

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made, entered into and executed by and between Greenaction for Health and Environmental Justice and El Pueblo para el Aire y Agua Limpia (collectively, Complainants) and the California Environmental Protection Agency (CalEPA) and Department of Toxic Substances Control (DTSC).

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, and the United States Environmental Protection Agency (U.S. EPA) Title VI regulations, 40 C.F.R. Part 7, prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. DTSC and CalEPA are recipients of financial assistance from U.S. EPA and are subject to the provisions of Title VI and U.S. EPA's implementing regulations.

### **SECTION I: FACTUAL BACKGROUND.**

#### The Parties

- A. El Pueblo para el Aire y Agua Limpia (El Pueblo) is a grassroots unincorporated association of the residents of Kettleman City, California. El Pueblo advocates for the health of Kettleman City residents, to preserve a clean environment, and for the rights of the people of Kettleman City.
- B. Greenaction for Health and Environmental Justice (Greenaction) is a grassroots organization that advocates for a clean environment for all people and for meaningful and equal opportunities for public involvement in government decision-making processes for environmental justice communities and other communities, including, but not limited to, non-English speaking and limited-English speaking communities.
- C. CalEPA is the State of California's cabinet-level environmental agency, comprised of DTSC, the Air Resources Board, the Department of Pesticide Regulation, the Department of Resources Recycling and Recovery, the Office of Environmental Health Hazard Assessment, and the State Water Resources Control Board. CalEPA's mission is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality.
- D. DTSC, among other functions, oversees the permitting of hazardous waste facilities. DTSC's mission is to protect California's people and environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

#### Kettleman City, the Kettleman Hills Facility, and the Permit Modification Decision

- E. Kettleman City is located in Kings County, California. A substantial percentage of Kettleman City residents are monolingual Spanish speakers.

- F. The Kettleman Hills Facility (KHF) is a hazardous waste disposal facility owned and operated by Waste Management, Inc. through its subsidiary Chemical Waste Management, Inc. KHF is located approximately three miles from Kettleman City in Kings County.
- G. Chemical Waste Management, Inc. has a permit to dispose of hazardous waste in KHF. DTSC approved a modification to the permit on May 21, 2014, expanding the hazardous waste landfill unit (B-18) at KHF.

#### Petitions for Review of the 2014 Permit Decision

- H. Greenaction and El Pueblo objected to DTSC's May 21, 2014, permit decision on numerous grounds, including civil rights grounds, and filed a Petition for Review of the decision with DTSC on June 23, 2014.
- I. DTSC denied the Petition for Review on October 13, 2014.

#### Title VI Complaint to the U.S. EPA's Office of Civil Rights

- J. El Pueblo and Greenaction filed a complaint (the Title VI Complaint) with U.S. EPA's Office of Civil Rights (OCR) against CalEPA and DTSC on March 19, 2015, (EPA File No. 09R-15-R4). The Title VI Complaint objected to DTSC's May 21, 2014, permit decision.
- K. OCR accepted the complaint for investigation by letter on April 17, 2015, concluding it met the four jurisdictional requirements described in U.S. EPA's nondiscrimination regulations.
- L. OCR identified in its acceptance letter the three areas for investigation under U.S. EPA's jurisdiction and stated that it would contact the parties about alternative dispute resolution. The parties agreed and mediation sessions were held on the following dates in 2016: January 19 and 20, February 24, April 1, May 6, June 15, and July 29.

#### **SECTION II: RECITALS.**

- A. DTSC and CalEPA are committed to carrying out their responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA implementing regulations. The activities detailed in Sections III and IV of this Agreement, which DTSC and CalEPA have voluntarily agreed to undertake and implement, are in furtherance of this commitment;
- B. DTSC and CalEPA are committed to continually improve their internal operations and processes, and strive to streamline CalEPA and DTSC operations through optimally utilizing information technology and human resources;

- C. DTSC and CalEPA are committed to provide meaningful opportunities for public input, including language access and community education, and to be responsive to all public inquiries;
- D. DTSC and CalEPA maintain an ongoing interest in integrating better protections for human health, vulnerable communities, the environment, and civil rights into DTSC programs;
- E. Complainants advocate for meaningful and equal opportunities for public involvement in government decision-making processes for environmental justice communities and other communities, including, but not limited to, non-English speaking and limited-English speaking communities;
- F. Complainants are committed to ensuring that Kettleman City is restored to being a healthy, vibrant community, removing the ill effects of decades of hazardous waste in its environs, and improving the quality of the environment, life and health for Kettleman City residents;
- G. Complainants are committed to ensuring that the civil rights of Kettleman City residents and all people of color and non-English proficient people are respected, protected and enforced so they can effectively and safely participate in environmental, permitting and governmental decision-making processes that are language accessible and free of intimidation;
- H. This Agreement is a model for the types of activities and considerations that can help vulnerable communities and DTSC's actions in vulnerable communities;
- I. Complainants and CalEPA and DTSC agree to work together to continue to increase opportunities to assist vulnerable communities, including, but not limited to, communities predominantly comprised of low-income people of color disproportionately affected by socio-economic burdens and environmental pollution (e.g., factors identified by health screening tools such as CalEnviroScreen), and to provide for meaningful public involvement; and
- J. El Pueblo, Greenaction, DTSC and CalEPA, (collectively, the Parties) therefore agree to the following terms described in the remainder of this Agreement.

### **SECTION III: SPECIFIC TERMS RELATED TO KETTLEMAN CITY.**

- A. Notice to Complainants of Actions at KHF. DTSC will continue to notify Complainants, through DTSC's electronic notification system, of opportunities for public comment and other important actions related to KHF. DTSC will notify Complainants of any statement of violation or enforcement order related to KHF's hazardous waste landfill operations and will make non-confidential background information available online if notice is not already provided through the existing notification system. DTSC's provision of additional non-electronic notifications to the Complainants ends when DTSC makes a decision on Chemical

Waste Management, Inc.'s permit renewal application submitted to DTSC on February 12, 2013. DTSC will notify the Complainants of that decision.

- B. Considerations related to KHF Hazardous Waste Permit Applications. DTSC acknowledges that decisions regarding whether to issue or deny Chemical Waste Management, Inc.'s permit renewal application submitted to DTSC on February 12, 2013, and any other permit decision for KHF must be made on the record after public notice, an opportunity for public comment, and public hearing(s) in compliance with the California Health and Safety Code, California Administrative Procedures Act, and applicable regulations including civil rights and language access regulations and laws. DTSC may not predetermine its permitting decisions. Consistent with these requirements, DTSC will consider the factors listed below related to Chemical Waste Management, Inc.'s February 12, 2013, permit renewal application and for an application to expand a hazardous waste management unit at KHF, if such application is submitted during a three-year period following the Effective Date of this Agreement. The factors to be considered include:
1. Kettleman City's vulnerability as identified by CalEnviroScreen indicators for such vulnerability, including pollution levels, income, health, linguistic isolation and language access needs.
  2. Whether the decision on the permit application and processes undertaken in relation to the permit decision are consistent with applicable civil rights laws.
  3. Enforcement actions against KHF since the last permit issuance.
  4. Violations or noncompliance that show a repeating or recurring pattern.
- C. Petitions for Review and Civil Rights. DTSC acknowledges that Petitions for Review of permit decisions are an appropriate forum in which to raise objections to DTSC's permitting decisions that include civil rights claims, when those objections are raised consistent with DTSC's regulations.
- D. Improved Air Quality Controls. DTSC, using its regulatory authorities during the consideration of the February 12, 2013, permit renewal application, and in consultation with CalEPA and the San Joaquin Valley Air Pollution Control District, will analyze measures to reduce air pollution related to KHF's hazardous waste management activities to help improve air quality in Kettleman City. These analyses will include the consideration of:
1. Use of emissions control devices for vehicles and equipment used on-site and in association with the hazardous waste operations at KHF.
  2. Rerouting trucks associated with KHF's hazardous waste operations either by avoiding the use of Highway 41 by those trucks within Kettleman City limits or by requiring the trucks to use a bypass.
  3. Coordination with the California Air Resources Board and the San Joaquin Valley Air Control District to reduce illegal diesel vehicle idling.
  4. Monitoring and enforcement of permit conditions.
- E. Improved Environmental Monitoring and Enforcement. DTSC will use its best efforts to support additional monitoring including of the air and water quality in Kettleman City and its environs through support of grant funding opportunities during the three years following the Effective Date of this Agreement. This support will include:

1. Efforts to identify potential sources of funding for a neutral, third-party expert to conduct air and water quality monitoring not otherwise funded by Chemical Waste Management, Inc.
2. Providing technical assistance to prepare and submit grant applications, and as appropriate, may apply or co-apply or provide assistance as a supporting agency.
3. Supporting, as needed, community education meetings including written notices of such meetings, in English and Spanish, that help to inform community members about what is being monitored, whether any issues have been identified, how such issues are being addressed, and whether there is progress toward addressing the issues.
4. Supporting community monitoring activities (separate from expert third-party monitoring) by working to identify potential sources of funding for monitoring activities and for a third-party expert to conduct an analysis of the community air monitoring data, providing technical assistance to prepare and submit grant applications, and as appropriate, may apply or co-apply or provide assistance as a supporting agency.

F. Public Health Assessments and Programs in Kettleman City. DTSC, in consultation with CalEPA, will use its best efforts to support and cooperate in the Complainants' efforts to develop the following public health assessment and programs in Kettleman City during the three years following the Effective Date of this Agreement. The Parties recognize that Complainants have limited capacity and that execution of the below activities can only occur if sufficient technical and financial support is provided:

1. A community-based participatory environmental health assessment that analyzes the human health effects in Kettleman City from exposure to pollution, including air pollution, hazardous waste, and other contaminants, as appropriate. This assessment will include the following:
  - a. Researchers with expertise working with community members, including from the University of California or other recognized experts in the field identified and approved by DTSC and Complainants. These expert partners will help to design the assessment, in conjunction with members from the Kettleman City community, and collect and analyze the relevant data in a participatory manner.
  - b. Biomonitoring of willing individuals from the Kettleman City community and employees of KHF. Researchers will collect and analyze, in a participatory way, information on the health indicators of the residents and employees, including the degree of exposure to toxic substances, and other substances that may pose health risks, and make that information available to the residents of Kettleman City and KHF employees in an accessible form. Biomonitoring activities shall comply with applicable legal obligations, including confidentiality requirements. The Parties agree that biomonitoring information could be submitted to DTSC during its consideration of any permit application by Chemical Waste Management, Inc. related to KHF, and that DTSC shall consider the data during its review and decision on any such permit.
  - c. Efforts to identify federal or state grants or funding from other sources. DTSC and CalEPA, as appropriate, may apply or co-apply or provide assistance as a supporting agency for such funding opportunities, with third parties such as community groups or a California university identified and approved by Complainants and DTSC, and

- provide technical assistance to these third parties to prepare and submit grant applications for public health assessments and bio-monitoring.
  - d. Materials, findings, and recommendations accessible to Kettleman City residents and prepared in both English and Spanish.
  - e. Regular evaluations of the progress of the assessment.
2. An asthma intervention program to help inform and address the asthma issues among the residents of Kettleman City after funding is secured and includes the following:
    - a. Researchers with expertise working with community members, including from the University of California or other recognized experts in the field identified and approved by DTSC and Complainants, with input from any individuals from the Kettleman City community who wish to provide input. These expert partners will help to design and implement the asthma intervention program in a participatory manner.
    - b. Federal or state grant funding, or funding secured from other sources with CalEPA and DTSC assistance.
    - c. Program design and implementation with the active, meaningful participation of the Complainants and individuals from the Kettleman City community.
    - d. Regular evaluations of the asthma intervention program's progress.
    - e. Regular reporting of the program's findings that are translated into Spanish and accessible to the residents of Kettleman City.

**G. Clean Water for Kettleman City.**

1. DTSC and CalEPA agree to consult with relevant agencies to provide updates to community residents on the status of the Kettleman City Community Services District's Surface Water Treatment Facility drinking water project.
2. DTSC and CalEPA agree to use their best efforts to request expedited review and implementation of the water project.

**SECTION IV: PROGRAMMATIC AND REGULATORY TERMS.**

- A. Civil Rights Compliance: Applicable state and federal civil rights requirements will be complied with during DTSC's permitting process for hazardous waste disposal facilities and during regulatory oversight of facilities under its jurisdiction.
1. Applicable civil rights requirements include (but are not limited to) the following:
    - a. The Civil Rights Act of 1964 including Title VI of that Act.
    - b. The Dymally-Alatorre Bilingual Services Act of 1973.
    - c. California Government Code 11135.
  2. DTSC will take into account and address as appropriate relevant civil rights guidance during its permitting process for hazardous waste disposal facilities, including:
    - a. U.S. EPA Title VI Limited English Proficiency Guidance, 69 Federal Register 35602.
    - b. U.S. Department of Justice Title VI Limited English Proficiency guidance, 67 Federal Register 41455.
    - c. DTSC Bilingual Services Policy.

- B. Civil Rights Policy. DTSC, in consultation with CalEPA and after public comment, will adopt and implement a policy that describes DTSC's compliance with civil rights requirements during DTSC's permitting processes for hazardous waste facilities. DTSC will publish a draft civil rights policy, including language access policies, no later than nine (9) months after the Effective Date of this Agreement and will adopt a final policy no later than eighteen (18) months after the publication of the draft policy. The draft policy circulated for public comment shall include the following elements:
1. The review of hazardous waste permit applications.
  2. Comments on such applications.
  3. The creation of environmental documents and hazardous waste permit decisions.
  4. Consideration of Petitions for Review to appeal a permit decision for alleged civil rights violations.
  5. In the event that non-compliance is found, a procedure to address civil rights complaints raised during public comment periods and in Petitions for Review of permit decisions.
- C. Public Participation and Language Access Policies. DTSC will, after receiving public comment, adopt and implement one or more policies to enhance public involvement using procedures that provide for early identification and integration of public concerns into permitting decisions, including concerns of communities identified pursuant to Health and Safety Code Section 39711. DTSC will draft a policy or policies on public participation and language access for DTSC processes no later than nine (9) months after the Effective Date of this Agreement and will adopt a final policy or policies eighteen (18) months after the publication of the draft policy or policies. In developing the policy or policies on public participation and language access DTSC will consider the following:
1. The need for language access in DTSC processes and the need to collect and assess data on the Limited English Proficiency (LEP) needs of the individual communities affected by DTSC's hazardous waste disposal permitting processes.
  2. The need for DTSC to develop a comprehensive action plan to address identified LEP needs.
  3. Translation of executive summaries of decision documents and technical documents of substantial importance prepared by DTSC for permitting decisions, including California Environmental Quality Act decision documents prepared by DTSC.
  4. Meaningful public participation through processes that comply with civil rights laws, regulations, polices, and guidance and have the following elements:
    - a. Clear prohibition on discriminatory practices, including practices of intimidation and hostile environments that prevent meaningful public participation.
    - b. Meetings and hearings at appropriate times and locations that facilitate the ability of members of the public to participate, including interpretation in public meetings and hearings held by DTSC and translation of accompanying visuals, handouts, and presentations.
    - c. Timely notices in English and any other appropriate languages, with the English and translated versions on the same page when feasible, for workshops, meetings, available drafts, comment periods, and related documents and publications.
    - d. Accommodation of cultural, linguistic, and educational characteristics of the affected communities.

- D. Senate Bill (SB) 673 Regulatory Reform and Community Vulnerability. DTSC will, no later than January 1, 2018, and consistent with SB 673's (Sen. Bill No. 673 (2015-2016, 1<sup>st</sup> Ex. Sess.) requirements related to hazardous waste facility permit decisions, adopt by regulation criteria for permit issuance. In developing these regulations, DTSC shall consider criteria that will include the assessment of vulnerability and existing health risks using available tools, such as CalEnviroScreen, California Health and Safety Code Section 39711, and other appropriate determinations or assessments, including cumulative impact analysis, and actions that can help to address potential impacts from hazardous waste facilities in vulnerable communities.
- E. Coordination and Communication with Other Agencies. DTSC will transmit notice of new regulations, policies, and guidance to other state and local agencies with jurisdiction over hazardous waste disposal permitting after the completion of the new policies described in Section IV of this Agreement.

#### **SECTION V: DISPUTE RESOLUTION TERMS.**

- A. Notification: Complainants shall notify DTSC and CalEPA in writing if Complainants contend that DTSC or CalEPA has not satisfied a term of this Agreement. Complainants' written notice to DTSC and CalEPA shall be made within ninety (90) calendar days of receipt of DTSC or CalEPA actions or an alleged failure to act and shall include a statement of the facts and circumstances upon which Complainants relied in making their determination.
- B. Resolution: The parties shall attempt to resolve any disputed issue(s) by informal means if Complainants disagree with DTSC or CalEPA's execution of any of the terms described in this Agreement and submit written notice of this disagreement as described above in paragraph A of this section. DTSC, CalEPA and Complainants will have sixty (60) calendar days from the date DTSC and CalEPA receive Complainants' written notice to resolve and memorialize any disputed issue(s) by informal means. The Parties may agree in writing to continue the 60-calendar day period for dispute resolution.
- C. Alternative Remedies: If DTSC, CalEPA and Complainants are unable to reach a mutually acceptable resolution of the dispute within 60 calendar days, or other mutually agreed upon period of time, then Complainants may terminate this Agreement by providing a written notification to DTSC and CalEPA. Thereafter, Complainants may reinitiate their Title VI complaint resolved by this Agreement and use any other means authorized by law to raise claims regarding compliance with Title VI.

#### **SECTION VI: EFFECT OF AGREEMENT AND PUBLIC DISCLOSURE TERMS.**

- A. The Parties have settled the Title VI Complaint (EPA File No. 09R-15-R4) filed by Greenaction and El Pueblo as of the Effective Date of this Agreement. This Agreement constitutes a full and final release among the Parties (except for the executory provisions hereof) of only the specific claims made in Complainants' Title VI Complaint (U.S. EPA File No. 09R-15-R4) about the May 21, 2014, permit modification. Complainants reserve any



and all rights, claims, demands, and causes of action which they might have against CalEPA or DTSC with respect to any matter, transaction, or occurrence which was not made in Complainants Title VI Complaint specifically about the May 21, 2014, permit modification.

- B. The Parties agree that signing this Agreement will result in the full resolution of the Title VI Complaint (U.S. EPA File No. 09R-15-R4) and understand that OCR will issue a letter closing the complaint upon receipt of the executed Agreement. The Parties further acknowledge that the mediator will provide a copy of the executed Agreement to OCR.
- C. This Agreement constitutes the entire agreement between DTSC, CalEPA and the Complainants regarding the matters addressed, and no other statement, promise, or agreement, made by any other person shall be construed to change any term of this Agreement, except as specifically agreed to by DTSC, CalEPA and the Complainants in accordance with the provisions of this Agreement.
- D. This Agreement does not constitute an admission by DTSC or CalEPA or a finding of any violations of 40 C.F.R. Part 7 in connection with the allegations in Complainants' Title VI Complaint.
- E. This Agreement does not constitute an admission or decision by any party that hazardous waste permits for KHF should or should not be approved or should or should not include any specific conditions.
- F. The Parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement creates any right or interest in any non-party or in any member of the public as a third-party beneficiary.
- G. Any party seeking to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to DTSC's or CalEPA's programs or authorities, or for other good cause, shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement executed by all Parties.
- H. This Agreement is a public document. A copy of this Agreement and any information contained in it can be made available to any person by DTSC, CalEPA or the Complainants on request under the Public Records Act or otherwise.
- I. This Agreement shall remain in effect for three (3) years from its Effective Date, except as provided in Section III (A), (B), and (D). Nothing in this Agreement, however, shall affect DTSC's and CalEPA's continuing responsibility to comply with Title VI and the U.S. EPA's implementing regulations for Title VI, and the consideration of relevant civil rights guidance documents, which are not subject to the time limit expressed in this paragraph. This includes compliance with all civil rights requirements in any future permit decision.

- J. The undersigned representatives of each party certify that they are fully authorized to consent to the terms and conditions of this Agreement. Signature on a counterpart or authorization of an electronic signature shall constitute a valid signature.
- K. The Effective Date and date of execution of this Agreement is the date by which all Parties have signed this Agreement. This Agreement can be signed in counterparts.
- L. Notifications in the Agreement shall be provided to the following entities using the following contact information:
  1. Notification from DTSC or CalEPA to the Complainants shall be directed to:

Maricela Mares-Alatorre  
 El Pueblo Para El Aire y Agua Limpia  
 de Kettleman City  
 Email: alatmig@netzero.net  
 Phone: (559)816-9298

Marisol F. Aguilar, Esq.  
 Director, Northern Region  
 Community Equity Initiative  
 California Rural Legal Assistance,  
 Inc.  
 Email: maguilar@crla.org  
 Phone: (209) 577-3811

Ilene J. Jacobs, Director of Litigation,  
 California Rural Legal Assistance,  
 Inc.  
 Email: ijacobs@crla.org  
 Phone: (530) 742-7235

Bradley Angel  
 Executive Director  
 Greenaction for Health and  
 Environmental Justice  
 Email: Bradley@greenaction.org and  
 greenaction@greenaction  
 Phone: (415) 447-3904 ext. 102

Tovah R. Trimming  
 Graduate Law Fellow  
 Environmental Law and Justice Clinic  
 Golden Gate University School of Law  
 Email: ttrimming@ggu.edu  
 Phone: (415) 396-5340


Helen Kang  
 Director  
 Environmental Law and Justice Clinic  
 Golden Gate University School of Law  
 Email: hkang@ggu.edu  
 Phone: (415) 442-6693

2. Notification from the Complainants to DTSC or CalEPA shall be directed to:

Matthew Rodriquez  
Secretary for Environmental  
Protection  
Email:  
sectyrodriquez@calepa.ca.gov  
Phone: (916) 324-9214

Barbara Lee  
Director  
Department of Toxic Substances  
Control  
Email:  
DTSCdirectorsoffice@dtsc.ca.gov  
Phone: (916) 322-0504

**On behalf of the California Environmental Protection Agency**

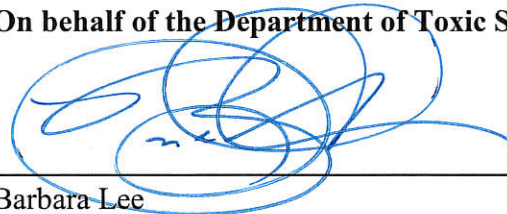
  
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Matthew Rodriguez

8/9/16  
\_\_\_\_\_

Date

**On behalf of the Department of Toxic Substances Control**

  
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Barbara Lee

8/9/16  
\_\_\_\_\_

Date

**On behalf of Greenaction for Health and Environmental Justice**

  
\_\_\_\_\_

Bradley Angel

8/10/16  
\_\_\_\_\_

Date

**On behalf of El Pueblo Para El Aire y Agua Limpia de Kettleman City**

  
\_\_\_\_\_

Maricela Mares-Alatorre

8/10/16  
\_\_\_\_\_

Date