverse impact on the community.

It is unacceptable and a violation of civil rights that the State of California would knowingly and intentionally use key documents produced and approved through blatant racial discrimination in this or any other State action. DTSC/Cal EPA are sending a message that civil rights laws do not apply in permit decisions, and we file this complaint to force DTSC, Cal EPA and all other state agencies to follow the law of our land which include California Government Code 11135 as well as Title VI of the United States Civil Rights Act.

IX. REMEDIES

In order to provide effective remedies for the discrimination and substantial violations of Title VI set forth in this Complaint, the United States EPA should require as a condition of continuing to provide financial assistance to DTSC/Cal EPA that these agencies:

(1) Reverse the approval for the expansion/permit modification of the landfill;

(2) Rescind the Order Denying the Petitions for Review;

(3) Cease use of or reliance on environmental review documents or other permit

documents which were approved by any agency using racially discriminatory procedures;

(4) Cease use of Statements of Overriding Consideration in permit decisions affecting low-income and communities of color heavily and disproportionately impacted by pollution;

(5) Uphold and comply with applicable civil rights laws in permit decisions; and

(6) Actively work with all relevant parties to ensure that Kettleman City's contaminated water supply is replaced within six months with safe uncontaminated water.

Respectfully submitted,

March 19, 2015

Mariciela Mares Alatorre
El Pueblo Para el Aire y Agua Limpia
PO Box 262, Kettleman City, CA 93239
559-816-9298
alatmig@netzero.com

Bradley Angel
Greenaction for Health and Environmental Justice
559 Ellis Street, San Francisco, CA 94109
415-447-3904 x 102
bradley@greenaction.org