

1 STATE OF CALIFORNIA  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of: ) Docket No.: PAT-FY08/09-07  
5 )  
6 CHEMICAL WASTE MANAGEMENT, ) ORDER DENYING PETITION FOR  
7 INC., KETTLEMAN HILLS FACILITY ) REVIEW AND VACATING STAY  
8 35251 Old Skyline Road )  
9 Kettleman City, California ) California Code of Regulations,  
10 ) Title 22, Section 66271.18(c)  
11 EPA Id. No.: CAT 000 646 117

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11 **I. INTRODUCTION**

12 On March 5, 2009, the Department of Toxic Substances Control's Operating  
13 Facilities Team (DTSC) issued a Temporary Authorization for a Class 3 permit  
14 modification to Chemical Waste Management, Inc. (CWM) for its Kettleman Hills Facility  
15 (herein referred to as "Facility"). The Facility is located at 35251 Old Skyline Road,  
16 Kettleman City, California. The Temporary Authorization decision approved  
17 modifications to the bench slope design for Landfill B-18 at the Facility. On  
18 April 17, 2009, Mr. Bradley Angel, Executive Director, Greenaction for Health and  
19 Environmental Justice; El Pueblo Para El Aire y Agua Limpio/People for Clean Air and  
20 Water; and, Kids Protecting Our Planet (collectively "Petitioner") filed a Petition for  
21 Review (Appeal) of the Temporary Authorization decision.

22 Pursuant to California Code of Regulations, title 22, section 66271.14,  
23 subdivision (b)(2), the Temporary Authorization decision has been stayed pending  
24 determination whether the appeal meets the criteria for granting a review. In the  
25 interim, CWM continues to be authorized to operate the Facility under the terms and  
26 conditions of its Hazardous Waste Facility Permit 02-SAC-03 issued with an effective  
27 date of June 16, 2003, as modified September 21, 2007.  
28

1 **II. JURISDICTION**

2 The Department has jurisdiction over hazardous waste facility permits and the  
3 imposition of conditions on such permits pursuant to the California Health and Safety  
4 Code, sections 25200 et seq. and 25186.1(b)(1) and California Code of Regulations,  
5 title 22, sections 66270.30 and 66271.18.

6  
7 **III. BACKGROUND**

8 **A. FACILITY DESCRIPTION:**

9 The Facility is described in the modified Hazardous Waste Facility Permit,  
10 dated September 21, 2007, as follows:

11  
12 The Chemical Waste Management, Inc., Kettleman Hills Facility is a  
13 commercial hazardous waste treatment, storage and disposal facility. The  
14 Facility contains 1,600 contiguous acres, 499 of which have been  
15 approved for hazardous waste activity. The Facility accepts solid, semi-  
16 solid, and liquid hazardous and extremely hazardous waste. It may not  
17 accept Class 1, Division 1.1 or 1.2, or forbidden explosives (Code of  
18 Federal Regulations, title 49, subchapter C, part 173, section 50);  
19 compressed gas cylinders (excluding aerosol cans); radioactive waste that  
20 is not exempt from regulation and licensing or is not expressly authorized  
21 for disposal under the Radiation Control Law, chapter 8 (commencing with  
22 section 114960) of part 9 of division 104 of the Health and Safety Code, or  
23 any successor statute that may replace the Radiation Control Law, or is  
24 prohibited from disposal under article 1 (commencing with section 114705)  
25 of chapter 5 of part 9 of division 104 of the Health and Safety Code or any  
26 successor statute that may replace article 1, or is prohibited from disposal  
27 by any government agency; biological agents or infectious wastes. The  
28 Facility conducts the following activities: solar evaporation in three  
surface impoundments; disposal into one hazardous waste landfill; PCB  
draining and flushing; PCB disposal and storage; and stabilization,  
solidification and storage of bulk and drummed wastes. The Facility is  
also permitted to construct and operate a neutralization/filtration unit and  
eight one-million gallon above ground evaporation tanks.

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1 **B. TEMPORARY AUTHORIZATION DECISION**

2 On October 10, 2008, CWM submitted a Temporary Authorization request to  
3 allow CWM to modify the bench slope design for Landfill B-18 to accommodate an  
4 increased probable maximum precipitation (PMP) from 7.4 inches to 10.3 inches. The  
5 administrative record provided to the Permit Appeals Officer by DTSC shows that the  
6 public notice (English and Spanish) of the Temporary Authorization request was mailed  
7 to the facility mailing list by CWM on or about October 16, 2008. The public notice of  
8 the Temporary Authorization request was also published in the *Hanford Sentinel*  
9 newspaper on October 14, 2008.

10 DTSC issued the approval letter for the Temporary Authorization on  
11 March 5, 2009. The approval letter describes the changes in the run-off control bench  
12 and slope design as follows:

- 13 • 28-foot wide bench, instead of the approximately 23-foot wide bench  
14 (at the waste grade);
- 15 • Approximately 3.5H:1V slopes, instead of the approximately 3.6H:1V  
16 slopes between individual benches;
- 17 • Bench sloped longitudinally at 2 percent, instead of 3 percent for  
18 surface water drainage of the cover; and,
- 19 • The plans for the asphalt-lined V-ditch channel and gravel in the  
20 original design are no longer required with the above modifications of  
21 the bench channel to accommodate the increased flow from the PMP.

22  
23 DTSC issued the Notice of a Temporary Authorization Decision (Notice) in  
24 English and Spanish by mailing it to the facility mailing list on or about March 16, 2009.  
25 The Notice was also published in the *Hanford Sentinel* newspaper on March 20, 2009.  
26 The Spanish version of the Notice was published in the *Vida En El Valle* newspaper for  
27 the week of March 25, 2009. The Notice states that the Temporary Authorization  
28

1 documents are available at the Kettleman City Library, Avenal Library, and Hanford  
2 Library and also on DTSC's website [www.envirostor.dtsc.ca.gov](http://www.envirostor.dtsc.ca.gov).

3 A Notice of Exemption was prepared for the Temporary Authorization decision,  
4 based on the Categorical Exemption (Cal Code of Regs., tit 14, § 15301) for minor  
5 alterations to the operation of an existing facility to comply with the California  
6 Environmental Quality Act. The Notice of Exemption was filed with the State  
7 Clearinghouse on March 25, 2009.

8 **C. PERMIT APPEAL PROCESS**

9 Pursuant to California Code of Regulations, title 22, section 66271.18,  
10 subdivision (a), the period specified in the Notice for filing a petition for review (appeal)  
11 of the Temporary Authorization decision ended on April 18, 2009. Mr. Bradley Angel,  
12 Executive Director, Greenaction for Health and Environmental Justice; El Pueblo Para  
13 El Aire y Agua Limpio/People for Clean Air and Water; and, Kids Protecting Our Planet  
14 filed an Appeal (Petition for Review) on April 17, 2009.

15 The Temporary Authorization decision was stayed on April 24, 2009, pursuant to  
16 California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), until the  
17 Permit Appeals Officer completes review of the appeal and determines which, if any, of  
18 the issues raised in the appeal meet the criteria set forth in California Code of  
19 Regulations, title 22, section 66271.18, for granting review. On April 24, CWM KHF, the  
20 Operating Facilities Team, and the Petitioner were notified of the stay.

21  
22 **IV. STANDARD OF REVIEW**

23 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
24 provides that any person may petition the Department to review a temporary  
25 authorization decision. California Code of Regulations, title 22, sections 66271.18,  
26 subdivision (a) also provides, in pertinent part, that:  
27  
28

1 The petition shall include a statement of the reasons supporting that  
2 review, including a demonstration that any issues being raised were raised  
3 during the public comment period (including any public hearing) to the  
4 extent required by these regulations and when appropriate, a showing that  
5 the condition in question is based on:

- 6 (1) a finding of fact or conclusion of law which is clearly erroneous, or
- 7 (2) an exercise of discretion or an important policy consideration which  
8 the Department should, in its discretion, review.

## 9 **V. FINDINGS**

10 The Petition for Review can be characterized as containing two (2) distinct  
11 Appeal Comments, identified as Appeal Comment 1 and Appeal Comment 2. The full  
12 text of the Petition for Review is provided in the two Appeal Comments.

### 13 **Appeal Comment 1:**

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15  
16 Greenaction for Health and Environmental Justice, El Pueblo Para El Aire  
17 y Agua Limpio/People for Clean Air and Water, and Kids Protecting Our  
18 Planet file this appeal of the “Temporary Authorization” of a Class 3 Permit  
19 Modification issued by DTSC for the Chemical Waste Management  
20 Kettleman Hills Facility.

21 We challenge this “Temporary Authorization” as it violates DTSC/Cal  
22 EPA’s environmental justice policies and civil rights laws. These violations  
23 resulted from (1) DTSC’s failure to provide public comment opportunities  
24 to the public, especially to the low-income people of color residents of  
25 Kettleman City and Avenal who live closest to the hazardous waste facility  
26 and are most directly impacted by the facility, and (2) the continued  
27 dumping of hazardous waste at this facility made possible by this decision.

28 DTSC’s failure to provide an opportunity for public comment violated  
DTSC/Cal EPA’s own environmental justice policies. DTSC and Cal EPA  
have a stated commitment to environmental justice and a mandate not to  
take actions that have a discriminatory or disproportionate impact on low-  
income people of color. There is no reason that at least some opportunity  
for public participation in this decision could have been made available.

1  
2 DTSC's approval of the requested modification without public comment  
3 opportunities has a disproportionate and discriminatory impact on the  
4 low-income people of color residents, and therefore is illegal under state  
5 and federal civil rights laws.

6 The discriminatory and disproportionate impact of this decision includes  
7 the exclusion of residents from decision-making processes about this  
8 facility that poses a threat to public health. The Chemical Waste  
9 Management facility is the largest hazardous waste landfill in the western  
10 United States, and government decision-making regarding this facility has  
11 a several decade-long and well-documented history of systemic and de  
12 facto exclusion of residents from meaningful participation in permit and  
13 regulatory decisions. DTSC is well aware of this ongoing problem and  
14 concern, yet chose to issue a Temporary Authorization without any public  
15 input.

16 Adding insult to injury, DTSC announced the decision in the midst of at  
17 least other three permit tracks for this facility taking place at the exact  
18 same time – resulting in confusion in the community and limiting the ability  
19 of residents to challenge this decision. In fact, the issuance of a  
20 Temporary Authorization was believed by some residents to be the permit  
21 decision for the proposed hazardous waste dump expansion.

22 **Response:**

23 The Petitioner has failed to meet the burden to establish that the Department  
24 should grant review of this issue pursuant to the criteria set forth in California Code of  
25 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
26 denies the petition for review of this Appeal Comment.

27 The Petitioner claims the Temporary Authorization violates DTSC/Cal EPA's  
28 environmental justice policies and civil rights laws by (1) failing to provide public  
comment opportunities to the public, especially to the low-income people of color  
residents of Kettleman City and Avenal who live closest to the hazardous waste facility  
and are most directly impacted by the facility, and (2) the continued dumping of  
hazardous waste at this facility made possible by this decision.

California Code of Regulations, title 22, section 66270.42, subdivision (e)(1),  
allows the Department to grant temporary authorizations, without prior public notice and

1 comment. The Petitioner does not show how DTSC's Temporary Authorization decision  
2 pursuant to subdivision 66270.42(e)(1) violates civil rights laws or DTSC/Cal EPA's  
3 environmental justice policies. The Petitioner has not provided any specific comment  
4 that the Temporary Authorization does not meet the requirements of California Code of  
5 Regulations, title 22, section 66270.42, subdivision (e).

6 The administrative record provided by DTSC shows that the public notices of the  
7 Temporary Authorization request and final decision, required pursuant to California  
8 Code of Regulations, title 22, section 66270.42, subdivisions (e)(2)(C) and (f), were  
9 provided in this case. The administrative record does not show that DTSC received any  
10 public inquiries or public comments concerning the temporary authorization request. If  
11 any public comments were received between October 14, 2008, and March 5, 2009,  
12 they could have been considered by DTSC in its decision for the Temporary  
13 Authorization.<sup>1</sup> The community notification of a temporary authorization request  
14 provides an opportunity for the community to be involved in the decision.

15 The Petitioner further asserts, "...DTSC announced the decision in the midst of at  
16 least other three permit tracks for this facility taking place at the exact same time –  
17 resulting in confusion in the community and limiting the ability of residents to challenge  
18 this decision." However, this does not explain why there were no public inquiries or  
19 comments presented to DTSC in this regard. Petitioner has not provided any factual  
20 basis for their assertion. It should be further noted that the Temporary Authorization is  
21 valid only for 180 days with one possible extension of an additional 180 days. Pursuant  
22 to California Code of regulations, title 22, section 66270.42, subdivision (e)(4), the  
23 public will have additional opportunities to comment and participate in this matter during  
24 the Class 3 permit modification approval process.

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27 <sup>1</sup> See Elizabeth A. Cotsworth, Acting Director, Office of Solid Waste, U.S. Environmental Protection  
28 Agency, letter to Mr. Jose A Boix, Senior Environmental Specialist, Solutia, Inc., April 16, 1998, RCRA  
Online 14264. (Attachment 1.)

1 The second part of Petitioner's comment is factually incorrect because the  
2 continued dumping of hazardous waste at this facility is not contingent on the  
3 Temporary Authorization decision. The Temporary Authorization does not increase the  
4 permitted capacity of Landfill B-18. The Temporary Authorization only affects the runoff  
5 control design requirements for Landfill B-18. Underlying this part of Petitioner's  
6 comment is an assertion that dumping hazardous waste at the Kettleman Hills Facility  
7 violates DTSC/Cal EPA's environmental justice policies and civil rights laws. The  
8 Petitioner's appeal does not provide any factual basis for this assertion and it is beyond  
9 the scope of this appeal decision.

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11 **Appeal Comment 2:**

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13 In addition, this Temporary Authorization was approved by DTSC without  
14 the agency investigating the large birth defect cluster that has been  
15 discovered in Kettleman City and brought to DTSC's attention. Unless  
16 and until DTSC or another appropriate, impartial agency investigates  
17 these birth defects and can conclude there is absolutely no connection to  
18 the ongoing dumping of hazardous wastes or trucking of these wastes to  
19 the facility, no new permits should be issued to Chem Waste.

18  
19 **Response:**

20 The Petitioner has failed to meet the burden to establish that the Department  
21 should grant review of this issue pursuant to the criteria set forth in California Code of  
22 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
23 denies the petition for review of this Appeal Comment.

24 The comment is factually incorrect because the Temporary Authorization is not a  
25 new permit and does not affect the ongoing dumping of hazardous wastes or trucking of  
26 these wastes to the facility. The Temporary Authorization only affects the runoff control  
27 design requirements for Landfill B-18.

1 The Petitioner's appeal does not provide any factual basis for its assertion that  
2 DTSC, or another agency, must investigate the birth defects prior to DTSC making a  
3 temporary authorization decision.  
4

5 **VI. ORDER**

6 For the reasons set forth above, the Permit Appeals Officer denies the Petition  
7 for Review. The stay of the Temporary Authorization is hereby vacated and all  
8 provisions of the Temporary Authorization issued by DTSC on March 5, 2009, shall be  
9 effective upon the issuance date of this Order.  
10

11  
12 Dated: May 19, 2009

13 //original signed by//

14 \_\_\_\_\_  
15 Mohinder S. Sandhu, P.E.,  
16 Permit Appeals Officer  
17 Department of Toxic Substances Control

18 Attachment 1  
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# Attachment 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Mr. Jose A. Boix  
Senior Environmental Specialist  
Solutia, Inc.  
F.M. 2917  
P.O. Box 711  
Alvin, Texas 77521

Dear Mr. Boix:

You recently suggested a change to the temporary authorization language found in 40 CFR 270.42(e)(2)(iii). As you are aware, this section of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations requires the permittee to send a notice to persons on the facility mailing list within seven days of submission of the temporary authorization request.

EPA is committed to providing opportunities for meaningful public participation in the RCRA permitting program. The intent of the referenced notice is to inform members of the community that the facility is seeking temporary authorization to implement a change to the equipment or operations prior to submitting a formal Class 2 Permit Modification. This early notification allows the community to be informed of the potential anticipated changes. Community members may then provide supplemental information or voice any potential concerns or support to the permitting authority, prior to action being taken on the request.

Rather than the notification becoming "useless" if the permitting authority denies the request, as you suggest, we believe that the notification provides an important notice to the community so that they may be involved in the permitting decision. In fact, information supplied by the community may be considered in the decision made by the permitting authority on the temporary authorization request.

Your suggestion that the notice would be more effective if it were provided after the permittee receives approval for their temporary authorization request is counter to our policy of providing early public participation opportunities. Instead, it might be useful for facilities to provide an additional notice to persons on the mailing list of the temporary authorization decision. RCRA facilities in many cases are finding that going beyond the minimum public participation requirements makes good business sense.

If you have any further questions on RCRA permitting topics, please feel free to

RO 14264

contact Vernon Myers of my staff at (703) 308-8660.

Sincerely,

Elizabeth A. Cotsworth, Acting Director  
Office of Solid Waste

**Solutia Inc.**  
FM. 2917  
PO Box 711  
Alvin, Texas 77512  
Tel 281-581-2161

March 24, 1998

**CERTIFIED MAIL - Z197212095**  
**RETURN RECEIPT REQUESTED**

Ms. Elizabeth Cotsworth, Acting Director  
US EPA - Office of Solid Waste  
401 M Street SW

Washington. D.C. 20460

SUBJECT: SOLUTIA INC. - CHOCOLATE BAYOU PLANT  
ISW REG.: 30138  
HW PERMIT: 50 189-001  
EPA ID: TXD001700806

Dear Ms. Cotsworth:

This letter is to propose a modification to the language used for provision 40 CFR 270.42(e)(2)(iii) under the title Temporary Authorizations.

As written, the permittee must send notice "*within seven days of submission of the authorization request.*" However, since the Director may deny (40 CFR 270.42(e)(3)) the request for temporary authorization, the effort of notification becomes useless. It would seem more effective to provide the required notification "*within seven days of receipt of the approval from the Director.*"

We continue to appreciate your support in our efforts to effectively manage our industrial solid waste program. If you have any questions, please contact me by phone 281.228.4313, FAX 281.228.4317 or EMail "jaboix@solutia.com".

Sincerely,

Jose A. Boix  
Senior Environmental Specialist

Formerly the chemical businesses of Monsanto Company

RO 14264