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

**COMPLAINT UNDER TITLE VI OF THE UNITED STATES CIVIL RIGHTS ACT OF 1964**

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 Title VI of the United States Civil Rights Act and its implementing regulations against the Department of Toxic Substances Control and California Environmental Protection Agency (collectively “DTSC/CalEPA”) for discriminating on the basis of race in approving the expansion of the Chemical Waste Management Kettleman Hills Hazardous Waste Facility through use of flawed, defective and racially discriminatory procedures, studies and permit processes.

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

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

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

6 The DTSC/CalEPA’s decision on May 21, 2014 to approve the permit modification  
7 for the hazardous waste dump expansion at the Kettleman Hills Facility (KHF) and its actions  
8 on October 13, 2014 issuing the “California Environmental Quality Act Notice of  
9 Determination,” the “Findings of Fact and Statement of Overriding Considerations,” and the  
10 Order denying the Petitions for Review filed by El Pueblo and Greenaction have a prohibited  
11 discriminatory, negative impact on a protected class of persons that DTSC/CalEPA in fact  
12 acknowledges to be true. We attach and incorporate Greenaction and El Pueblo’s Petition for  
13 Review, the DTSC Permit Decision including Statement of Overriding Considerations, and  
14 declarations of residents into this complaint.  
15

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

22 DTSC/CalEPA receives federal funding from the United States Environmental  
23 Protection Agency. DTSC is the permitting authority for hazardous waste landfills in  
24 California. An operator cannot build a hazardous waste landfill or receive hazardous waste  
25 without a RCRA hazardous waste permit, issued by DTSC. By approving the KHF  
26 expansion, it is directly responsible for the facility’s impacts on nearby residents.  
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1 As acknowledged by permit documents including the Statement of Overriding  
2 Considerations, the project will have significant, adverse, disproportionate and unavoidable  
3 impacts.

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

15 According to the 2010 U.S. Census, Kettleman City is 96 percent Hispanic or Latino;  
16 Kings County is 52 percent Hispanic or Latino; and California is 38 percent Hispanic or  
17 Latino. Using this Census data, it is readily apparent that DTSC's approval of the KHF  
18 expansion would have a disparate and prohibited impact based on race when compared to the  
19 rest of the state.  
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21 In addition to the project approval's discriminatory impact, DTSC/CalEPA  
22 *intentionally discriminated* against Latino and Spanish speaking residents by relying on Kings  
23 County's Environmental Impact Reports and related documents that were adopted through the  
24 systematic use of racially discriminatory methods and police intimidation that limited and  
25 rendered meaningless their participation in the decision-making process. Most Kettleman  
26 City residents' first language is Spanish, and a high percentage are monolingual Spanish  
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1 speakers. In spite of Kettleman City residents' continued request and demand for documents  
2 in Spanish, the County's entire process including hearings and the environmental review  
3 documents were provided in an English-only format. EIR documents were adopted through  
4 the use of these racially discriminatory procedures and by a large scale and intimidating  
5 police presence including police dogs. DTSC/CalEPA's reliance on Kings County's  
6 permitting process and environmental review documents is thus intentionally discriminatory  
7 and had a clear discriminatory impact—two separate grounds for Title VI action.

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

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

## 16 **II. TITLE VI OF THE UNITED STATES CIVIL RIGHTS ACT**

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

## 23 **III. COMPLAINANTS**

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

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

13 Complainants El Pueblo and Greenaction bring this Civil Rights Complaint on behalf  
14 of their Latino and Spanish-speaking members and residents living in Kettleman City in  
15 Kings County, California.  
16

#### 17 **IV. RESPONDENTS**

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

23 Cal EPA's mission "is to restore, protect and enhance the environment, to ensure  
24 public health, environmental quality and economic vitality." Cal EPA is mandated to fulfill its  
25 mission by developing, implementing and enforcing the state's environmental protection laws  
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1 that regulate clean air, clean water, clean soil, safe pesticides and waste recycling and  
2 reduction.

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

13 This complaint is ripe because on October 13, 2014, DTSC/Cal EPA issued the  
14 “California Environmental Quality Act Notice of Determination” and the “Statement of  
15 Overriding Considerations” for approval of the hazardous waste landfill expansion permit  
16 modification on the same day they improperly denied the complainant’s Petitions for Review  
17 of the permit decision issued on May 21, 2014. DTSC’s denial of the Petitions for Review  
18 constituted the final act of approval of the permit by the agency, the final agency action that  
19 has now allowed the controversial and harmful expansion of the hazardous waste landfill to  
20 proceed immediately.  
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## 22 **VI. FINANCIAL ASSISTANCE**

23 The DTSC and Cal EPA are subject to and must comply with Title VI because they  
24 receive funding from the United States Environmental Protection Agency.  
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1 **VII. STATEMENT OF FACTS**

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

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

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

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

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

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

4

5 **B. The Community:**

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

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

23  
24 Beginning in September 2007, Kettleman City's residents experienced a sudden and  
25 unexpected increase in birth defects. At least 11 babies were born with defects, many of them  
26 with cleft palette and various heart and brain defects. Three of the infants died from

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

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

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

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

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

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

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

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

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

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

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

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1           **comparatively high level of pollution burden and vulnerability.**

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

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

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

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

25          The linguistic isolation indicator measures the percentage of households where no one  
26          27

1 speaks English “very well,” and identifies 23.6% of households in Kettleman City as  
2 in this category. **This percentage is also significantly higher** than the two other  
3 comparison zip codes. Kettleman City is also high on the tool’s measure of poverty,  
4 with 39.8% of the population living below twice the federal poverty level. The percent  
5 low birth weight in Kettleman City, 6.03%, is comparable to the two comparison zip  
6 codes. Finally, **CalEnviroScreen identifies 96.27% of the population of Kettleman**  
7 **City as non-white or Hispanic/Latino, significantly higher than the two**  
8 **comparison zip codes.” (emphasis added).**  
9

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

11 Even though DTSC acknowledges that Kettleman City residents face a cumulative risk  
12 from multiple pollution sources, it failed to conduct a serious analysis to identify the nature of  
13 those impacts or address them. DTSC’s entire cumulative impact analysis consists of listing  
14 new or proposed projects that have emerged since Kings County certified its EIR for the  
15 project and summarizing any existing CEQA documentation for the new projects. DTSC did  
16 not analyze the combined impact of multiple environmental stressors in the area, and certainly  
17 individual sites.  
18

19 The failure to conduct a comprehensive cumulative impact study of the potential  
20 impacts of expanding the toxic waste landfill combined with existing and other proposed  
21 pollution sources in this community already suffering high rates of serious health problems  
22 has resulted in inadequate analysis of the potential and real impacts of the expansion.  
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24 **F. DTSC/Cal EPA’s Issuance of Expansion Permit Despite Well-Document History**  
25 **of Violations Places Residents at Increased Risk:**  
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1           It is a matter of public record, and an undeniable fact, that Chemical Waste  
2 Management has a long track record of serious, repeat and chronic violations of their permits  
3 regarding handling and disposal of hazardous wastes and PCBs at the Kettleman Hills  
4 Facility. In the last few years alone, Chem Waste has been cited for violations including years  
5 of illegal disposal of hazardous wastes and PCBs, years of failing to conduct some of the  
6 required monitoring, failing to report 72 spills of hazardous waste over a four year period, and  
7 faulty laboratory results. These chronic violations clearly are grounds for a permit denial, yet  
8 the state's decision to issue a permit sends a message to polluters that they can violate their  
9 permit dozens of times as Chem Waste has, yet still get new permits.

10           Agencies have fined Chemical Waste Management millions of dollars for violations at  
11 KHF since it was built, and violations continued. In 1984, EPA fined Chemical Waste  
12 Management \$2.5 million for a total of 130 violations. In 1985, EPA and Chemical Waste  
13 Management's parent company, Waste Management, Inc., agreed to a consent decree  
14 involving \$4 million in fines for failing to adequately monitor ground water and for  
15 mishandling hazardous waste, including PCBs, at the Kettleman Hills landfill. In 2005, EPA  
16 and Chemical Waste Management entered into a consent decree for extensive monitoring  
17 violations. The California Department of Health Services fined Chemical Waste Management  
18 \$363,000 for eleven administrative and operational violations at the Kettleman dump. On  
19 April 8, 2010, EPA issued Chemical Waste Management a letter outlining that the company  
20 was engaged in improper disposal and improper handling of highly toxic materials. And, on  
21 May 27, 2010, EPA Region IX issued a Notice of Violation to Waste Management stating  
22 that, "the data quality control system at the KHF Laboratory is not adequate to ensure reliable  
23 analytical results," and "should not be used for decision making." On March 2013, DTSC  
24 fined Chemical Waste Management \$311,194 for 72 violations for failing to report hazardous  
25 waste spills on its property during a four year period between 2008 and 2012.  
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1 Health & Safety Code, Section 25186 authorizes DTSC to deny or revoke a permit  
2 based on violations of or noncompliance with environmental protection statutes and  
3 regulations, if the violation or noncompliance shows a repeating or recurring pattern or may  
4 pose a threat to public health or safety of the environment. Moreover, Title 22 of the  
5 California Code of Regulation, Section 66270.43 authorizes DTSC to revoke or deny a permit  
6 for noncompliance by the applicant with any condition of the permit. DTSC/Cal EPA have  
7 ignored the serious and repeat violations by issuing a permit for a massive landfill expansion,  
8 thus putting residents at increased risk.

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

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

17  
18 Title VI prohibits discrimination based on race and also on national origin. This  
19 protects language minorities, such as Spanish speakers, from unfair exclusion of the benefits  
20 afforded to non-minorities.

21 Kings County knowingly and intentionally discriminated against Latino residents by  
22 systematically limiting their participation in the decision-making process despite their  
23 protected status under state and federal civil rights laws. Kings County excluded Latinos from  
24 meaningful participation in the Local Assessment Committee process, deprived Latinos  
25 access to permit information and documents due to the County’s refusal to translate, denied  
26 Latinos access to the public hearings by setting hearings on inconvenient dates and times and  
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1 in inaccessible locations, and routinely denied Spanish speakers equal time to testify as non-  
2 Spanish speakers. Also, the County stifled participation from the Latino residents of  
3 Kettleman City through systematic county-initiated police harassment, intimidation and  
4 violence. The County used unnecessarily heavy police and canine presence during the public  
5 hearings which had the effect and, likely, purpose of intimidating Kettleman City residents,  
6 many of whom have uncertain immigration status. Kings County contracted for over 40  
7 police officers and sheriffs to patrol the hearings, in addition to its normal security staff. The  
8 clear excess in police presence and force had the effect of limiting the public participation of  
9 Latinos and Mexican immigrants, both protected classes under state and federal civil rights  
10 laws.

11           Despite repeated requests from residents, Kings County consistently refused to  
12 translate permit documents or public hearings into Spanish, denying the people most affected  
13 by the proposed project the ability to fully participate. When translators were present, they  
14 were provided by Chem Waste (FSEIR at 3-200), an interested and biased party in the  
15 proceeding. (Kings County Planning Commission, Meeting Transcript, October 5, 2009,  
16 2:00pm PST).

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

23           When Spanish-speaking residents objected at the hearing to being given only half the  
24 time to testify, County officials and police threatened them with removal from the hearing.  
25 During the hearing, one resident who is a citizen and senior citizen was physically removed  
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1 by the police for continuing to object to the discriminatory rules. The County officials’  
2 warnings to the resident were in English, and his requests for translation of the warning were  
3 ignored. The county also brought police dogs in a K-9 unit squad car parked near the entrance  
4 to the following hearing in an attempt to intimidate residents and others opposing the landfill  
5 expansion.

6  
7 **H. DTSC/Cal EPA Relied on Flawed, Biased and Unscientific Studies:**

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

- 10 • The DTSC 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 – and CWM knew  
20 they were being tested by many agencies at the time.
- 21 • DTSC/CalEPA cites the state’s birth defect study, but omits key information  
22 including the clear fact that the state knowingly and intentionally understated and withheld the  
23 true number of birth defects. DTSC/CalEPA’s “review” also failed to mention the state  
24 agencies had refused to investigate until the Governor ordered an investigation in the wake of  
25 major national news coverage.  
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**I. DTSC/CalEPA’s “Environmental Justice Review” Used to Justify the Permit Was Flawed, Inadequate and Biased Towards CWM:**

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

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

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

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

3 • Even if the information about assessing harmful impacts was in this review, a real  
4 Cumulative Impact Assessment and analysis would include the toxic waste facility, other  
5 existing environmental hazards, proposed environmental hazards and existing and recent  
6 health and environmental quality information – this DTSC “Environmental Justice Review”  
7 failed to analyze these issues cumulatively;

8 • It was completely improper, and a biased attempt to justify dumping more hazardous  
9 waste and PCBs on Kettleman City, for this document to review “...authoritative and  
10 voluntary actions taken by DTSC, local government, federal government, and the Applicant to  
11 address impacts on the people in the community from the facility or from the multiple impacts  
12 of other activities.” These voluntary actions are irrelevant to a permit decision that should be  
13 based on facts and the law, not on a giant corporation using its vast wealth to greenwash their  
14 polluting operations and attempt to win the support of residents;

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

23 • DTSC’s claim that “To address the issue of air pollution, the Applicant has agreed to  
24 an enforceable plan to reduce diesel truck emissions ...” is absurd and Orwellian, as the  
25 DTSC/CalEPA permit allows a massive increase in diesel truck traffic and diesel emissions;  
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1 Diesel truck trips carrying hazardous waste will increase from the current level of  
2 approximately one per day to about 400 per day. Using cleaner, but not clean, diesel vehicles  
3 will in no way “address the issue of air pollution” as DTSC claims and will not result in  
4 cleaner air and less diesel emissions. The only way to truly reduce diesel emissions is to reject  
5 the expansion, and make sure that there are not 399 more diesel truck trips per day than have  
6 occurred for the last several years;

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

11 • The discussion of air quality in this “review” focuses on air monitoring requirements,  
12 but fails to mention anywhere the undeniable and well-documented fact that CWM has  
13 violated some of its permit requirements on monitoring, including for years at a time.  
14 Essentially the DTSC details a wishful thinking, make-believe world where CWM complies  
15 with its permit and does all the required monitoring and reporting;

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

22 • The DTSC “review” cites the “ US EPA KHF PCB Congener Study”, yet this study  
23 allowed a toxic polluter with a serious record of violations, including failing to report spills  
24 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;
- 8 • DTSC’s “review” cites the state’s birth defect study, but omits key information  
9 including the clear fact that the state knowingly and intentionally understated and withheld the  
10 true number of birth defects. DTSC’s “review” also failed to mention the state agencies had  
11 refused to investigate until the Governor ordered an investigation in the wake of major  
12 national news coverage;
- 13 • DTSC included in its so-called “Environmental Justice Review” actions proposed to  
14 be taken by a giant corporation that has repeatedly violated its permits to essentially buy off  
15 and sway public opinion. These include paying for a walking track, soccer field lighting,  
16 pavilion, and parking lot at the Kettleman City Elementary School. Children’s ability to  
17 participate in sports should not be dependent on money from a company that dumps  
18 hazardous wastes and PCBs next to their town and has a terrible compliance history;
- 19  
20  
21 • DTSC’s permit decision that refers to funds that may be provided by Chem Waste (if  
22 they received their permit) to help pay off the water service debts of the Kettleman City  
23 Community Services District is improper, as many now believe that the only way Kettleman  
24 City will get a new and safe water supply is if the dump expands. This is an unethical way to  
25 garner support for a toxic waste landfill, essentially sending a message to residents that if you  
26 want clean water for your family and babies, you must allow more toxic waste to be disposed

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

3

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

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

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

13 “DTSC specifically adopts and makes this Statement of Overriding Considerations  
14 that this Project has eliminated or substantially lessened all significant effects on the  
15 environment where feasible (including the incorporation of feasible mitigation  
16 measures) and finds that the remaining significant unavoidable impacts of the Project,  
17 which are described above, are acceptable because the benefits of the Project set forth  
18 below outweigh it.”  
19

20  
21 DTSC/CalEPA thus clearly and unequivocally acknowledges that their approval of a  
22 landfill expansion will have negative, significant and unavoidable impacts on a community  
23 they have confirmed is vulnerable and at risk to pollution. DTSC/CalEPA’s Final Decision  
24 including the Statement of Overriding Considerations is attached and incorporated into this  
25 complaint.

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1           In addition, when issuing a Statement of Overriding Considerations, the agency must  
2 set forth the reasons for its action based on the final EIR or other information in the record.  
3 Pub. Res. Code § 21081(b); 14 CCR § 15093(a). The Statement of Overriding Considerations  
4 must be supported by substantial evidence in the record of the agency’s proceedings. 14 CCR  
5 § 15093(b); see also *Sierra Club v. Contra Costa County* (1992) 10 Cal. App.4th 1212, 1223  
6 (statement of overriding considerations should be treated like findings and therefore must be  
7 supported by substantial evidence.). A statement is legally inadequate if it does not accurately  
8 reflect the significant impacts disclosed by the EIR and mischaracterizes the relative benefits  
9 of the project. See *Woodward Park Homeowners Ass’n v. City of Fresno* (2007) 150 Cal.  
10 App. 4th 683, 717.

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

22           DTSC cites an increase in hazardous waste generation in California from 1997 through  
23 2002 as the only evidence supporting its statement of overriding considerations. However, 13  
24 year old data about increased hazardous waste generation is not evidence supporting DTSC’s  
25 argument that the state needs additional capacity today. DTSC does not disclose or analyze  
26

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

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

10 DTSC also explains that one of the project benefits is to receive hazardous waste  
11 generated by U.S. businesses with facilities in Mexico. However, DTSC also acknowledges  
12 that the facility only receives the equivalent of half a truckload of waste per year from  
13 Mexico. Existing facilities have sufficient capacity for this very small amount of waste.  
14 DTSC does not provide any evidence that demonstrates that the KHF expansion is needed to  
15 provide capacity for waste from Mexico.  
16

17 Because DTSC has no support for its findings of overriding considerations, and is  
18 unable to demonstrate that the facility provides any benefit, DTSC should not approve the  
19 expansion permit.  
20

21 **K. DTSC/CalEPA's Order Denying Petition for Review of Permit Modification**

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

- 23  
24 1. DTSC's claim that violations of civil rights are not properly raised in an appeals  
25 process is without merit and a violation of environmental justice:  
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1 DTSC/CalEPA's states in their Order Denying the Petition for Review (page 7) that  
2 "...this appeals process is not the right forum to address civil rights matters."  
3 DTSC/CalEPA's claim that civil rights matters are not properly raised in an appeals process is  
4 without merit and a violation of civil rights and environmental justice. State and federal civil  
5 rights laws do not provide an exemption to DTSC/CalEPA to allow them to violate civil rights  
6 laws or to claim their permit decisions are somehow beyond the scope of civil rights laws.  
7 DTSC further mischaracterizes our civil rights allegations by focusing on the issue of the  
8 siting of all three of the hazardous waste landfills in Latino Spanish speaking communities. In  
9 fact our comments on the draft permit and in our appeal/Petition for Review set forth  
10 numerous violations of civil rights by the DTSC/CalEPA including their significant reliance  
11 on Kings County's EIR documents that were adopted through the systemic use of racially  
12 discriminatory rules and procedures including English-only documents, providing the Spanish  
13 speaking residents only half the time to speak as English speakers, and the use of police  
14 intimidation and violence the presence of police dogs.  
15

16  
17 2. DTSC/CalEPA's Order and Response to Comments is Flawed and Inaccurate:

18 A review of the DTSC/CalEPA Order and Response to Comments clearly shows in many  
19 instances they mischaracterized complainants' comments and were non-responsive to many  
20 issues raised in our comments during the public comment period and appeals process.  
21

22 3. DTSC/CalEPA's Appeal's Process Was Biased and Unfair and Inadequate:

23 The DTSC staffer appointed as the appeals officer has a long history of conflict with  
24 complainant Greenaction and other community and environmental justice groups.  
25 Greenaction and community groups were in intensive conflict with this appeals officer since  
26 the late 1990's due to concerns about perceived lax oversight of toxic cleanup and  
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28



1 contamination sites in the low income communities of color in Midway Village and West  
2 Oakland. DTSC/CalEPA's use of this staff person in a role that should be devoid of even the  
3 perception of bias is unacceptable and tainted the integrity of the appeals process.  
4

## 5 **VII. CONCLUSION**

6 People of color and non-English speakers are entitled to be protected from unlawful  
7 discrimination in state-funded activities and programs, yet the DTSC and CalEPA continue to  
8 ignore and violate state and federal civil rights laws. Discrimination against minority  
9 populations is prohibited under Title VI of the US Civil Rights Act  
10

11 Section 601 of Title VI of the Civil Rights Act of 1964 states that "No person in the  
12 United States shall, on the ground of race, color, or national origin, be excluded from  
13 participation in, be denied the benefits of, or be subjected to discrimination under any  
14 program or activity receiving Federal financial assistance." Section 602 of Title VI states:  
15 "Each Federal department and agency which is empowered to extend Federal financial  
16 assistance to any program or activity ...is authorized and directed to effectuate the provisions  
17 of section 601"

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

25 DTSC and Cal EPA, as recipients of federal funding, have violated Title VI through  
26 their decision to approve expansion of the Chem Waste hazardous waste facility adjacent to  
27

1 Kettleman City, relying on flawed and defective studies and a discriminatory process and  
2 approving the expansion despite confirming that this expansion would have a negative,  
3 disparate impact on 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 are sending a message that  
14 civil rights laws do not apply in permit decisions, and we file this complaint to force DTSC,  
15 Cal 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.

## 17 18 **IX. REMEDIES**

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

- 22 (1) Reverse the approval for the expansion/permit modification of the landfill;
  - 23 (2) Rescind the Order Denying the Petitions for Review;
  - 24 (3) Cease use of or reliance on environmental review documents or other permit
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- 1 documents which were approved by any agency using racially discriminatory  
2 procedures;
- 3 (4) Cease use of Statements of Overriding Consideration in permit decisions  
4 affecting low-income and communities of color heavily and disproportionately  
5 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  
9 uncontaminated water.

10  
11 Respectfully submitted,

12  
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