

*Greenaction for Health and Environmental Justice
El Pueblo Para el Aire y Agua Limpia/People for Clean Air & Water of Kettleman City
Center on Race, Poverty and the Environment
Central California Environmental Justice Network*

July 21, 2020

Janice Mayes, Planner

Kern County Planning and Natural Resources Department

2700 M Street, Suite 100, Bakersfield, CA 93301

Submitted via email to mayesj@kerncounty.com and murphyc@kerncounty.com

RE: Comments on Scope of Draft Environmental Impact Report for the Clean Harbors Buttonwillow Solid Waste Treatment, Storage, and Disposal Facility and Hazardous Waste Facility Permit

Greenaction for Health and Environmental Justice, El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City, Center on Race, Poverty and the Environment, and the Central California Environmental Justice Network submit these comments on behalf of our members and constituents in Buttonwillow and across Kern County. Please enter these comments into the administrative record.

1. Fatal Defects in the Notice of Preparation and July 10th Scoping Meeting:

Greenaction and El Pueblo have previously submitted comments that have been entered into the administrative record documenting the numerous defects and flaws in the Notice of Preparation document and process begun by the Kern County Planning and Natural Resources Department.

The request for rescheduling the Scoping Meeting was improperly rejected, as was our request that you begin the process again with proper notice and a process that complies with CEQA as well as civil rights and language access laws.

Lack of proper notice:

We are unaware of any residents that received the Notice from Kern County. Despite being on the state's mandatory contact list for these types of projects – a list that the State Department of Toxic Substances Control informed us that they provided to your agency for notification purposes – Greenaction for Health and Environmental Justice did not receive your notice from your agency. In addition, all Buttonwillow residents should have been notified of the opportunity to participate in this important process, yet notice was not provided to residents.

Pre-determined outcome is improper:

The first paragraph of your Notice of Preparation states that you have “determined that the preparation of an Environmental Impact Report (EIR) is necessary for the Clean Harbors Buttonwillow Solid Waste Treatment, Storage and Disposal Facility: 1) construction and

operation of non-hazardous waste landfill expansion; and 2) existing hazardous waste facility permit renewal....”

This wording, quoted above, fails to include the word “proposed” which is what an application is – a proposal to change their permits and operations.

Inaccurate Statement of Purpose of the EIR process:

In the second paragraph of your original Notice, it states in part that your agency “... solicits views from the public which may be of assistance in possible mitigation suggestions...”

As you are well aware, but as the Notice failed to mention, the EIR process is not just about mitigation. It is also about identifying and reducing significant environmental impacts, including identifying alternatives and cumulative impacts. An EIR can conclude that a proposed project has significant harmful impacts that cannot be mitigated to less than significant, potentially resulting in a denial of the permit application based on the EIR’s findings. The public has a right under CEQA to submit comments about potential harmful impacts that they believe should be considered in the CEQA/permit process.

Mr. Murphy of the Kern County Planning Department acknowledged during the July 10th “Scoping Meeting” that EIR processes are indeed about more than mitigation – contradicting what your Notice incorrectly stated.

2. Violation of Language Access & Civil Rights of Latinx and Limited and Non-English Speaking Residents:

Kern County’s process for the Draft EIR illegally provides different levels of participation for English speaking persons versus Limited and Non-English Speaking persons, with English speaking residents being given more opportunities to participate in the process than Limited and Non-English speaking residents. In fact, non-English speaking residents are being effectively denied the basic right to comment and participate in the Scoping process. The Notice for the July 10th Scoping Meeting stated that that “Closed captioning in Spanish will be available to attendees.” We made it clear in our written comments that this is not acceptable, and violated laws and policies requiring meaningful and equal opportunities for civic engagement for all members of the public, including Limited and Non-English speaking residents.

If a Limited or Non-English speaking person participated by phone that is not a smart phone, then there would be no closed captions visible and that person would not be able to understand or participate in the Scoping Meeting at all. As you are well aware, Buttonwillow and the County have a large percentage of Limited and Non-English speaking residents – all of whom are being denied the ability to participate in this process, a denial of their civil rights.

Most importantly, Spanish speaking residents who do not read English are being completely denied their right to participate and comment in the Scoping process as the Scoping document has apparently not been translated or even summarized in an Executive Summary. Without being able to read a word of the Scoping document, it is clearly and obviously impossible to comment on it. This is racial discrimination, pure and simple and indisputable.

On July 20, 2020 Greenaction emailed Kern County Planning Department requesting information as to whether there is a translation or even Executive Summary, but we have not received a response. The County in effect acknowledged the importance of translation by providing a translation of the Notice of Preparation, but then improperly failed to translate the actual Scoping document.

In addition, we reviewed your website looking for a translation or Executive Summary of the Scoping document, but none was found.

As a recipient of state and federal funding, Kern County is subject to, and must comply with, California Government Code 11135 and Title VI of the United States Civil Rights Act of 1964 and its implementing regulations. These laws prohibit recipients of state and/or federal funding from taking actions that are intentionally racially discriminatory or have a prohibited disproportionate impact on protected classes of persons.

Approximately 78% of Buttonwillow residents are Latinx, and many of them are limited or non-English speaking persons (According to CalEnviroScreen 3.0, Buttonwillow residents are in the 72% for linguistic isolation). Approximately 54% of county residents are Hispanic/Latinx. Only 26% of the population only speak English. Over 69% of the population speaks Spanish.¹

The failure and refusal to translate some or all of the Scoping document is clearly intentional, as evidenced by your County's long history on this issue. It also has a prohibited racially discriminatory impact, providing English speaking residents the opportunity to comment on the key document in this Draft EIR process while completely denying Spanish-speaking Latinx residents the same right.

In addition, as discussed below, specific individual and cumulative impacts of the proposed project would have a significant and harmful impact on public health and the environment. As people of color make up the vast majority of Buttonwillow and area residents, this proposed project would have a prohibited disproportionate and discriminatory harmful impact on a protected class of persons, in violation of state and federal civil rights laws.

The Draft EIR must include an analysis of potential civil rights violations of the proposed project, including of your defective Scoping and Draft EIR process.

3. Cumulative Impacts and Vulnerability of Buttonwillow Residents to Pollution:

The Draft EIR must consider cumulative impacts of all the potential impacts of the proposed project including how these will add to the existing environmental and health vulnerabilities of Buttonwillow and Kern County residents. The Draft EIR must consider the information in CalEnviroScreen 3.0 in its evaluation of the proposed project.

The California EPA's CalEnviroScreen 3.0 ranks Buttonwillow as one of the communities in the state most vulnerable to pollution due to environmental, health, and socio-economic indicators. In addition to the hazardous and non-hazardous waste landfill and the large scale truck traffic

¹ World Population Review, <https://worldpopulationreview.com/us-cities/buttonwillow-ca-population> (Accessed on July 21, 2020).

associated with the facility, Buttonwillow and area residents also suffer from pesticide exposure (farmworkers working in pesticide-laden fields as well as residents exposed to pesticide drift); massive diesel truck traffic on Interstate 5 and Highway 58; and air quality that is some of the worst in the nation. According to CalEnviroScreen 3.0, Buttonwillow ranks is the 72nd percentile on pesticides, 87% on drinking water threats, 70th percentile for solid waste, and high rankings for cardiovascular and low birth weight.

As the Initial Study acknowledges the project will likely have numerous significant impacts, and as the State of California (through its CalEnviroScreen 3.0) acknowledges Buttonwillow residents are already vulnerable to pollution, this cumulative impact analysis is vital and must be comprehensive and not a white-wash of the truth.

4. Draft EIR must comprehensively evaluate the likely significant impacts of the proposed project, individually and cumulatively:

The Initial Study states that the project would include “an increase in the permitted facility boundary from 320 acres to 640 acres to include the expansion parcel for a soil stockpile area; b. an increase in permitted disposal area from 160 disposal acres to 193.3 acres for the addition of non-hazardous waste landfill units (WMU 36, 37, 38) within existing facility boundary; c. an increase in permitted disposal capacity from 13,250,000 cubic yards to 16,674,000 for the addition of nonhazardous waste landfill units (WMUs 36, 37, 38) within the existing facility boundary; d. construction of four new hazardous waste treatment buildings (tank treatment buildings) to support modifications proposed in a Hazardous Waste Facility Permit renewal application; and e. construction of one latex paint recycling building.”

The Initial Study states in relevant part that “The project has the potential to cumulatively contribute to air quality, greenhouse gas emissions, hazards and hazardous materials, and traffic impacts. The proposed project may have the potential to affect air quality in the San Joaquin Valley Air Pollution Control District air basin, which is currently designated as “non-attainment” for ozone, PM10, and PM2.5 according to Federal and State standards.... Additionally, the proposed project has the potential to a generate greenhouse gas and VOC emissions that may have a significant impact on the environment, either directly or indirectly. Impacts are currently anticipated to be potentially significant. The EIR will evaluate the project’s contribution to cumulative impacts in these and other resource areas...The project may result in potentially significant impacts on the environment that may have a substantial adverse effect on human beings.”

5. Proposed Increase in Truck Traffic, and Truck Routes:

The Notice of Preparation and Scoping document acknowledge that the project would allow a significant increase in truck traffic to and from the landfill facility. This increase in truck traffic poses a real and significant health risk to local residents who are already impacted by massive truck traffic on Interstate 5, Highway 58, and local streets with trucks going to and from the landfill.

The Draft EIR must evaluate not just the emissions from the existing and proposed truck traffic going to and from the landfill, but also consider the cumulative emissions from landfill-related truck traffic with the truck traffic on the Interstate 5 and Highway 58.

In addition, the Draft EIR must consider the potential impact of trucks going through neighborhoods and schools as residents have reported has frequently occurred.

6. Air Pollution, Non-Attainment, and COVID-19:

The proposed project may have the potential to further harm air quality and thus further harm people's health in the San Joaquin Valley, a major concern as the San Joaquin Valley Air Pollution Control District air basin is already designated as "non-attainment" for ozone, PM10, and PM2.5 according to Federal and State standards. The Draft EIR must accurately and thoroughly evaluate the health risk of current and proposed project activities that will further harm the health of residents.

Adding to the threat posed by air pollution from the proposed project is the threat to public health, including respiratory health, due to COVID-19. The Draft EIR must consider the emerging science that the combination of COVID-19 and air pollution exacerbates the health threat posed by the pandemic as well as air pollution.

The Draft EIR should analyze and evaluate the rates of COVID-19 in Buttonwillow and throughout Kern County. The Draft EIR should also include the latest demographic data for COVID-19 in the state, as Latinx are the demographic by far being hit the hardest by the virus.

7. Impacts on Climate Change:

The Draft EIR must document the potential contributions of climate-related pollutants from the proposed project, particularly methane, using the latest science from state, national and international scientific bodies.

As extreme heat and drought continue to plague the Valley, a thorough analysis based in science and without pressure from industry that cares only about corporate profit is essential. Local and global impacts of adding pollution that contributes to climate change must be evaluated.

8. Draft EIR must evaluate the potential impacts of the facility operating without proper state regulatory oversight and on expired permits for many years:

The Draft EIR must evaluate the potential impacts of the well-documented failure of the State Department of Toxic Substances Control to properly carry out its responsibility to provide proper and legally required regulatory oversight of the hazardous waste landfills in the state, including the Clean Harbors Buttonwillow landfill facility. The Draft EIR should evaluate the potential impact of a facility operating on expired permits for years or decades, as is the reality for the Buttonwillow and Kettleman Hills hazardous waste landfills.

The last DTSC permit for the Clean Harbors facility was issued in 1996 and expired in 2006. The facility continued to dispose of hazardous waste for the last fourteen years on an expired permit. In addition, DTSC has been slow to respond to deficiencies in Clean Harbors' permit renewal

application, as documented in DTSC's Envirostor database found at https://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report?global_id=CAD980675276&starttab=

DTSC has taken 15 years to process Clean Harbors' renewal application, including taking several years to respond to deficiencies in the application.

The Draft EIR should consider the impact of the failure to properly regulate hazardous waste disposal operations.

The Draft EIR should also consider the double standard that allows a giant corporation to dump hazardous waste in a low-income, Spanish speaking community for 14 years on an expired permit, when the same approach is non-existent for residents who for example might be driving on an expired license.

9. Draft EIR and Final EIR must reject use of a Statement of Overriding Consideration:

As the Initial Study already identifies numerous potential significant impacts of the proposed project, including but not limited to public health and the environment, and as the State acknowledges that Buttonwillow is already a community vulnerable to pollution, and as the area is already in Non-Attainment for air pollution, a Statement of Overriding Consideration if used would be an intentional action that would allow the health and environment of already at risk residents to be further put at risk and harmed. This would be unacceptable and a violation of civil rights.

For environmental justice,

Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice

Maricela Mares Alatorre
Coordinator
El Pueblo Para el Aire y Agua Limpia/
People for Clean Air and Water of Kettleman City

Caroline Farrell
Executive Director
Center on Race, Poverty and the Environment

Nayamin Martinez
Director
Central California Environmental Justice Network

