

Hubbard, Dean@Waterboards

From: Bradley Angel <bradley@greenaction.org>
Sent: Tuesday, November 12, 2013 4:14 PM
To: Hubbard, Dean@Waterboards; Rodgers, Clay@Waterboards; Rodgers, Clay@Waterboards; Mataka, Arsenio@EPA
Cc: alatmig@netzero.com; ana@greenaction.org; Ingrid Brostrom; Cesar mpos
Subject: Greenaction for Health and Environmental Justice & El Pueblo comments in opposition to Tentative Order for Chemical Waste Management Kettleman Hills Facility

To: Central Valley Regional Water Quality Control Board

From: Greenaction for Health and Environmental Justice and El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City November 12, 2013

Attached please find our comments on the Tentative Order for the Chemical Waste Management Kettleman Hills Facility.

Please confirm receipt of these comments, thank you.

Bradley Angel



November 12, 2013

To: California Regional Water Quality Control Board via email dhubbard@waterboards.ca.gov

From: Greenaction for Health and Environmental Justice & El Pueblo Para El Aire y Agua Limpia/People for Clean Air and Water of Kettleman City

Re: Comments on Tentative Order Revising Waste Discharge Requirements Order 98-058 and in Opposition to Proposed Revised Waste Discharge Requirements for Chemical Waste Management Kettleman Hills Hazardous Waste Facility

Greenaction for Health and Environmental Justice and El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City submit these comments on the Tentative Order Revising Waste Discharge Requirements Order 98-058 and in opposition to the proposed issuance of new Revised Waste Discharge Requirements for the Chemical Waste Management (CWM) Kettleman Hills Hazardous Waste Facility. We submit these comments on behalf of Greenaction and El Pueblo's members and constituents in Kettleman City and Avenal, the two closest communities to the project that are impacted by the operation of the CWM facility.

These comments will demonstrate that the Central Valley Regional Water Quality Control Board (RWQCB) must deny Chemical Waste Management's application that would allow them to expand the violation-plagued hazardous waste and PCB disposal facility in the suffering, overly burdened and at-risk low-income, Latino and Spanish-speaking community of Kettleman City.

Kettleman City residents have suffered enough from pollution and environmental racism and injustice, and the health problems likely caused by pollution continue. The proposed expansion of hazardous waste landfills at the Chemical Waste Management Kettleman Hills Facility would add significant risks to the already over-burdened community of Kettleman City.

As a state agency mandated to protect public health and the environment, ensure compliance with the law including permits, and required to comply with and uphold and comply with civil rights laws and environmental justice policies and mandates, the RWQCB must deny new permits and WDR's to Chemical Waste Management.

The project applicant's dismal compliance history and the many project impacts on nearby residents are so significant that they justify, and require, a permit denial.

I. Overview of Chemical Waste Management Inc., Kettleman Hills Facility:

The Kettleman Hills Facility (KHF) owned by Chemical Waste Management, Inc. (CWM) is a 1,600-acre facility located approximately 3.5 miles southwest of Kettleman City.

Despite the responsibility of the RWQCB and numerous other agencies to provide regulatory oversight and ensure compliance with permit conditions, the KHF has had chronic, repeat and serious violations of hazardous waste laws and regulations. For example, the U.S. Environmental Protection Agency (US EPA) and Department of Toxic Substances Control (DTSC) records show that over the years, CWM has repeatedly failed to report toxic spills, improperly disposed of PCBs and other hazardous waste, and failed to conduct required monitoring – and as a result the company/facility has been the subject of repeated enforcement action.

CWM has demonstrated a pattern and practice of chronic and repeated violations at KHF, some spanning a period of several years. The Water Board must fully evaluate and consider this terrible compliance history when deciding whether or not CWM deserves and can be trusted to comply with new revised waste discharge requirements for some of the most hazardous chemicals known to science. Unfortunately and improperly, the RWQCB appears to have failed to take this dismal compliance history into consideration.

II. Key Points of and Problems with the Proposed Revised Waste Discharge Requirements:

Specifically, CWM proposes to expand its hazardous waste landfill B-18 both vertically and laterally. The expansion would increase the footprint of the landfill from 53 acres to 67 acres and would increase the volume of the landfill from 9.7 million cubic yards to 15.6 million cubic yards. Such an expansion would extend the landfill's operating life by about 8 to 9 years.

The KHF is already the largest hazardous waste facility in the western United States. The Kettleman City community has experienced elevated rates of birth defects and childhood cancer in recent years, and agencies have repeatedly taken enforcement action and fined the facility for chronic and serious violations of hazardous waste laws and regulations. Even under the revised waste discharge requirements, CWM's poor compliance history virtually guarantees that CWM will continue to violate environmental laws and permits and will negatively impact a low-income community of color that the state admits is highly vulnerable to pollution and whose health is already heavily burdened by proximity to the landfill and other environmental pollution.

We are alarmed at the unacceptable proposed reduction in groundwater monitoring frequency that would cut the current monitoring frequency in half, from quarterly to semi-annually. It defies reason, common sense and the best practices in environmental protection to reduce monitoring requirements for a company that repeatedly has violated its permit including for significant monitoring violations, illegal disposal of hazardous waste and PCBs, failing to report at least 72 spills of hazardous waste, and problems with the unreliability of its laboratory.

In particular, the revised waste discharge requirements are still inadequate to protect water sources, the environment, and the health of individuals living in nearby communities. For example, the expansion of the landfill means more opportunities for leakage into groundwater supplies, such as groundwater wells and surface water bodies, such as the California Aqueduct,

which is only 3.5 miles away from the KHF. In the 1980s, leakage was detected from waste management units at the KHF. The leakage had contaminated groundwater in the underlying San Joaquin Formation. Although it is claimed that the “impacts [of this leakage] were highly localized,” there is nothing guaranteeing that a future leakage would also result in highly localized impacts.

We note that the RWQCB’s Exhibit E has a map that includes many Corrective Action Wells, and very importantly these wells are located outside of the “Conditional Use Permit” boundary as well as inside the facility.

Furthermore, and more importantly, there is no guarantee that leakages or releases will not occur, despite the KHF’s claims of compliance. This risk is too great to be taken as it could potentially endanger the health of thousands of low-income individuals that have less access to health care and that are already exposed to a multitude of environmental hazards including, but not limited to, contaminated drinking water, severe air pollution, pesticide exposure and massive diesel pollution. Thus, it would be highly irresponsible of the RWQCB to allow the KHF to operate under the revised waste discharge requirements when considering the proposed expansion of the facility.

III. Residents of Kettleman City are Already Over-Burdened by Multiple Sources of Pollution and At-Risk from Future Pollution, as Confirmed by the State’s Own CalEnviroScreen. The Expansion of the KHF and the Proposed Waste Discharge Requirements Would Further Threaten the Health of This Suffering and At-Risk Population:

In April of 2013, the California Environmental Protection Agency, along with the Office of Environmental Health Hazard Assessment, released a science-based tool (California Communities Environmental Health Screening Tool, the “CalEnviroScreen”) for evaluating multiple pollutants and stressors in communities for use by its boards, departments, and office.

The tool shows which areas of the state have higher pollution burdens and vulnerabilities than other areas. The tool uses environmental, health, demographic and socioeconomic data to create a screening score for communities across the state.

Contradicting the findings, and purpose, of CalEnviroScreen, the RWQCB and other agencies are proposing to approve a massive expansion of this problem-plagued hazardous waste landfill in a community that the state’s own CalEnviroScreen methodology found is one of the most at-risk and vulnerable communities in the state.

The RWQCB must consider the established and clear fact, as documented by the California Environmental Protection Agency and OEHHA in their CalEnviroScreen tool, that Kettleman City is highly vulnerable and at risk from the multiple sources of pollution already affecting the community and at risk to additional new pollution.

The Kettleman City zip code is identified by the CalEnviroScreen Environmental Health Screening Tool to be in the top 10% of California zip codes with significant pollution burdens and socioeconomic vulnerabilities. An analysis of the current state of Kettleman City with regard to pollution and population characteristics (as provided by the CalEnviroScreen) reveals that

Kettleman City is home to an already overburdened population that is presently bearing some of the highest pollution levels in the state.

The DTSC's "Environmental Justice Review" written as part of their analysis of the proposed expansion of the CWM hazardous waste facility states the following about the findings of CalEnviroScreen regarding Kettleman City (*emphasis added*):

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

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

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

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

The linguistic isolation indicator measures the percentage of households where no one speaks English "very well," and identifies 23.6% of households in Kettleman City as in this category. This percentage is also significantly higher than the two other comparison zip codes. Kettleman City is also high on the tool's measure of poverty, with 39.8% of the population living below twice the federal poverty level. The percent low birth weight in Kettleman City, 6.03%, is comparable to the two comparison zip codes. Finally, CalEnviroScreen identifies 96.27% of the population of Kettleman City as non-white or Hispanic/Latino, significantly higher than the two comparison zip codes.

The data from CalEnviroScreen are useful for understanding the multiple pollution sources present in the Kettleman City census zip code. They are also valuable in understanding how the zip code compares to other zip codes in the state. *Finally, they provide a way to assess the community's relative vulnerability to those pollution sources, particularly in light of emerging scientific research indicating that the relationship between pollutant exposure, stress, and health outcomes can vary based on the race and ethnicity of the population.*"

Thus, CalEPA/DTSC fully acknowledges that Kettleman City residents are extremely at risk and vulnerable. It must be noted that the CalEnviroScreen ranked Kettleman City very high in terms of risk and vulnerability, yet did not factor in many of the known present and past sources of pollution that also plague the community- meaning that the risk and burden is even greater than documented in this important screening tool.

In addition, it is unsurprising that Kettleman City, the home of a hazardous waste, PCB, and solid waste landfill, is in the 98th percentile in the state for the total number of toxicity-weighted pounds of chemicals released on-site to air or water from all facilities in the Kettleman City zip code. Between 2008 and 2010, Kettleman City facilities collectively reported an average of 39.1 million toxicity-weighted pounds of emissions. With such a large amount of emissions, it is without a doubt that these emissions have the serious potential to have a negative impact on public health and the environment of the residents of Kettleman City and Avenal.

Kettleman City ranks in the 95th percentile in the state for the sum of weighted permitted hazardous waste facilities and hazardous waste generators that fall within the boundaries of the city's zip code. Regardless of any safety measures taken or proposals for compliance with hazardous waste disposal laws and regulations, the high concentration of hazardous waste facilities and generators in Kettleman City places its residents at an increased risk for injury caused by violations and accidents.

The expansion of the KFH under the revised waste discharge requirements would not do anything to alleviate the situation of residents of Kettleman City, as disclosed above. Rather, the expansion would further compromise and threaten the health of the residents, a majority of whom are low-income, Hispanic individuals that have few financial resources. Specifically, 57% of the population is over the age of 25 with less than a high school education. The expansion under the revised waste discharge requirements would be an impermissible exploitation of and contribution to this population's health, socioeconomic status and educational vulnerabilities.

In addition, the RWQCB erred in failing to analyze or even mention the cumulative impacts of their proposed approval of new revised WDR's and failed to consider or even mention the important and well-documented information provided by CalEnviroScreen.

IV. The History of Violations at the KHF Mandates A Denial of the Permit:

A member of the public would never know from the RWQCB's documents and Tentative Order (which includes certain "facts" about the facility and area) that Chemical Waste Management has had even one violation of their permit during the life of the facility, as there appears to be

absolutely no mention of the many violations that have occurred and been the subject of numerous agency enforcement actions.

The proposed KHF expansion project takes place against a backdrop of repeated, chronic and serious environmental violations and fines for failure to meet basic operating standards. Agencies have fined Chemical Waste Management millions of dollars for violations at KHF since it was built, and continue to issue major fines to the facility as recently as this year.

Chemical Waste Management has been fined repeatedly for violations at KHF. In 1984, EPA fined Chemical Waste Management \$2.5 million for a total of 130 violations. Among other incidents, Chemical Waste Management was charged with allowing leaks from the dump to contaminate local water supplies. In 1985, EPA and Chemical Waste Management's parent company, Waste Management, Inc., agreed to a consent decree involving \$4 million in fines for failing to adequately monitor ground water and for mishandling hazardous waste, including PCBs, at the Kettleman Hills dump.

In 2005, EPA and Chemical Waste Management entered into a consent decree for extensive monitoring violations.

Another example is that on April 8, 2010, EPA issued Chemical Waste Management a letter outlining that the company was engaged in improper disposal and improper handling of highly toxic materials. And, on May 27, 2010, EPA Region IX issued a Notice of Violation to Waste Management stating that, "the data quality control system at the KHF Laboratory is not adequate to ensure reliable analytical results," and "should not be used for decision making." However, use of that unreliable laboratory apparently went on for several years. On March 2013, the Department of Toxic Substances Control fined Chemical Waste Management \$311,194 for 72 violations for failing to report hazardous waste spills on its property during a four year period between 2008 and 2012.

Agencies have issued violations against CWM that would fall under each of these categories:

a. Monitoring violations

EPA and DTSC have issued violations to Chemical Waste Management for failure to implement a groundwater monitoring program and failure to implement an unsaturated zone monitoring program. EPA has issued a violation for failure to perform monthly monitoring of lysimeters for presence of liquids. The RWQCB issued a number of violations for failing to monitor groundwater. The San Joaquin Valley Air Quality Management District issued violations for failing to conduct required monthly monitoring.

b. Inadequate construction

The facility had one of the largest ever failures of a hazardous waste liner. A landslide occurred on one of the site's slopes and tore out part of the liner system. This resulted in a displacement of over a million cubic yards of hazardous waste. Subsequent analysis suggests that the landslide resulted from design and construction issues.

c. Waste mismanagement

DTSC and EPA have taken enforcement action and issued numerous violations to Chemical Waste Management for failing to adequately treat waste prior to placement in the landfill, impermissibly land disposing prohibited waste, failing to maintain and operate facility to minimize releases, and improper disposal. For example, during a series of 2010 inspections, EPA investigators found that Chemical Waste Management improperly managed PCBs at the facility. Further analysis revealed spills next to the facility's PCB Storage and Flushing Building. Samples taken by EPA and Chemical Waste Management in and around the building detected PCBs at elevated levels ranging from 2.1 parts per million (ppm) up to 440 ppm. These levels are above the regulatory limit of 1 ppm and, in soil, demonstrate that PCBs were improperly disposed of in violation of federal law.

In the last few years alone, CWM has been cited for violations including years of illegal disposal of hazardous wastes and PCBs, years of failing to conduct some of the required monitoring, failing to report 72 spills of hazardous waste over a four year period, and faulty laboratory results.

Taking into account CWM's history of chronic violations, it is not realistic to assume that the revised waste discharge requirements will be followed by CWM.

In addition, the RWQCB's failure to include any information whatsoever about the violation-plagued compliance history of the facility in its permit documents demonstrates a bias in favor of this company and resulted in the public not being properly informed about all relevant information that should be considered in commenting on the Tentative Order.

We attach the DTSC and US EPA "compilations" of the violation/compliance history at the CWM KHF facility and incorporate them into our comments. We also point out that these compliance histories appear to be incomplete.

V. Issuance of New WDR's Would Have a Negative and Disproportionate Impact on Spanish-speaking and Latino Residents, in Violation of State and Federal Civil Rights Laws and Cal EPA Policies:

As a recipient of state and federal funding, the Central Valley Regional Water Quality Control Board is subject to and required to comply with state and federal civil rights laws. Taking action to issue WDR's to expand a hazardous waste company and facility with a violation-plagued compliance history in an overburdened, vulnerable and at-risk low-income, Spanish-speaking Latino community would have a disparate and prohibited impact on these residents who are a protected class of persons under state and federal civil rights laws.

The problematic Tentative Order's conflict with civil rights protections is compounded by the fact that the last RWQCB hearing in Kettleman City (on the bioreactor) was a disgraceful and illegal violation of the civil rights of residents due to the massive police presence and intimidation of residents. The RWQCB summoned a large, highly visible, unnecessary and multi-agency police presence in addition to hiring private security. Undercover officers were in the hearing room along with uniformed officers and police cars were parked in formation in front

of Kettleman City School where the hearing took place. Police cars were stationed at key intersections in town and roamed the streets in an unusually heavy and visible presence.

Such a huge police presence would be unacceptable in any community, but was particularly onerous and unacceptable in a community with large numbers of immigrants who may be fearful of police.

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin under any program or activity that receives federal financial assistance.

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

A. As part of the California EPA, the RWQCB must also comply with Cal EPA guidelines:

The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state. Pub. Res. Code § 71110.

It is without a doubt clear that approval of the Tentative Order would result in a decision and actions that would be unfair, harm and have a discriminatory impact on the low-income, people of color residents of Kettleman City and Avenal.

B. RWQCB's Approval of WDR's for the proposed KHF Expansion Would Violate California Government Code Section 11135:

California Government Code, section 11135 prohibits discrimination under any program or activity that receives any financial assistance from the state. An agency violates section 11135 if it receives state funding and takes an action that results in a significantly adverse or disproportionate impact on minorities. Unlike intentional discrimination claims, proving disparate-impact discrimination does not require a showing of discriminatory intent. To make a showing of disproportionate impact, statistical evidence of a kind and degree showing that the practice in question has negatively impacted minorities to a greater degree than non-minorities is sufficient.

The facility has, and an expansion would have, a disproportionate and adverse impact on nearby residents. As acknowledged by the EIR and by the DTSC, the project would have significant and unavoidable impacts. The EIR concluded that the project's significant and unavoidable impacts would impact nearby residents to a greater degree than other populations.

These impacts would disproportionately affect Latinos. According to the 2010 U.S. Census, Kettleman City is 96 percent Hispanic or Latino; Kings County is 52 percent Hispanic or Latino; and California is 38 percent Hispanic or Latino. The basis for a successful disparate impact

claim involves a comparison between two groups — those affected and those unaffected by the facially neutral policy. In determining disparity, it is usually appropriate to measure the racial proportionality of the allegedly affected populations against the population of the agency's decision making jurisdiction. Using this Census data, it is readily apparent that the approval of the KHF WDR's for expansion would have a disparate and prohibited impact based on race when compared to the rest of the state.

C. RWQCB's Approval of WDR's for a KHF Expansion Would Violate California Regulations by Improperly Perpetuating King County's Discrimination:

Decision-making about regulating hazardous waste facilities is an integrated process, involving the facility operator, local, regional, state, and federal agencies, including the RWQCB. The RWQCB, if it approves the WDR's for a KHF expansion, will perpetuate the disproportionate siting of hazardous waste facilities in low-income, Spanish-speaking and Latino communities in California and perpetuate the disparate impact of this facility on the Latino, Spanish-speaking residents of Kettleman City and Avenal.

California law establishes that an agency is liable for perpetuating discrimination perpetrated by others. According to Title 22, Section 98101 of the California Code of Regulations, "[i]t is a discriminatory practice for a recipient, in carrying out any program or activity directly . . . on the basis of ethnic group identification . . . to utilize criteria or methods of administration that: perpetuate discrimination by another recipient on the basis of ethnic group identification. . ." 22 CCR § 98101(i)(3).

Kings County is a recipient of State funds. Here, the RWQCB would perpetuate the discriminatory action of Kings County in approving the KHF expansion by relying on Kings County's action as documented in the Tentative Order.

Kings County issued a land use permit to Chemical Waste Management in an area where the facility will have a disproportionate impact on Latino residents. Kings County used a process that discriminated against its Latino residents. Most Kettleman City residents' first language is Spanish, and a high percentage of residents are monolingual Spanish speakers. In spite of Kettleman City residents' continued request and demand for documents in Spanish, the County provided documents in an English-only format. Kings County excluded Latino Kettleman City residents from the Local Advisory Committee considering the Kettleman Hills expansion, and stacked the LAC with Chem Waste supporters and non-residents. Kings County illegally gave Spanish speaking residents half the time to testify at the public hearing as English speakers, many of whom were shipped into the hearing from outside the county by their employer Waste Management, the parent company of CWM. Kings County contracted with a large police and security force that had the effect of intimidating local residents and preventing them from participating in the decision-making process.

The RWQCB in part relies on Kings County's discriminatory process to make its own decision on the hazardous waste permit, by relying on Kings County's EIR that was the product of this discriminatory process. RWQCB's decision to issue the permit is contingent and dependent on King's County's environmental review process.

Only by denying this permit can RWQCB prevent the disproportionate impact of Kings County's decision.

D. Approval of the KHF Expansion Would Violate Title VI of the United States Civil Rights Act of 1964:

Title VI prohibits discrimination by recipients of federal funding. Section 601 provides that "[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

As a recipient of federal funding, approval of WDRs for the expansion of the KHF facility would clearly have a negative, disparate impact on a protected class of people, as the Kings County EIR concluded and as the CalEnviroScreen confirms. These facts are clear and should be considered:

- The vast racial disparities in where the State of California approves hazardous waste facilities in California.
- 100% of the State's hazardous waste landfills are permitted in low-income, Spanish-speaking Latino communities.
- RWQCB's draft approval despite knowing that Kettleman City is in the top 10% of most vulnerable communities in California, factoring in demographic data and pollution sources.
- RWQCB's significant reliance in the permit decision on Kings County's racially discriminatory permit process that top Cal EPA officials themselves have denounced as unacceptable.

VI. State Agencies including the RWQCB Improperly Rely on the State's Scientifically Flawed "Environmental Exposure" Study to Incorrectly Conclude that Chemical Waste Management Facility Could Not Have Caused the Birth Defects Plaguing Kettleman City:

Possibly the most important document being used by government agencies including the RWQCB to justify a massive expansion of the landfill and a dramatic increase in pollution associated with an expansion is the Environmental Exposure Study conducted by California EPA and many of its agencies.

This state study was conducted by reluctant agencies with a historical and well-documented bias in favor of Chemical Waste Management, and was done only after the Governor ordered an investigation of the birth defects and pollution impacting Kettleman City. State agencies had earlier refused to investigate the birth defects until ordered to do so.

The controversial exposure study concluded that the emissions from the Chemical Waste Management hazardous waste landfill likely could not have caused the birth defects. We assert that the evidence clearly proves that the State study's conclusion was without basis in fact or science.

State Study Was Flawed and Misleading, and Compared Apples to Oranges:

The state's study was flawed and misleading and used improper evaluation methods to reach its conclusion.

The clear and unequivocal fact – ignored by the state agencies that did the study - is that actual operating conditions, monitoring and emissions at the Chem Waste landfill facility were dramatically different between the times the birth defects spiked in 2007 and when the testing and exposure study were conducted in 2010.

Despite this enormous discrepancy in disposal operations, the state improperly and unscientifically equated emissions when the facility operated at full capacity with emissions when it was operating at less than 5% capacity.

1. CWM was in full scale operation in 2007:

When the birth defects and infant deaths spiked in 2007, hazardous waste disposal operations at the Chem Waste landfill were at 100% normal levels and PCB dumping had soared:

- Hundreds of diesel truck trips going to and from the landfill were taking place daily
- Emissions from the full scale landfill operations were not being independently monitored on a daily or regular basis
- Chem Waste was producing faulty or unreliable laboratory results, as documented later by USEPA (and was the subject of enforcement action)
- Chem Waste had numerous other violations including illegal disposal of wastes and failure to conduct some of the required monitoring
- Shipments and disposal of PCBs, a banned substance that is a known reproductive toxin, had skyrocketed, probably due to the increased shipments from the PG&E Hunters Point power plant in San Francisco that was being demolished
- The PCB monitor had been turned off prior to the huge increase PCB disposal

2. CWM Operations Were Dramatically Reduced and at Less Than 5% of Capacity in 2010:

When the state conducted its environmental exposure study in early 2010, hazardous waste operations at the Kettleman Hills landfill were only about 5% of normal; down by over 95% when compared to 2007 when the birth defects problem erupted:

- The state's environmental exposure study negligently or intentionally failed to note the crucial fact that hazardous waste and PCB disposal activities at the landfill were at or near 100% of normal operations when the number of babies born with birth defects erupted in 2007, compared to less than 5% of normal operations when the testing and study took place in 2010.

- In a July 26, 2013 email from Wayne Lorentzen of DTSC to Bradley Angel of Greenaction, Mr. Lorentzen stated "... the Kettleman Hills hazardous waste landfill (B-18) had less than 5% of permitted capacity remaining in January 2010 by our estimates." This email is attached and incorporated into these comments.

- It is clear that a landfill experiencing more than a 95% decrease in waste disposal transport and disposal activity would have dramatically less emissions than when it was operating at full capacity and normal operations.

- When the study took place in 2010, Chem Waste knew they were being monitored and watched closely by government, the media and the public, so they may have been more careful than usual during their operations – in contrast to their decades of well documented permit violations.

3. State Study Was Biased Towards Chem Waste:

This flawed study was done by state agencies biased in favor of Chemical Waste Management, as evidenced by the refusal of state agencies to investigate the birth defects and infant deaths until ordered by the Governor to "investigate", and their decades of public statements defending the company's landfill operations at the same time that years of chronic and repeat violations were taking place.

It is a documented fact that the California Department of Public Health intentionally understated and withheld the true number of known birth defects, including in a presentation to the Kings County Board of Supervisors, until challenged with the true, accurate number by Greenaction and the Kettleman City community group El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water.

In addition, the state agencies never accounted for or evaluated the numerous violations committed by CWM in the state's evaluation of potential environmental impacts from the facility operation.

In conclusion, the state study was completely flawed and essentially compared apples to oranges and misled the public. The state study never acknowledged or mentioned the issues raised above, resulting in an enormous failure to consider crucial and relevant facts in reaching a conclusion.

While we agree that as of today no firm cause of the birth defects and infant deaths has been found, the state study did not prove that Chem Waste's activities could not have caused these terrible health problems and deaths and it is improper to rule Chem Waste out as a cause or contributor to the past or present profound health problems. The Kettleman City birth defect study did rule out genetics and lifestyle activities as possible causes, thus leaving pollution as the likely cause of the high number of birth defects.

It is thus improper and without basis in fact for the RWQCB to cite or rely on this state exposure study to justify adding more pollution and toxic waste to this overburdened community.

VII. Discovery of New Childhood Leukemia and Many Adult Cancers, and other Ongoing Health Problems Affecting Residents:

Kettleman City residents have long suspected elevated levels of birth defects, infant deaths, cancer and other environmental health issues in the community may be tied to pollution sources such as the Kettleman Hills Facility. This concern was highlighted when residents, their community group El Pueblo and Greenaction discovered a large and unexplained number of birth defects and infant deaths.

Unfortunately, and wrongly, no government agency has ever conducted a comprehensive health survey in the town to determine the extent of health problems or to confirm or refute the belief that pollution may be causing high rates of illnesses and infant deaths.

Now, new information is now emerging that seems to confirm the existence of higher than expected cancers and other health problems in the community. RWQCB should be aware of these problems and consider them prior to making a decision on the permit, as the new information appears to confirm once again that Kettleman City residents are suffering, vulnerable and at-risk and thus should not be exposed to a dramatic increase in hazardous waste transportation and disposal.

RWQCB's approval of an expansion of the landfill would expose residents to decades of increased toxic pollution.

It would be completely irresponsible – and the breaking of a specific promise by the state to reduce pollution in Kettleman City - for the state to approve a massive increase in pollution that would result from expanding the landfill in a community suffering profound illnesses that may be caused by one or many of the pollution sources in and next to Kettleman City.

For health and environmental justice,



Bradley Angel
Executive Director

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

Hubbard, Dean@Waterboards

From: Lorentzen, Wayne@DTSC <Wayne.Lorentzen@dtsc.ca.gov>
Sent: Friday, July 26, 2013 9:42 AM
To: bradley@greenaction.org
Cc: Raphael, Debbie@DTSC; Johnson, Brian@DTSC; Marxen, Jim@DTSC; Ghazi, Rizgar@DTSC; Mataka, Arsenio@EPA; alatmig@netzero.com; Luis.Alejo@assembly.ca.gov; Bob.Fredenbourg@asm.ca.gov
Subject: RE: Can you confirm the level of capacity at the Chem Waste hazardous waste landfill in January 2010

Hi Bradley, the Kettleman Hills hazardous waste landfill (B-18) had less than 5% of permitted capacity remaining in January 2010 by our estimates.

Also, just want to remind you that we are in a public comment period that ends on September 4, 2013. The full administrative record is available from 8:00 a.m. to 5:00 p.m. at our Sacramento office, Mondays through Fridays, excluding state holidays. More information is also available at our website:

<http://www.dtsc.ca.gov/HazardousWaste/Projects/CWMISiteDescription.cfm>

<http://www.envirostor.dtsc.ca.gov/public/>

We invite you to the Open House on July 31 at 5:30 p.m. in the Kettleman City Elementary School Cafeteria where DTSC staff will be available to answer questions. We will also be available during the Drop In session on August 1 from 10:00 a.m. to 2:00 p.m. at the Kettleman City Community Center. The Public Hearing for the draft decision will be held on August 27, 2013 at 6:30 p.m. in the Kettleman City Elementary School Cafeteria.

Wayne Lorentzen, P.E.
Hazardous Substances Engineer
Department of Toxic Substances Control
8800 Cal Center Drive, Sacramento, CA 95826
(916) 255-3883
Wayne.Lorentzen@dtsc.ca.gov

From: Bradley Angel <bradley@greenaction.org>
Date: July 24, 2013, 12:14:04 PM PDT
To: Debbie Raphael <draphael@dtsc.ca.gov>, Jim Marxen <JMarxen@dtsc.ca.gov>, Arsenio Mataka <AMataka@calepa.ca.gov>
Cc: "alatmig@netzero.com" <alatmig@netzero.com>, "Alejo, Luis" <Luis.Alejo@assembly.ca.gov>, "Fredenburg, Bob" <Bob.Fredenbourg@asm.ca.gov>
Subject: Can you confirm the level of capacity at the Chem Waste hazardous waste landfill in January 2010

Can you tell me how much capacity was left at the Kettleman Hills hazardous waste landfill in January 2010. For example, did they have 75% of their landfill capacity left or 25% or some other amount?

Thank you for a prompt response to this request.

Bradley Angel

CWM Kettleman Hills Facility
U.S. Environmental Protection Agency
TSCA-PCB Inspections and Enforcement - 1983 to Present
(WST-3 working document - based on available Regional Office records)

Date Inspected	Potential Violations/Comments	Informal Enforcement Action Resolution Date (matter resolved without penalty - e.g. warning letter, return to compliance)	Formal Enforcement Action Resolution Date (matter resolved with penalty)	Penalty
Not applicable (n/a)	<p>Self disclosure</p> <ul style="list-style-type: none"> • Landfill leachate was placed in a hazardous waste surface impoundment prior to analysis 	n/a (see next column)	9/7/12	\$9,375
6/2/10 and 2/8-12/10	<p>Inspection report</p> <ul style="list-style-type: none"> • Failure to indicate removal from service date • Failure to properly manifest (failed to include removal from service date or weight) • Continued use (contamination in PCB building) • Continued use (contamination in PCB building and adjacent slab) • Improper disposal (contamination in soil around PCB building) • Improper disposal (contamination in soil under concrete slab next to PCB building) 	n/a (see next column)	11/29/10	\$302,100
12/6-15/05 and 8/22-23/05	<p>NEIC inspection. 6/26/07 Notice of Noncompliance (NON) - Over-calibration of PCB testing equipment</p>	2/4/08	n/a	n/a
n/a	<p>Record review</p> <ul style="list-style-type: none"> • Failure to perform monthly monitoring of lysimeters for presence of liquids 	n/a (see next column)	5/3/05	\$10,000 plus \$37,500 Supplemental Environmental Project
n/a	9/10/04 NON - CWM failed to submit manifest discrepancy reports	5/26/05	n/a	n/a

CWM Kettleman Hills Facility
U.S. Environmental Protection Agency
TSCA-PCB Inspections and Enforcement - 1983 to Present
(WST-3 working document - based on available Regional Office records)

4/14/04	None	n/a	n/a	n/a
8/30/02	None	n/a	n/a	n/a
10/25-26/01	None	n/a	n/a	n/a
10/14-15/98	None	n/a	n/a	n/a
4/8/97	None	n/a	n/a	n/a
6/18/96	None	n/a	n/a	n/a
8/31/95	None	n/a	n/a	n/a
12/8/93	None	n/a	n/a	n/a
Date not found	Inspection report shredded by TSCA Confidential Business Information (CBI) Document Control Officer on 9/24/99. ¹ (Document R9-91-010 logged in 7/23/91; Document R9-92-004 logged in 3/16/92 - copy of document R9-91-010). This information was obtained from the database on the computer in the TSCA CBI room.	No record found ²	No record found ³	No record found ⁴
3/21 - 4/18 1984	<p>Inspection report could not be located.⁵ Dates of inspection and details of the potential violations were listed in the enforcement action.</p> <ul style="list-style-type: none"> • No individual landfill grid sheet for seven shipments of PCBs • Facility received seventy-seven shipments of PCBs for placement in PCB cell prior to receiving approval for waiver of fence requirement • Seven shipments of PCB liquids were placed in the PCB landfill • A shipment containing less than 500 ppm of PCBs was solidified for placement in the PCB landfill • Three shipments of PCBs were disposed of in RCRA landfill cell B-15 vs an approved PCB incinerator • A shipment of PCBs were disposed of in RCRA landfill cell B-15 vs an approved PCB landfill 	n/a (see next column)	Complaint - 6/5/85 <ul style="list-style-type: none"> ▪ Final Order - 11/7/85 	\$2,103,000 for TSCA & RCRA

¹⁻⁵ Inspection and enforcement records are only required to be retained for 10 years (EPA records retention schedule)

CWM Kettleman Hills Facility
U.S. Environmental Protection Agency
TSCA-PCB Inspections and Enforcement - 1983 to Present
(WST-3 working document - based on available Regional Office records)

4/13-14/83	<p>Inspection report</p> <ul style="list-style-type: none"> • PCB storage container design not reviewed to determine effect on structural safety from placing PCB liquids in the container • SPCC plan has not been prepared for 10,000-gallon PCB storage container • Inadequate records of the quantity of each batch of PCBs added to the 10,000-gallon PCB storage container • Facility failed to give written notices to the State and local agencies at least 30 days before the facility was used for the disposal of PCBs • Incomplete three dimensional burial coordinate records for PCB items • Facility does not intend to install a 6-ft fence around landfill B-16 • 1981 PCB Annual Document did not completely identify the specific types of PCBs and PCB items disposed of 	No record found ⁶	No record found ⁷	No record found ⁸
------------	---	------------------------------	------------------------------	------------------------------

⁶⁻⁸ Inspection and enforcement records are only required to be retained for 10 years (EPA records retention schedule)