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BEFORE THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

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El Pueblo Para El Aire y Agua
Limpio; Kids Protecting our Planet

**COMPLAINT UNDER CALIFORNIA
GOVERNMENT CODE § 11135**

Complainants,

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v.

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Board of Supervisors of Kings County,

Respondents.

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I. INTRODUCTION

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This is a civil rights complaint by El Pueblo para el Aire y Agua Limpio and Kids
Protecting our Planet (collectively “El Pueblo”), under Section 11135 of the California
Government Code against Kings County for discriminating on the basis of race in approving
the expansion of the Chem Waste Hazardous Waste Facility, and in limiting the participation
of the Latino residents of Kettleman City in the decision-making process.

Kettleman City residents have for many years been forced to bear a disproportionate

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1 share of the County's environmental dangers by hosting Chem Waste's Kettleman Hills
2 Facility, the largest hazardous waste landfill in the western United States. Residents will be
3 forced to bear an even greater proportion of this burden if the County's improperly issued
4 permits for continued operation and expansion are allowed to stand.

5 The County's decision to approve a hazardous waste dump expansion adjacent to the
6 highest concentration of Latinos in Kings County has a *discriminatory impact*. Kettleman
7 City—which already suffers from disproportionate exposure to chemicals, air pollution, and
8 contaminated water—has recently experienced an alarming spike in unexplained birth defects
9 and infant mortality. The County moved forward with its decision without adequately
10 assessing the source of these acute health effects in the community, or otherwise addressing
11 the project's adverse and discriminatory impacts.

12 In addition to the project approval's discriminatory impact, the County *intentionally*
13 *discriminated* against Latino residents by systematically limiting their participation in the
14 decision-making process. Most Kettleman City residents' first language is Spanish, and a
15 high percentage are monolingual Spanish. In spite of Kettleman City residents' continued
16 request and demand for documents in Spanish, the County provided documents in an English-
17 only format. Further, the County excluded Latino residents of Kettleman City from the Local
18 Advisory Committee in clear violation of the State Tanner Act. Finally, the County provided
19 Latinos only half as much time to testify at public hearings as non-Latino counterparts. The
20 County's permitting process was intentionally discriminatory and had a discriminatory impact
21 —two separate grounds for § 11135 action.

22 II. THE COMPLAINANTS

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24 Complainant El Pueblo Para El Aire y Agua Limpio/People for Clean Air and Water
25 (“El Pueblo”) is an unincorporated association of Kettleman City residents. El Pueblo's
26 primary interest is in protecting the health of Kettleman City residents and in preserving and

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1 enhancing the environment and promoting justice in Kettleman City and other similar
2 communities. El Pueblo was founded in 1987 by residents concerned about the impact of a
3 proposed hazardous waste incinerator on the community. El Pueblo and its members
4 submitted written and oral comments during Kings County's permit process.

5 Complainant El Pueblo Para El Aire y Agua Limpio brings this Civil Rights
6 Complaint on behalf of the residents of Kettleman City in Kings County, California.
7 Membership in the organization mirrors the demographics of Kettleman City, which are
8 predominantly Latino.

9 Kids Protecting Our Planet is a Kettleman City youth organization. Founded in 2007,
10 KPOP has been active in educating and mobilizing youth and adults to protect the health and
11 environment of Kettleman City. KPOP and its members submitted written and oral comments
12 during Kings County's permit process.

13 **III. RIPENESS**

14 This complaint is timely filed because Kings County's pattern and practice of
15 discrimination against Kettleman City residents is ongoing. Moreover, the most recent action
16 on the permit application is the adoption of a statement of overriding considerations
17 (Resolution No. 09-073) and issuance of the permit during the December 22, 2009 Kings
18 County Board of Supervisors meeting. *Action Summary*, at 4.

19 **IV. FINANCIAL ASSISTANCE**

20 The Board of Supervisors for Kings County must comply with § 11135 because the
21 County receives substantial state financial assistance from Caltrans. Kings County has
22 received an "Environmental Justice grant for the Kettleman City Community and Safety
23 Study" from Caltrans. Kings County Association of Governments, *Minutes*, at 4 (April 22,
24 2009). Caltrans funds will also be used for the proposed Project traffic impact mitigation

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measured. FSEIR No. 2005041064, at 1-42 (Sept. 2009).¹

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V. STATEMENT OF FACTS

A. The Community.

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4 Kettleman City is a rural, unincorporated community of 1500 residents. Ninety three
5 percent of the residents of Kettleman City are Hispanic or Latino, and 62 percent are foreign
6 born.² In contrast, only 48 percent of the residents of Kings County are Hispanic or Latino,
7 and 21 percent are foreign born.³ A significant percentage of Kettleman City residents are
8 employed as farm workers. Kettleman City residents are predominantly language minority.
9 Eighty-eight percent of Kettleman City residents are primarily Spanish-speaking, and 61
10 percent are monolingual Spanish-speaking.

11 Kettleman City is economically depressed. Residents have few resources available to
12 cope with the cumulative exposures to environmental stressors such as pesticides applied on
13 nearby fields, diesel trucks on Interstate 5 and Highway 41, sewage sludge applied on nearby
14 agriculture land, and contaminated drinking water. Residents of Kettleman City also have
15 less occupational and residential mobility, less access to health care, lower income and less
16 political power than other sectors of the Kings County population. In 2000, the per capita
17 income for Kettleman City was \$7,389—one third of California’s average of \$22,711. Thirty-
18 eight percent of families and 43.7 percent of Kettleman City residents were below the poverty
19 line in 2000.⁴

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22 ¹ For more detailed information about this grant and the project it is funding, see the grant proposal.
23 Kings County Association of Governments, *FY 2008-09 ENVIRONMENTAL JUSTICE: CONTEXT-SENSITIVE
24 PLANNING APPLICATION*, [http://www.countyofkings.com/kcag/Whats%20New/Kettleman%20City
25 %20Comm%20Grant%20App.%202008-09%20with%20modified%20SOW.pdf](http://www.countyofkings.com/kcag/Whats%20New/Kettleman%20City%20Comm%20Grant%20App.%202008-09%20with%20modified%20SOW.pdf).

26 ² U.S. Census Bureau, *Kettleman City CDP, California*,
27 [http://factfinder.census.gov/servlet/SAFFacts?
28 _event=Search&geo_id=&_geoContext=&_street=&_county=Kettleman+city&_cityTown=Kettleman+city&_state=04000US06&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y](http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=Kettleman+city&_cityTown=Kettleman+city&_state=04000US06&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y) (last visited
29 May 25, 2010).

30 ³ *Id.*

31 ⁴ *Id.*

Since September 2007, Kettleman City has seen a sudden and unexpected increase in birth defects. A total of at least 11 babies were born with defects, many of them with cleft palate 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.

B. A History of Discrimination.

Kings County has historically discriminated against language minorities and, as a result, is one of just three counties in California that must obtain pre-clearance from the U.S. Department of Justice before changing any of its voting laws. Kings County has failed to invest tax dollars in Kettleman City and the city is plagued by inferior municipal services. Kettleman City receives fewer and poorer public services than other neighborhoods in Kings County. There are generally no sidewalks, inadequate or non-existent drainage services, poorly maintained roads, few streetlights, inadequate traffic control signs, inadequate law enforcement and 911 emergency services. These poor conditions adversely affect the health, safety and dignity of Kettleman City residents.

The County's discriminatory approval of Chem Waste's expansion permit is part of a long history of racist land use decisions affecting Latinos in Kettleman City. In 1979, Kings County permitted Chem Waste to open the largest toxic dump west of Louisiana just 3.5 miles from residents' homes in Kettleman City. Kings County did not inform Kettleman City residents that it was siting the Chem Waste Hazardous Waste landfill adjacent to the community. Kings County took no steps to solicit comment or consent from Kettleman City residents. Chem Waste's initial siting is part of a disturbing pattern of discriminatory permitting decisions by Kings County that continues today.

The phenomenon of siting polluting facilities in low-income Latino communities was described in the 1984 Cerrell Report, which was commissioned by the California Waste

Management Board and funded with taxpayer dollars. That report implicitly advised companies and governmental entities to site waste facilities in small, poor, rural, Catholic communities with low education levels whose residents were engaged in extractive industries—a description that fits Kettleman City and the two other communities that play host to hazardous waste facilities in the United States. Overall, Latinos comprise 32 percent of the state’s population, but Latino communities bear 100 percent of the risk and impact of hosting toxic waste dumps.

In 1988, Kings County accepted Chem Waste’s application to establish a toxic waste incinerator in Kettleman City with capacity to burn over 216,000,000 pounds of waste each year. Again, the County did not inform residents about the proposed incinerator. When residents ultimately found out about the proposal, they made extensive efforts to participate in the environmental review process, but were hampered when the County failed to provide the Spanish-speaking residents with translated documents. The County conducted its public hearings in inconvenient locations at inconvenient times, and in fact never held a single hearing in Kettleman City. The County approved the incinerator over residents’ vocal opposition. However, a judge later rejected the approval on the grounds that the County’s failure to translate materials had unlawfully precluded residents from meaningful involvement, and because the Environmental Impact Report had not sufficiently analyzed impacts to air quality or agriculture.⁵

The County has since authorized a series of new projects at the hazardous waste site including a municipal solid waste disposal unit, a landfill bioreactor, and a class II/III landfill over the objections of residents.

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⁵ See *El Pueblo para el Aire y Agua Limpio v. County of Kings*, Civ. No. 366045, Ruling on Submitted Matter, 22 Env’tl. Rep. 20357 (Sacramento Sup. Ct. Dec. 30, 1991).

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Cl. The Hazardous Waste Expansion Project

In 2005, Chem Waste requested approval from Kings County to increase the hazardous waste disposal capacity at KHF to allow continued operations for an additional 32 years by constructing and operating a new Class I/II hazardous waste landfill (B-20) and expanding an existing Class I/II hazardous waste landfill (B-18). The proposed project would add 221.5 acres of new hazardous waste operations to the area. The new and expanded landfills would accept approximately 2,900 tons of hazardous waste daily, including, but not limited to, materials containing PCBs, cyanides, asbestos, solvents, corrosives, lead, metals, and halogenated organics. The two Class I/II landfills may be operated concurrently for a period of time as the B-18 Landfill nears capacity and disposal operations are shifted to the B-20 Landfill. A combined maximum average of 400 trucks per day may transport waste to the B-18 Landfill or B-20 Landfill.

After all feasible mitigation measures have been imposed, the project would significantly increase ozone, coarse 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.

The KHF expansion project takes place against a backdrop of repeated environmental violations and fines for failure to meet basic operating standards. Chem Waste has been fined millions of dollars for violations at KHF since it was built, and continues to be the subject of EPA enforcement action against violations action as recently as this year.

KHF is already the largest commercial hazardous waste landfill in the western United States and is one of only eight facilities in the United States that is permitted to accept PCBs. PCBs are a known carcinogen and have been linked to numerous other health impacts.⁶

⁶ Watanabe and Sugahara, “Experimental formation of cleft palate in mice with polychlorinated biphenyls (PCB).” *Toxicology*. 19:1, 1981; Abstracts and citations for 30 additional studies linking PCBs to cleft palate

Perhaps most significant in light of current developments is that PCBs have been linked to birth defects, including the occurrence of cleft palate.⁷

D. The Discriminatory Process

Upon receiving the request for a permit for expansion of KHF, the County was required to appoint a seven member local assessment committee (LAC) to act in an advisory capacity in considering Chem Waste's application. Kings County carefully selected only one member who actually resides in Kettleman City. *FSEIR*, at 3-191 to -96. The lone Kettleman City resident on the LAC is one of the few known local supporters of Chemical Waste Management. In response to extensive criticism, Kings County finally selected one Latino from outside Kettleman City to serve on the LAC in January, 2009, at the very end of a multi-year process. This member was unable to effectively participate in the LAC process, however, because his first language is Spanish and all LAC and permit documents were provided only in English.

In spite of residents' repeated requests and the court's 1991 decision, the County consistently refused to translate permit documents or public hearings into Spanish. As a result, the people most affected by the proposed project were not able to fully participate in the public process. When translators were present, they were provided by Chem Waste (*FSEIR* at 3-200), which concerned residents due to the potential for bias in the translation process (Kings County Planning Commission, *Meeting Transcript*, October 5, 2009, 2:00pm PST).

are available at: http://www.foxriverwatch.com/cleft_palate_pcb.html

PCBs, banned by Congress in 1970 because of their high toxicity, persist in the environment for extremely long periods of time, and travel long distances in the air. They are known to lead to increased risk of many different diseases, including cancer, endocrine disruption, neurobehavioral abnormalities, and immunosuppression. Kudyakov et al., "Respiratory disease in relation to patient residence near to hazardous waste sites." *Environmental Technology and Pharmacology*. 2004. PCBs' effect on reproduction and development are particularly severe: shorter menstrual cycle, maternally reduced fecundability, hormonal changes, paternally delayed conception, decreased sperm motility, and irregular menstrual cycle. Decreased birth weight and gestational ages have also been shown to result from exposure. Faroon et al. "Effect of polychlorinated biphenyls on development and reproduction." *Toxicology and Industrial Health*. 2001.

1 During the permit hearing, Spanish-speaking Latinos were allowed only half the time
2 to testify as whites. While English speakers were allotted a full five uninterrupted minutes to
3 testify, the County effectively allowed the Spanish-speaking Latinos only 2 ½ minutes to
4 testify—using the other 2 ½ minutes to have the translators provided by the toxic waste
5 company translate the testimony into English. *Meeting Transcript* at 152:16-19.

6 When Spanish-speaking residents objected at the hearing to being given only half the
7 time to testify, County officials and police threatened them with removal from the hearing.
8 During the hearing, one resident was physically removed by the police for continuing to
9 object to the discriminatory rules. The County officials' warnings to the resident were in
10 English, and his requests for translation of the warning were ignored. In the process of
11 removing the resident, police knocked an elderly resident to the ground.

12 The County also knowingly ignored the growing evidence of a health crisis within
13 Kettleman City, and approved the expansion without conducting any investigation into a
14 possible link between the hazardous waste dump and the birth defects, in violation of the
15 California Environmental Quality Act. On December 15, 2009, the County requested that
16 California formally investigate potential causes of the birth defect cluster, including the
17 proximity of the Kettleman Hills hazardous waste facility. Despite the fact that no
18 investigation had taken place, the Kings County Board of Supervisors approved the hazardous
19 waste dump expansion without an investigation on December 22, 2009.

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21 Similar to past permitting votes, the County held its final vote on a project of utmost
22 public concern during the holiday season when many residents were unable to attend. The
23 timing of the final vote conflicted with family obligations of many concerned residents and
24 had the effect of minimizing attendance and criticism of the permit.

25 **VI. ARGUMENT**
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Environmental Justice communities are protected from unlawful discrimination in state-funded transportation activities and programs. Intentional discrimination against minority populations is prohibited under Cal. Gov. Code § 11135(a), which provides:

No person in the State of California shall, on the basis of race, *national origin, ethnic group identification*, religion, age, sex, sexual orientation, *color*, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that . . . is funded directly by the state, or receives any financial assistance from the state.

Cal. Gov. Code § 11135(a) (West 2007) (emphasis added).

Kings County, a recipient of state financial assistance from Caltrans, has violated § 11135 through its decision on December 22, 2009 to allow the expansion of the Chem Waste hazardous waste facility adjacent to Kettleman City, relying on a discriminatory process that led up to that decision.

The County's decision to allow the expansion of the Chem Waste Hazardous Waste Facility adjacent to Kettleman City violates the County's statutory and regulatory duty to administer all programs and activities in a nondiscriminatory manner. The County's action exacerbates existing adverse environmental and social impacts in Kettleman City and creates a substantial adverse impact on the community. Caltrans must take all appropriate action to end Kings County's state civil rights law violations.

A. Kings County Unlawfully Voted to Approve an Expansion of The Kettleman Hills Facility That Will Have Discriminatory And Significant Adverse Impacts on the Latino Population of Kettleman City.

The County's approval of the KHF expansion adds to the already disproportionate burden of toxic pollution that Latinos in Kettleman City shoulder. The County chose to site and continually expand the largest toxic waste dump west of Louisiana within 3.5 miles of the town with the County's highest Latino concentration. The County failed to take the severe and repeated violations of environmental and other permit conditions into account. In spite of

1 recent information indicating that the dump may be causing a drastic increase in birth defects
2 and infant mortality, the County rushed its approval ahead before an investigation it called for
3 itself could be completed.

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5 *1. Latino residents in Kettleman City are exposed to a disproportionate burden of
6 toxic contamination.*

7 Beyond the explanations provided by the Cerrell Report, there is little logical
8 connection between the Kettleman area and the toxic waste being dumped there. Kings
9 County produces less than three percent of the waste stream dumped at the Kettleman facility
10 and Kettleman City produces none of that waste. KHF is one of only three toxic waste sites in
11 California, and the only dump in the state which accepts PCBs, one of the most dangerous
12 pollutants known to man. Residents, 93 percent of whom are Latino, have been exposed to
13 toxic contaminants at KHF since 1979. The County failed to prevent the disproportionately
14 high and adverse environmental and human impacts of the KHF expansion.

15 The County itself found that the air quality (periodic construction and operations
16 impacts, long-term operations impacts) and land use (compatibility with Kings County
17 Regional Transportation Plan) impacts of the Project will be “significant and unavoidable,”
18 despite mitigation efforts. *Id.* at 1-26, 1-42 (table 1-1). Moreover, the proposed Project
19 would exceed the cancer risk standard at the KHF property boundary and contribute to the
20 ongoing significant cumulative regional . . . air quality impacts . . .” *Id.* at 1-4, 5. No
21 residents of California or Kings County towns where the majority of residents are white are
22 exposed to these kinds of risks.

23 Despite the fact that Kettleman City bears almost the entire risk and impact of hosting
24 the Chem Waste toxic waste dump, it receives virtually none of the substantial tax revenue
25 which the dump yields to the County. In Kings County, the dump has produced millions of
26 dollars tax money per year, reaching almost 10 percent of the County’s annual budget. Yet,

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while Kettleman City residents pay with their quality of life, they receive almost nothing back. Instead, the money is spent in areas populated by the County's white residents.

23 The County chose to rush a final vote through without properly evaluating the health impacts of the project.

4 Residents and their environmental justice allies have documented at least eleven birth
5 defects—many of them life threatening—since late 2007. Six children were born with cleft
6 palate. Since late 2007, three children have died as a result of complications related to their
7 birth defects. Given that dozens of studies have linked PCB exposure to cleft palate and other
8 health effects, and KHF is the only facility in California which accepts PCB, there is a logical
9 suspicion that the KHF dump is linked to the extraordinary rise in birth defects. The County
10 itself called for an investigation. Yet, instead of waiting for the investigation to conclude, the
11 County chose to approve the Project. *Action Summary* at 4, (Dec. 22, 2009).

12
13 The County's permit process also failed to evaluate the impact on residents of the
14 emissions of carcinogens and particulates from the hundreds of diesel trucks every day that
15 travel next to and near Kettleman City on their way to and from the Chemical Waste
16 Management facility. No testing of diesel emissions in Kettleman City has ever been
17 performed, and these emissions have never been considered in evaluations of the impacts of
18 the landfill operations.

19 The County's permit process and EIR also failed to properly evaluate cumulative
20 impacts from the proposed permits. Residents are exposed to multiple pollution sources,
21 including waste dumping, massive diesel traffic including thousands of diesel trucks engaged
22 in waste and freight transport on Highway 41 and Interstate 5. Residents are also exposed to
23 toxic contaminated drinking water, pesticides, and the terrible air quality prevalent throughout
24 the Valley.

25 The County's approval of the expansion failed to recognize KHF's atrocious history of environmental violations.

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1 The County's permit was based on the incorrect assumption that KHF is a well-run
2 and tightly regulated facility. Chem Waste has been fined repeatedly for violations at KHF.
3 In 1984, EPA fined Chem Waste \$2.5 million for a total of 130 violations. Among other
4 incidents, Chem Waste was charged with allowing leaks from the dump to contaminate local
5 water supplies. In 1985, EPA and Chem Waste's parent company, Waste Management, Inc.,
6 agreed to a consent decree involving \$4 million in fines for failing to adequately monitor
7 ground water and for mishandling hazardous waste, including PCBs, at the Kettleman Hills
8 dump. The California Department of Health Services fined Chem Waste \$363,000 for eleven
9 administrative and operational violations at the Kettleman dump.

10 Violations and fines have been levied against Chem Waste consistently and continue
11 into the present year. On April 8, 2010, the U.S. EPA issue a Notice of Violation to Chem
12 Waste alleging that the company engaged in improper disposal and improper handling of
13 highly toxic PCBs. And, on May 27, 2010, EPA Region 9 issued a Notice to Waste
14 Management stating that, "the data quality control system at the KHF Laboratory is not
15 adequate to ensure reliable analytical results," and "should not be used for decision making."
16 The County's approval relied on an EIR that cited KHF laboratory results that EPA now calls
17 into question.
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19 Further, extensive testimony has been presented to the County evidencing that
20 improper disposal of radioactive waste has taken place at the landfill. The County ignored
21 this evidence and approved KHF's permit.

22 **B. Kings County Unlawfully and Intentionally Discriminated Against the Latino
23 Residents of Kettleman City During the Administrative Process to Consider the
24 Hazardous Waste Expansion.**

25 Kings County *intentionally discriminated* against Latino residents by systematically
26 limiting their participation in the decision-making process despite their protected status under
27 California Government Code § 11135(a). Kings County excluded Latinos from meaningful
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1 participation in the Local Assessment Committee process, deprived Latinos access to permit
2 information and documents due to the County's refusal to translate, denied Latinos access to
3 the public hearings by setting hearings on inconvenient dates and times and in inaccessible
4 locations, and routinely denied Spanish speakers equal time to testify as non-Spanish
5 speakers. Finally, the County attempted to stifle participation from the Latino residents of
6 Kettleman City through systematic county-initiated police harassment, intimidation and
7 violence.

8 *I. Kings County excluded Latinos and residents of Kettleman City from participating*
9 *on the Local Assessment Committee.*

10 The Tanner Act provides that:

11 The membership of the committee shall be broadly constituted to reflect the makeup of
12 the community, and shall include three representatives of the community at large, two
13 representatives of environmental or public interest groups, and two representatives of
14 affected businesses and industries.

15 Cal. Health & Safety Code § 25199.7 (Tanner Act) (West 2010).

16 Despite the Tanner Act's requirement that the committee "reflect the makeup of the
17 community," Kings County selected only one member who actually resides in Kettleman
18 City. *FEIR*, at 3-191 to -196. The lone Kettleman City resident on the LAC is a long-time
19 and vocal supporter of Chemical Waste Management. In attempting to justify their selection
20 by stating that the Tanner Act's requirement of "three representatives of the community at
21 large" allows them to include residents of Hanford (31.8 mi away) and Avenal (13.5 mi away)
22 as two of these representatives, the County seems to confuse the location of the government
23 representatives authorized to decide the fate of the project application with the location of the
24 people who will actually be affected by the project. *Id.* In excluding residents of Kettleman
25 City, the County ignores the purpose of the Tanner Act which is to ensure that those most

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1 impacted by the hazardous waste facility have a voice in the deciding how those impacts will
2 be mitigated. Here, those most impacted were entirely excluded from the process.

3 Additionally, throughout most of the process there was not a single Latino on the
4 committee. Only when the process was about to conclude did Kings County select one Latino
5 to be a member of the LAC. Moreover, this member was unable to fully and effectively
6 participate in the LAC process as his first language is Spanish yet all the LAC and permit
7 documents were in English only. The lone Kettleman City resident on the LAC is African-
8 American and a long-time and vocal supporter of Chemical Waste Management. The County
9 notes that “[a]lthough non-Latino, Ms. Ware is a member of a minority group.” *Id.* The
10 County seems to believe that minority groups can be considered uniform, and that the
11 appointment of an African-American representative in a 92.7 percent Latino community is
12 adequate to represent the generalized “minority” viewpoint. By artificially grouping all
13 “minorities” into one category, the County discriminated against the Latino members of this
14 community and was unable to consider their unique viewpoint.⁸

15 2. *The County limited the ability of Spanish speakers to participate equally in the*
16 *decision-making process.*

17 §71135 prohibits not only discrimination based on race, but also national origin. This
18 protects language minorities, such as Spanish speakers, from unfair exclusion of the benefits
19 afforded to non-minorities. However, despite losing on this very issue during a legal
20 proceeding 19 years ago, Kings County again consistently refused to translate permit
21 documents or public hearings into Spanish, denying the people most affected by the proposed
22 project the ability to fully participate. When translators were present, they were provided by

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25 ⁸ 25 Ecology L.Q. 752. See also Sheila Foster, *Environmental Justice in an Era of Devolved*
26 *Collaboration*, 26 Harv. Env'tl. L. Rev. 459, 490-91 (2002) (“In both communities where the advisory
27 committees were deemed “unsuccessful,” the committee was widely considered to be both geographically and
demographically unrepresentative of the community where the proposed facility was to be located” (citations
omitted)).

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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 boldly and 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.

The County’s justification of this procedure—that the same process was used for Spanish-speakers supporting Chem Waste as that used for Spanish-speakers opposed to it—highlight the County’s misconception of its responsibilities under § 11135. *Id.* at 152:20-22. The County essentially believes that it is acceptable to discriminate against Spanish-speaking community members as long as they discriminate against all Spanish-speakers regardless of viewpoint. However, the County is required to avoid all discrimination in its permitting process.

This language discrimination is not a one-time occurrence in Kings County. The County is one of only three counties in California that is required to obtain pre-clearance before changing county voting laws.⁹ This means that Kings County has to demonstrate to the U.S. Department of Justice that any proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group.

By instituting a pattern of practices to limit opportunities available to Spanish speakers to effectively participate in the decision-making process, Kings County has intentionally discriminated Kettleman City residents on the basis of their national origin. This far exceeds the showing of disparate impact necessary to find a violation of § 11135.

⁹United States Department of Justice, Civil Rights Division, *Section 5 Covered Jurisdictions*, http://www.justice.gov/crt/voting/sec_5/covered.php#counties (last accessed May 27, 2010).

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3, *Kings County instituted policies and practices that had the effect of limiting the participation of Latinos in Kettleman City.*

2 Kings County held meetings and hearings to consider the expansion at times and locations⁴ inconvenient and inaccessible to Kettleman City residents. This is in line with the County's⁵ history of creating as inconvenient and inaccessible a process as possible to minimize⁶ public criticism of the project.¹⁰ In 1991, the County's final push to permit the incinerator⁷ took place through the holiday season with the final vote on January 3. Kings County⁸ used a similar approach this time, and voted to approve the expansion on December 22, 2009.⁹

10 The County also used unnecessarily heavy police and canine presence during the public¹¹ hearings which had the effect and, likely, purpose of intimidating Kettleman City residents,¹² many of whom have uncertain immigration status. Kings County contracted for¹³ over 40 police officers and sheriffs to patrol the hearings, in addition to its normal security staff.¹⁴ The Kings County Planning Commission asked police to forcibly remove an elderly resident¹⁵ who objected to the lack of translation. When eight to nine officers responded and surrounded¹⁶ the resident to escort him from the premise they also knocked over an elderly woman.¹⁷ The clear excess in police presence and force had the effect of limiting the public¹⁸ participation of Latinos and Mexican immigrants, both protected classes under § 11135.¹⁹

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VII. REMEDIES

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¹⁰ The County's final push to permit the incinerator took place through the holiday season with the final vote²⁶ on January 3, 1991. The flawed EIR approval for the current expansion under consideration took place on December 22, 2009.²⁷

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1 In order to provide effective remedies for the discrimination set forth in this
2 Complaint, Caltrans should require as a condition of continuing to provide state financial
3 assistance to Kings County that the County:

4 (1) Reverse its December 2009 decision to approve the expansion of the hazardous
5 waste facility due to substantial violations of § 11135.

6 (2) Cease permitting landfills in communities of color, particularly in Kettleman City.

7 (3) Require that future LAC's in communities of color be legitimate and truly
8 representative of the population as a condition of continuing federal financial assistance.

9 (4) Sue to compel compliance with the law, to the extent that imposition of the
10 foregoing remedies prove in any way to be ineffectual.

11 (5) Provide complainants with copies of all correspondence to or from Kings County
12 throughout the course of the investigation, deliberation and disposition of this Complaint.
13

14 VIII. CONCLUSION

15 Kings County's decision of December 22, 2009 to approve the expansion the Chem
16 Waste Hazardous Waste Facility has a disparate impact on the Latino residents of Kettleman
17 City. Moreover, Kings County intentionally enacted policies and practices during the
18 administrative process to approve the expansion that discriminated against Latinos and
19 Spanish speakers. These are clear violations of § 11135. As this Complaint makes clear,
20 residents of Kettleman City are being forced to continue to live next door to a hazardous
21 waste facility that serves the entire State, but were effectively excluded from the only
22 processes by which they could have protected their community from the expansion.

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24 DATE: June 18, 2010

Respectfully submitted,

25 **EL PUEBLO PARA EL AIRE Y AGUA LIMPIO**
26 **KIDS PROTECTING OUR PLANET**
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