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El Pueblo Para El Aire y Agua
Limpia; Greenaction for Health and
Environmental Justice

**COMPLAINT UNDER CALIFORNIA
GOVERNMENT CODE § 11135**

Complainants,

v.

Department of Toxic Substances Control and
California Environmental Protection Agency

Respondents.

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 Section 11135 of the California Government Code 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 process.

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 discriminatory and negative impact on a protected class of persons that DTSC/CalEPA in fact acknowledges to be true. We incorporate Greenaction and El Pueblo’s Petitions for Review, the DTSC Permit Decision including Statement of Overriding Considerations, and declarations of residents into this complaint.

1 California Government Code, section 11135 prohibits discrimination under any
2 program or activity that receives any financial assistance from the state. An agency violates
3 section 11135 if it receives state funding and takes an action that results in a significantly
4 adverse or disproportionate impact on minorities. Unlike intentional discrimination claims,
5 proving disparate-impact discrimination does not require a showing of discriminatory intent.
6 To make a showing of disproportionate impact, statistical evidence of a kind and degree
7 showing that the practice in question has negatively impacted minorities to a greater degree
8 than non-minorities is sufficient. This complaint documents that DTSC/CalEPA's actions had
9 a prohibited disparate impact on a protected class of persons. In addition, DTSC/CalEPA
10 intentionally discriminated against protected classes of persons by knowingly and
11 intentionally using and relying on Kings County's studies and processes that were done and
12 approved through the use of racially discriminatory procedures and rules and police actions
13 and intimidation of Latino and Spanish-speaking residents.

14 DTSC/CalEPA is a state agency and receives state funding for its programs including
15 permitting. DTSC/CalEPA is the permitting authority for hazardous waste landfills in
16 California. An operator cannot build a hazardous waste landfill or receive hazardous waste
17 without a RCRA hazardous waste permit issued by DTSC/CalEPA. By approving the KHF
18 expansion, it is directly responsible for the facility's impacts on nearby residents.
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20 The facility has, and an expansion would have, a disproportionate and adverse impact
21 on residents. As acknowledged by the EIR and other documents including the Statement of
22 Overriding Considerations, the project would have significant and unavoidable impacts.

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

8 According to the 2010 U.S. Census, Kettleman City is 96 percent Hispanic or Latino;
9 Kings County is 52 percent Hispanic or Latino; and California is 38 percent Hispanic or
10 Latino. . Most Kettleman City residents' first language is Spanish (88%), and a high
11 percentage are monolingual Spanish speakers (61%). Using this Census data, it is readily
12 apparent that DTSC's approval of the KHF expansion would have a disparate and prohibited
13 impact based on race when compared to the rest of the state.

14 In addition to the project approval's discriminatory impact, DTSC/CalEPA
15 *intentionally discriminated* against Latino and Spanish speaking residents by relying on Kings
16 County's Environmental Impact Reports and related documents that were adopted through the
17 systematic use of racially discriminatory methods and police intimidation that limited and
18 rendered meaningless participation in the decision-making process. In spite of Kettleman City
19 residents' continued request and demand for documents in Spanish, the County's entire
20 process including hearings and the environmental review documents were provided in an
21 English-only format. The EIR documents were adopted through the use of these racially
22 discriminatory procedures and by the use of a large scale and intimidating police presence
23 including police dogs. DTSC/CalEPA's reliance on Kings County's permitting process and
24 environmental review documents is thus intentionally discriminatory and had a clear
25 discriminatory impact—two separate grounds for § 11135 action.

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

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

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9 **II. CALIFORNIA GOVERNMENT CODE SECTION 11135**

10 California Government Code, section 11135 prohibits discrimination on the basis of
11 race, color or national origin under any program or activity that is conducted, operated, or
12 administered by the state or by any state agency, is funded directly by the state, or receives
13 any financial assistance from the state.
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15 **III. COMPLAINANTS**

16 Complainant El Pueblo Para El Aire y Agua Limpia/People for Clean Air and Water
17 ("El Pueblo") is an unincorporated association of Kettleman City residents. El Pueblo's
18 primary interest is in protecting the health of Kettleman City residents and in preserving and
19 enhancing the environment and promoting justice in Kettleman City and other similar
20 communities. El Pueblo was founded in 1987 by residents concerned about the impact of a
21 proposed hazardous waste incinerator on the community. Membership in the organization
22 mirrors the demographics of Kettleman City, which are predominantly Latino. El Pueblo and
23 its members submitted written and oral comments during DTSC/Cal EPA's permit process.
24

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

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

8 9 **IV. RESPONDENTS**

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

15 Cal EPA’s mission “is to restore, protect and enhance the environment, to ensure
16 public health, environmental quality and economic vitality.” Cal EPA is mandated to fulfill its
17 mission by developing, implementing and enforcing the state's environmental protection laws
18 that regulate clean air, clean water, clean soil, safe pesticides and waste recycling and
19 reduction.

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

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4 **V. RIPENESS**

5 This complaint is ripe and timely filed because on October 13, 2014, DTSC/Cal EPA issued
6 the “California Environmental Quality Act Notice of Determination” including the “Statement
7 of Overriding Considerations” for approval of the hazardous waste landfill expansion permit
8 modification on the same day they improperly denied the complainant’s Petitions for Review
9 of the permit decision issued on May 21, 2014. DTSC’s denial of the Petitions for Review
10 constituted the final agency action that has now allowed the controversial and harmful
11 expansion of the hazardous waste landfill to proceed immediately.

12
13 **VI. FINANCIAL ASSISTANCE**

14 The DTSC and its parent agency the Cal EPA are subject to and must comply with
15 California Government Code § 11135 because they receive state financial assistance and the
16 bulk of their budgets directly from the California Legislature. DTSC’s budget for 2014-2015
17 from the state is over \$195,000,000.

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19 **VII. STATEMENT OF FACTS**

20 **PROVING CIVIL RIGHTS VIOLATIONS BY DTSC/CALEPA**

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

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

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

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

13 CWM’s facility is already the largest hazardous waste landfill in the western United
14 States. Regulatory agencies have repeatedly fined the facility for chronic and serious
15 violations of hazardous waste laws and regulations. For example, the U.S. Environmental
16 Protection Agency (“EPA”) and DTSC records show that over the years, CWM has
17 repeatedly failed to report toxic spills, improperly disposed of PCBs and other hazardous
18 waste, and failed to conduct required monitoring. CWM has demonstrated a pattern of chronic
19 and repeated violations at KHF, some spanning a period of several years. Remarkably, just
20 months before DTSC issued this permit and despite operating at 1 or 2% of capacity, KHF
21 violated the terms of its permit yet again.
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24 **B. The Community:**

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

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

16
17 Beginning in September 2007, Kettleman City's residents experienced a sudden and
18 unexpected increase in birth defects. At least 11 babies were born with defects, many of them
19 with cleft palette and various heart and brain defects. Three of the infants died from
20 complications stemming from those birth defects. Residents estimated that the affected
21 children represented nearly a quarter of Kettleman City births.

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

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

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

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

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

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

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 CalEnviroScreen’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 City. The indicators show how residents of Kettleman City compare to the other communities across the 18 CalEnviroScreen indicators.

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

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

10 The failure to conduct a comprehensive cumulative impact study of the potential
11 impacts of expanding the toxic waste landfill combined with existing and other proposed
12 pollution sources in this community already suffering high rates of serious health problems
13 has resulted in inadequate analysis of the potential and real impacts of the expansion.
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15 **F. DTSC/Cal EPA's Issuance of Expansion Permit Despite Well-Document History**
16 **of Violations Places Residents at Increased Risk:**

17 It is a matter of public record, and an undeniable fact, that Chemical Waste
18 Management has a long track record of serious, repeat and chronic violations of their permits
19 regarding handling and disposal of hazardous wastes and PCBs at the Kettleman Hills
20 Facility. In the last few years alone, Chem Waste has been cited for violations including years
21 of illegal disposal of hazardous wastes and PCBs, years of failing to conduct some of the
22 required monitoring, failing to report 72 spills of hazardous waste over a four year period, and
23 faulty laboratory results. These chronic violations clearly are grounds for a permit denial, yet
24 the state's decision to issue a permit sends a message to polluters that they can violate their
25 permit dozens of times as Chem Waste has, yet still get new permits.
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1 Agencies have fined Chemical Waste Management millions of dollars for violations at
2 KHF since it was built, and violations continued. In 1984, EPA fined Chemical Waste
3 Management \$2.5 million for a total of 130 violations. In 1985, EPA and Chemical Waste
4 Management's parent company, Waste Management, Inc., agreed to a consent decree
5 involving \$4 million in fines for failing to adequately monitor ground water and for
6 mishandling hazardous waste, including PCBs, at the Kettleman Hills landfill. In 2005, EPA
7 and Chemical Waste Management entered into a consent decree for extensive monitoring
8 violations. The California Department of Health Services fined Chemical Waste Management
9 \$363,000 for eleven administrative and operational violations at the Kettleman dump. On
10 April 8, 2010, EPA issued Chemical Waste Management a letter outlining that the company
11 was engaged in improper disposal and improper handling of highly toxic materials. And, on
12 May 27, 2010, EPA Region IX issued a Notice of Violation to Waste Management stating
13 that, "the data quality control system at the KHF Laboratory is not adequate to ensure reliable
14 analytical results," and "should not be used for decision making." On March 2013, DTSC
15 fined Chemical Waste Management \$311,194 for 72 violations for failing to report hazardous
16 waste spills on its property during a four year period between 2008 and 2012.

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

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

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

8 § 11135 prohibits discrimination based on race and also on national origin. This
9 protects language minorities, such as Spanish speakers, from unfair exclusion of the benefits
10 afforded to non-minorities.

11 Kings County knowingly and intentionally discriminated against Latino residents by
12 systematically limiting their participation in the decision-making process despite their
13 protected status under California Government Code § 11135(a). Kings County excluded
14 Latinos from meaningful participation in the Local Assessment Committee process, deprived
15 Latinos access to permit information and documents due to the County’s refusal to translate,
16 denied Latinos access to the public hearings by setting hearings on inconvenient dates and
17 times and in inaccessible locations, and routinely denied Spanish speakers equal time to
18 testify as non-Spanish speakers. Also, the County stifled participation from the Latino
19 residents of Kettleman City through systematic county-initiated police harassment,
20 intimidation and violence. The County used unnecessarily heavy police and K-9 presence
21 during the public hearings which had the effect and, likely, purpose of intimidating Kettleman
22 City residents, many of whom have uncertain immigration status. Kings County contracted
23 for over 40 police officers and sheriffs to patrol the hearings, in addition to its normal security
24 staff. The clear excess in police presence and force had the effect of limiting the public
25 participation of Latinos and Mexican immigrants, both protected classes under § 11135.
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1 Despite repeated requests from residents, Kings County consistently refused to
2 translate permit documents or public hearings into Spanish, denying the people most affected
3 by the proposed project the ability to fully participate. When translators were present, they
4 were provided by Chem Waste (FSEIR at 3-200), an interested and biased party in the
5 proceeding. (Kings County Planning Commission, Meeting Transcript, October 5, 2009,
6 2:00pm PST).

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

13 When Spanish-speaking residents objected to being given only half the time to testify,
14 County officials and police threatened them with removal from the hearing. During the
15 hearing, one resident who is a citizen and senior citizen was physically removed by the police
16 for continuing to object to the discriminatory rules. The County officials' warnings to the
17 resident were in English, and his requests for translation of the warning were ignored.
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20 **H. DTSC/Cal EPA Improperly Relied on Flawed, Biased and Unscientific Studies:**

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

- 23 • The DTSC cites the “ US EPA KHF PCB Congener Study”, yet this study
24 allowed a toxic polluter with a serious record of violations, including failing to report spills
25 and failing to conduct some of the required monitoring, to conduct most of the testing;

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1 • DTSC’s “review” cites the “Cal EPA Kettleman City Community Exposure
2 Assessment” ordered by Governor Arnold Schwarzenegger in January 2010 which directed
3 Cal EPA to assess possible environmental contaminants in the air, groundwater and soil that
4 may have contributed to the increase in birth defects in the Kettleman City community since
5 2007. DTSC failed to point out that the pollution and waste disposal activities at the landfill
6 were reduced by over 95% at the time the study took place compared to the full operations
7 taking place several years earlier when the spike in birth defects took place – and CWM knew
8 they were being tested by many agencies at the time.

9 • DTSC/CalEPA cites the state’s birth defect study, but omits key information
10 including the clear fact that the state knowingly and intentionally understated and withheld the
11 true number of birth defects. DTSC/CalEPA’s “review” also failed to mention the state
12 agencies had refused to investigate until the Governor ordered an investigation in the wake of
13 major national news coverage.
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15 **I. DTSC/CalEPA’s “Environmental Justice Review” Used to Justify the Permit**
16 **Was Flawed, Inadequate and Biased Towards CWM:**
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18 One of the main DTSC/CalEPA permit documents used to justify its decision to
19 approve the landfill expansion is entitled “Environmental Justice Review.” DTSC claims it
20 “...prepared this Environmental Justice Review to identify and address environmental justice
21 concerns related to the Kettleman Hills Facility operated by Chemical Waste Management,
22 Inc. (Applicant). The Environmental Justice Review also assesses the potential harmful offsite
23 impacts from the facility as well as existing environmental burdens on the people in the
24 community.... Finally, this document reviews authoritative and voluntary actions taken by
25 DTSC, local government, federal government, and the Applicant to address impacts on the
26 people in the community from the facility or from the multiple impacts of other activities.
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1 This review is informed by the policies set forth in Government Code section 11135, Public
2 Resources Code sections 71110-71113, California Environmental Protection Agency
3 (Cal/EPA) Environmental Justice Action Plan (2004), and DTSC’s own policies for
4 environmental justice.”

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

- 10 • This review failed to identify or address environmental justice concerns related to the
11 Kettleman Hills Facility, and in fact no concerns were addressed by DTSC;
- 12 • Contrary to DTSC’s claim, this review does not include an assessment of Cumulative
13 Impacts, and the assessment of “potential harmful offsite impacts from the facility as well as
14 existing environmental burdens on the people in the community” that DTSC claims is in the
15 review is simply not in this document;
- 16 • Even if the information about assessing harmful impacts was in this review, a real
17 Cumulative Impact Assessment and analysis would include the toxic waste facility, other
18 existing environmental hazards, proposed environmental hazards and existing and recent
19 health and environmental quality information – this DTSC “Environmental Justice Review”
20 failed to analyze these issues cumulatively;
- 21 • It was completely improper and a biased attempt to justify dumping more hazardous
22 waste and PCBs on Kettleman City for this document to review “...authoritative and
23 voluntary actions taken by DTSC, local government, federal government, and the Applicant to
24 address impacts on the people in the community from the facility or from the multiple impacts
25 of other activities.” These voluntary actions are irrelevant to a permit decision that should be
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1 based on facts and the law, not on a giant corporation using its vast wealth to greenwash their
2 polluting operations and attempt to win the support of residents;

3 • DTSC improperly cites various incentive programs and the US Environmental
4 Protection Agency Environmental Justice Small Grant that was given to Greenaction to
5 reduce diesel pollution from illegal truck idling in Kettleman City - and DTSC improperly
6 mentions this grant as grounds to support granting Chem Waste its permit. As the State says
7 it wants to provide more funding for highly impacted communities to remediate past
8 disparities based on the CalEnviroScreen tool, this cannot be used as grounds to permit
9 additional disproportionate impacts. The goal of the tool and of those who participated in its
10 creation is to reduce and not increase impacts in these highly impacted communities;

11 • DTSC's claim that "To address the issue of air pollution, the Applicant has agreed to
12 an enforceable plan to reduce diesel truck emissions ..." is absurd and Orwellian, as the
13 DTSC/CalEPA permit allows a massive increase in diesel truck traffic and diesel emissions;
14 Diesel truck trips carrying hazardous waste will increase from the current level of
15 approximately one per day to about 400 per day. Using cleaner, but not clean, diesel vehicles
16 will in no way "address the issue of air pollution" as DTSC claims and will not result in
17 cleaner air and less diesel emissions. The only way to truly reduce diesel emissions is to reject
18 the expansion, and make sure that there are not 399 more diesel truck trips per day than have
19 occurred for the last several years;

20 • DTSC's claim that they are addressing the long-standing issue of water quality and the
21 lack of a safe drinking water supply for Kettleman City residents is also absurd, as DTSC
22 knows very well that the people of Kettleman City drink, bathe and wash in toxic
23 contaminated water every day and have done so for decades;

24 • The discussion of air quality in this "review" focuses on air monitoring requirements,
25 but fails to mention anywhere the undeniable and well-documented fact that CWM has
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1 violated some of its permit requirements on monitoring, including for years at a time.

2 Essentially the DTSC details a wishful thinking, make-believe world where CWM complies
3 with its permit and does all the required monitoring and reporting;

4 • The “review” mentions US EPA’s Air Emission Study on KHF Ponds, which despite
5 being based on a one day (November 12, 2010) inspection , allegedly indicated “... that the
6 Kettleman Hills Facility did not appear to be a significant source of the measured compounds
7 at the time of inspection.” The use of a one day inspection to conclude that the facility was
8 not a significant source of measured compounds at the time of inspection is not a
9 representative sample to make any conclusions;

10 • The DTSC “review” cites the “ US EPA KHF PCB Congener Study”, yet this study
11 allowed a toxic polluter with a serious record of violations, including failing to report spills
12 and failing to conduct some of the required monitoring, to conduct most of the testing;

13 • DTSC’s “review” cites the “Cal EPA Kettleman City Community Exposure
14 Assessment” ordered by Governor Arnold Schwarzenegger in January 2010 which directed
15 Cal EPA to assess possible environmental contaminants in the air, groundwater and soil that
16 may have contributed to the increase in birth defects in the Kettleman City community since
17 2007. DTSC failed to point out that the pollution and waste disposal activities at the landfill
18 were reduced by over 95% at the time the study took place compared to the full operations
19 taking place several years earlier when the spike in birth defects took place;

20 • DTSC’s “review” cites the state’s birth defect study, but omits key information
21 including the clear fact that the state knowingly and intentionally understated and withheld the
22 true number of birth defects. DTSC’s “review” also failed to mention the state agencies had
23 refused to investigate until the Governor ordered an investigation in the wake of major
24 national news coverage;

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1 • DTSC included in its so-called “Environmental Justice Review” actions proposed to
2 be taken by a giant corporation that has repeatedly violated its permits to essentially buy off
3 and sway public opinion. These include paying for a walking track, soccer field lighting,
4 pavilion, and parking lot at the Kettleman City Elementary School. Children’s ability to
5 participate in sports should not be dependent on money from a company that dumps
6 hazardous wastes and PCBs next to their town and has a terrible compliance history;

7 • DTSC’s permit decision that refers to funds that Chem Waste might provide if they
8 received their permit to help pay off the water service debts of the Kettleman City Community
9 Services District is improper, as many now believe that the only way Kettleman City will get
10 a new and safe water supply is if the dump expands. This is an unethical way to garner
11 support for a permit to expand the toxic waste landfill, essentially sending a message to
12 residents that if you want clean water for your family and babies, you must accept more toxic
13 waste. This approach by DTSC in fact divided residents and caused great conflict and harm in
14 the community;

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17 **J. DTSC/CalEPA’s Statement of Overriding Considerations is Improper and an**
18 **Admission of Negative Impact on Vulnerable Protected Class of Persons:**

19 When an agency seeks to approve a project with significant environmental effects that
20 will not be avoided or substantially lessened, it must adopt a statement that, because of the
21 project’s overriding benefits, it is approving the project despite its environmental harm. 14
22 CCR § 15043. DTSC/CalEPA’s final permit decision issued May 21, 2014 included a
23 Statement of Overriding Considerations that states clearly there are significant unavoidable
24 impacts of the project cannot be mitigated or eliminated:

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

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

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

20
21 DTSC/CalEPA found that specific economic, legal, social, technological and other
22 anticipated benefits of the Project outweigh the significant and unavoidable impacts to justify
23 project approval. DTSC/CalEPA specifically relies upon six alleged benefits to make this
24 finding. Most of the stated “benefits” concern the need for added hazardous waste disposal
25 capacity within the state. However, nowhere in the permitting process has DTSC provided a
26 useful review or consideration of the needed state capacity for hazardous waste disposal in
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1 California. State law required DTSC to provide this analysis in a statewide hazardous waste
2 management plan beginning in 1991 and updated every three years. See Health & Safety
3 Code § 25135.9. However, DTSC has never prepared the requisite analysis. Without this
4 analysis, DTSC has no way of knowing whether the state needs additional hazardous waste
5 disposal capacity and no way to support its finding of an overriding project benefit.

6 DTSC cites an increase in hazardous waste generation in California from 1997 through
7 2002 as the only evidence supporting its statement of overriding considerations. However, 13
8 year old data about increased hazardous waste generation is not evidence supporting DTSC's
9 argument that the state needs additional capacity today. DTSC does not disclose or analyze
10 how much waste is currently generated and how much capacity remains at existing hazardous
11 waste facilities in California. Without providing any information on the state's supply and
12 demand for hazardous waste disposal options, DTSC has no evidence demonstrating that the
13 project will achieve any of the stated benefits.

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

19 DTSC also explains that one of the project benefits is to receive hazardous waste
20 generated by U.S. businesses with facilities in Mexico. However, DTSC also acknowledges
21 that the facility only receives the equivalent of half a truckload of waste per year from
22 Mexico. Existing facilities have sufficient capacity for this very small amount of waste.
23 DTSC does not provide any evidence that demonstrates that the KHF expansion is needed to
24 provide capacity for waste from Mexico. Because DTSC has no support for its findings of
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1 overriding considerations, and is unable to demonstrate that the facility provides any benefit,
2 DTSC should rescind the expansion permit.

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4 **K. DTSC/CalEPA’s Order Denying Petition for Review of Permit Modification**

5 **Decision is factually flawed, non-responsive and without merit:**

6 1. DTSC’s claim that violations of civil rights are not properly raised in an appeals
7 process is without merit and a violation of environmental justice:

8 DTSC/CalEPA’s states in their Order Denying the Petition for Review (page 7) that “...this
9 appeals process is not the right forum to address civil rights matters.”

10 DTSC/CalEPA’s claim that civil rights matters are not properly raised in an appeals process is
11 without merit and a violation of civil rights and environmental justice. State and federal civil
12 rights laws do not provide an exemption to DTSC/CalEPA to allow them to violate civil rights
13 laws or to claim their permit decisions are somehow beyond the scope of civil rights laws.
14 DTSC further mischaracterizes our civil rights allegations by focusing on the issue of the
15 siting of all three of the hazardous waste landfills in Latino Spanish speaking communities. In
16 fact our comments on the draft permit and in our appeal/Petition for Review set forth
17 numerous violations of civil rights by the DTSC/CalEPA including their significant reliance
18 on Kings County’s EIR documents that were adopted through the systemic use of racially
19 discriminatory rules and procedures including English-only documents, providing the Spanish
20 speaking residents only half the time to speak as English speakers, and the use of police
21 intimidation and violence the presence of police dogs.

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24 2. DTSC/CalEPA’s Order and Response to Comments is Flawed and Inaccurate:

25 A review of the DTSC/CalEPA Order and Response to Comments clearly shows in

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1 many instances they mischaracterized complainants' comments and were non-
2 responsive to many issues raised in our comments during the public comment period
3 and appeals process.
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5 3. DTSC/CalEPA's Appeal's Process Was Biased and Unfair and Inadequate:

6 The DTSC staffer appointed as the appeals officer has a long history of conflict with
7 complainant Greenaction and other community and environmental justice groups.
8 Greenaction and community groups were in intensive conflict with this appeals officer since
9 the late 1990's due to concerns about perceived lax oversight of toxic cleanup and
10 contamination sites in the low income communities of color in Midway Village and West
11 Oakland. DTSC/CalEPA's use of this staff person in a role that should be devoid of even the
12 perception of bias is unacceptable and tainted the integrity of the appeals process.
13

14 **VIII. CONCLUSION**

15 People of color and non-English speakers are entitled to be protected from
16 discrimination in state-funded activities and programs, yet the DTSC and CalEPA continue to
17 ignore and violate state and federal civil rights laws. Discrimination against minority
18 populations is prohibited under Cal. Gov. Code § 11135(a), which provides:
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20 No person in the State of California shall, on the basis of race, *national*
21 *origin, ethnic group identification*, religion, age, sex, sexual orientation,
22 *color*, or disability, be unlawfully denied full and equal access to the
23 benefits of, or be unlawfully subjected to discrimination under, any
24 program or activity that . . . is funded directly by the state, or receives any
financial assistance from the state.

25 DTSC and Cal EPA, as recipients of state funding, have violated § 11135
26 through its decisions to allow the expansion of the Chem Waste hazardous
27 waste facility adjacent to Kettleman City, relying on flawed and defective
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1 studies and a discriminatory process and approving the expansion despite
2 confirming that this expansion would have a negative, disparate impact on
3 the environment of a Latino, Spanish-speaking low-income and heavily
4 polluted community the agencies themselves acknowledge is highly
vulnerable and at-risk.

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

10
11 It is unacceptable and a violation of civil rights that the State of California would
12 knowingly and intentionally use key documents produced and approved through blatant racial
13 discrimination in this or any other State action. DTSC/Cal EPA is sending a message that civil
14 rights laws do not apply in permit decisions, and we file this complaint to force DTSC, Cal
15 EPA and all other state agencies to follow the law of our land which include California
16 Government Code 11135 as well as Title VI of the United States Civil Rights Act. These Civil
17 Rights Laws do not exempt DTSC or Cal EPA from complying with laws, and certainly do
18 not allow these agencies to blatantly take actions that rely on and further racial discrimination
19 and discriminatory impacts.

20 **IX. REMEDIES**

21 In order to provide effective remedies for the discrimination and substantial violations
22 of § 11135 set forth in this Complaint, the State of California should require as a condition of
23 continuing to provide state financial assistance to DTSC/Cal EPA that these agencies:

24 (1) Reverse the approval for the expansion/permit modification of
25 the Kettleman Hills Facility;
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- 1 (2) Rescind the Order Denying the Petitions for Review;
- 2 (3) Cease use of or reliance on environmental review documents or other permit
- 3 documents which were approved by any agency using racially discriminatory procedures;
- 4 (4) Cease use of Statements of Overriding Consideration in permit decisions
- 5 affecting low-income and communities of color disproportionately impacted by pollution;
- 6 (5) Uphold and comply with applicable civil rights laws in permit decisions; and
- 7 (6) Actively work with all relevant parties to ensure that Kettleman City's
- 8 contaminated water supply is replaced within six months with safe uncontaminated water.
- 9

10 Respectfully submitted, March 19, 2015

11

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