

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: ) Case No.: HWCA 07/08-P002  
CHEMICAL WASTE MANAGEMENT, INC. ) ORDER DENYING PETITION FOR REVIEW  
KETTLEMAN HILLS FACILITY )  
35251 Old Skyline Road ) California Code of Regulations, Title 22,  
Kettleman City, California ) Section 66271.18(c)  
EPA ID No. CAT000646117 )

**I. INTRODUCTION**

On September 21, 2007, the Department of Toxic Substances Control (Department or DTSC) issued a Hazardous Waste Facility Permit decision approving a Class 3 Permit Modification (Permit) for the Chemical Waste Management, Inc. (CWMI), Kettleman Hills Facility (KHF or Facility), located at 35251 Old Skyline Road, Kettleman City, California. A Petition for Review (appeal) was timely filed.

Pursuant to California Code of Regulations, title 22, section 66271.14(b)(2), the Permit decision has been stayed pending the Department's determination whether the appeal meets the criteria for granting a review. In the interim, CWMI continues to be authorized by DTSC to operate Landfill B-19 under the terms and conditions of Hazardous Waste Facility Permit 02-SAC-03, issued with an effective date of June 16, 2003.

**II. JURISDICTION**

The Department has jurisdiction over hazardous waste facility permits and the imposition of conditions on such permits pursuant to the California Health and Safety Code section 25200 et seq., and California Code of Regulations, title 22, section 66271.18.

On July 23, 1992, the State of California received final authorization under section 3006(b) of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. section 6926(b), to operate its hazardous waste program in lieu of the federal program (57 Fed. Reg. 32, 726 (July 23, 1992)). As a RCRA-authorized state, California has the authority to issue, modify, and administer RCRA-equivalent permits.

1 **III. BACKGROUND**

2 **A. FACILITY DESCRIPTION AND HISTORY**

3 The Kettleman Hills Facility is 1) an existing hazardous waste treatment, storage, and  
4 disposal facility and 2) a disposal facility for municipal solid waste and designated waste. The  
5 Facility is located in an unincorporated area of western Kings County, California, 3.5 miles  
6 southwest of Kettleman City, 6.5 miles southeast of Avenal, and approximately 2.5 miles west of  
7 Interstate 5 (I-5). CWMI has owned and operated the KHF since 1979. The KHF site is  
8 approximately 1,600 acres, with 474 acres of operational area for ongoing waste storage,  
9 treatment, and disposal operations.

10 Landfill B-19, the portion of the Facility that is the subject of the proposed permit  
11 modification and of this review, was constructed between 1986 and 1989 in four phases. Landfill  
12 B-19 began accepting Class 1<sup>1</sup> hazardous waste (hazardous waste) in 1987. KHF accepted  
13 approximately three (3) million cubic yards of hazardous waste in Landfill B-19.

14 In 1992, CWMI placed Landfill B-19 into inactive status though capacity remained, and a  
15 temporary cover was placed over the hazardous waste. In 1997, CWMI converted the  
16 remaining, unused portion of Landfill B-19 to a designated (Class II) and municipal solid  
17 (Class III) waste (MSW) management unit. Kings County Department of Public Health, acting  
18 as Local Enforcement Agency (LEA), for the California Integrated Waste Management Board  
19 (CIWMB), issued a Solid Waste Facility Permit. A separation liner was installed to physically  
20 isolate the Class I hazardous waste from the Class II and III waste.

21 **B. PERMIT DECISION**

22 On December 7, 2006, CWMI submitted a Permit modification application to DTSC  
23 requesting changes to the Closure Plan for Landfill B-19 to allow a portion of the non-hazardous  
24 section of that landfill to be operated as an anaerobic bioreactor<sup>2</sup>.

25 \_\_\_\_\_  
26 <sup>1</sup> The California State Water Resources Control Board classifies landfills as Class I, Class II or Class III  
27 based on the nature of the wastes to be disposed and the level of protection they provide for water quality  
based on siting and containment features.

28 <sup>2</sup> 'Bioreactor' is a term used to describe a landfill in which the liquid content is raised, by direct injection of  
liquids, addition of high moisture content wastes, and recirculation of landfill leachate, in order to promote  
anaerobic conditions, accelerating the decomposition of organic material.

1 The full bioreactor project consists of the following six (6) key elements:

- 2 1. Converts a portion of the existing KHF Landfill B-19 to be operated as a bioreactor unit.
- 3 2. Reconfigures the existing Landfill Unit B-19 waste disposal area from 40 acres to 29  
4 acres and steepens the final grades from 4 (horizontal) : (to) 1 (vertical), to an effective  
5 slope of 3:1, with a maximum elevation of 945 feet above mean sea level.
- 6 3. Revises the final cover system from a composite liner system to a monolithic cover  
7 system.
- 8 4. Increases the permitted tonnage of designated waste and municipal solid waste disposal  
9 in Landfill B-19 from 1,400 tons per day (tpd) to 2,000 tpd, with no limits on Class II soils  
10 that are received for beneficial use, such as daily cover and intermediate cover, or on  
11 wastes received for use as alternative daily cover.
- 12 5. Provides for the receipt of up to 800 tpd of liquids and high-moisture-content wastes.
- 13 6. Increases the hours of waste acceptance at landfill B-19 to include Saturday from  
14 8:00 a.m. to 6:00 p.m.

15 The scope of DTSC's Permit modification decision includes only elements one (1)  
16 through three (3) as described above because those elements have the potential to impact the,  
17 in the existing Closure Plan, and, in particular, the integrity of the hazardous waste containment  
18 system.

19 The full bioreactor project requires approval from several other local, state, and federal  
20 governmental agencies with jurisdiction over different aspects of the project: Kings County, in  
21 the dual role of Planning Agency and Local Enforcement Agency (LEA), acted as the Lead  
22 Agency under the California Environmental Quality Act (CEQA, Public Resources Code,  
23 section 21000 et seq.), for the project.

24 Kings County commissioned the Draft Subsequent Environmental Impact Report,  
25 (DSEIR), and ultimately certified the Final Subsequent Environmental Impact Report, (FSEIR),  
26 for the project on June 6, 2005. As a Responsible Agency under CEQA, DTSC commented on  
27 the DSEIR and ultimately also used the FSEIR, in conjunction with DTSC's Responsible Agency  
28 Checklist, for DTSC's component of the larger bioreactor project.

1           The governmental agencies with regulatory authority over aspects of the bioreactor  
2 project include: Kings County Planning Agency with regard to the Conditional Use Permit;  
3 Kings County Department of Public Health as the LEA responsible for the Solid Waste Facility  
4 Permit modification including research design and development (RD&D) provisions; the  
5 Regional Water Quality Control Board – Central Valley Region with regard to Waste Discharge  
6 Requirements modifications; the California Integrated Waste Management Board (CIWMB)  
7 which concurred with the LEA on the revised Solid Waste Facility Permit; the San Joaquin  
8 Valley Air Pollution Control District which reviewed the Authority to Construct and the Permit to  
9 Operate the landfill gas flare.

10           On December 11, 2006, CWMI published a public notice in the *Hanford Sentinel* (in  
11 English) announcing a 60-day public comment period for the Class 3 Permit modification  
12 request and a public hearing. The public comment period ran from December 11, 2006, to  
13 February 9, 2007, and included a public hearing on January 4, 2007, at the Kettleman City  
14 Community Center, 75 Fifth Street, Kettleman City, California.

15           On June 12, 2007, DTSC published a public notice in the *Hanford Sentinel* (in English)  
16 and in *Vida en el Valle* (in Spanish), and mailed fact sheets (in English and Spanish) to 613  
17 addresses, announcing a 45-day public comment period on the draft Permit and a public  
18 hearing. The public comment period ran from June 12, 2007, to July 26, 2007, and included a  
19 public hearing on July 12, 2007, at the Kettleman City Elementary School Cafeteria,  
20 701 General Petroleum Street, Kettleman City, California.

21           The project public notice, fact sheet, CEQA documentation, modified Closure Plan, draft  
22 modified Permit, and bioreactor Joint Technical Document (JTD) were all available for review at  
23 the following locations: Avenal Library, 501 East Kings Street, Avenal, California the Hanford  
24 Library, 401 North Douty Street, Hanford, California and the Kettleman City Library, 106 Becky  
25 Pease Street, Kettleman City, California. In addition, the full administrative record was available  
26 for review at the DTSC Cal Center (Sacramento) office, 8800 Cal Center Drive, Sacramento,  
27 California. The above referenced documents, with the exception of the JTD, were also available  
28

1 on the DTSC website at the following link:

2 [http://www.dtsc.ca.gov/HazardousWaste/Projects/CWMI\\_Kettleman.cfm](http://www.dtsc.ca.gov/HazardousWaste/Projects/CWMI_Kettleman.cfm)

3 On September 21, 2007, DTSC issued a Notice of Final Permit Modification and  
4 established a 30-day period ending on October 29, 2007, for filing a request for review of the  
5 decision under California Code of Regulations, title 22, Section 66271.18. The Department also  
6 prepared a Response to Comments document, a copy of which was sent to each commenter.  
7 The Response to Comments document, the Final CEQA documents and the Final Permit were  
8 posted on the DTSC website at the link above.

9 **C. PERMIT APPEAL PROCESS**

10 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the period for  
11 filing a Petition for Review (“Petition” or “Appeal”) of the final Permit decision ended on  
12 October 29, 2007. A single Appeal was filed on or before that date by Mr. Bradley Angel and  
13 Ms. Anna Martinez on behalf of the following organizations:

- 14 • Greenaction for Health and Environmental Justice by Bradley Angel and Angela  
15 Martinez
- 16 • El Pueblo Para El Aire y Agua Limpio/People for Clean Air and Water by  
17 Maricela Mares Alatorre
- 18 • Lucha Por Salud Justicia Ambiental/Struggle for Health and Environmental  
19 Justice by Mauricio Cuadra
- 20 • Kids Protecting Our Planet by Miguel Alatorre

21 The final permit decision has been stayed pursuant to California Code of Regulations,  
22 title 22, section 66271.14(b)(2), until the Department has completed review of the appeal and  
23 determined which, if any, of the issues raised in the appeal meet the criteria set forth in  
24 California Code of Regulations, title 22, section 66271.18, for granting review.

25 **IV. STANDARD OF REVIEW**

26 California Code of Regulations, title 22, section 66271.18(a), provides that any person  
27 who filed comments, or participated in the public hearing on the draft Permit during the public  
28 comment period, may petition the Department to review any condition of the final permit

1 decision to the extent that the issues raised in the petition for review were also raised during the  
2 public comment period for the draft permit decision, including the public hearing. Any person  
3 who did not file comments or participate in the public hearing on the draft Permit may petition  
4 the Department for review of the final permit decision, but only with respect to those conditions  
5 in the final permit decision that differ from the draft Permit.

6 California Code of Regulations, title 22, section 66271.18(a) also provides, in pertinent  
7 part, that:

8 The petition shall include a statement of the reasons supporting that review,  
9 including a demonstration that any issues being raised were raised during the  
10 public comment period (including any public hearing) to the extent required  
11 by these regulations and when appropriate, a showing that the condition in  
question is based on:

- 12 (1) a finding of fact or conclusion of law which is clearly erroneous, or
- 13 (2) an exercise of discretion or an important policy consideration which  
14 the Department should, in its discretion, review.

15 California Code of Regulations, title 22, section 66271.12, specifies the extent to which  
16 issues are required to be raised during the public comment period for a draft Permit decision.

17 Specifically, this section states that:

18 All persons, including applicants, who believe any condition of a draft permit  
19 is inappropriate or that the Department's tentative decision to deny an  
20 application or prepare a draft permit is inappropriate, must raise all  
reasonably ascertainable issues and submit all reasonably available  
arguments and factual grounds supporting their position.

21 Only one of the Petitioners, Greenaction for Health and Environmental Justice,  
22 submitted comments on the draft Permit during the public comment period. El Pueblo Para El  
23 Aire y Agua Limpio/People for Clean Air and Water, Lucha Por Salud Justicia Ambiental  
24 /Struggle for Health and Environmental Justice, and Kids Protecting Our Planet, each of which  
25 joined the Petition filed by Greenaction for Health and Environmental Justice, did not submit  
26 comments or participate in the public hearing on the matter and, therefore, do not have standing  
27 to petition for review of any issues raised during the public comment period on the draft Permit.  
28

1 Thus, only Greenaction for Health and Environmental Justice has standing to petition for review  
2 of any issues raised during the public comment period for the draft Permit decision. Because  
3 there were no changes from the draft to the final Permit decision, we need not address the  
4 impact on standing in this circumstance.

5 DTSC notes that although the Petition raises concerns about the adequacy of DTSC's  
6 Response to Comments, the Petition does not assert that the alleged deficiencies resulted in  
7 any conditions within the Permit modification that should be reviewed or rescinded. Further, any  
8 issues raised in the appeal that relate to CEQA will not be addressed in this Order. CEQA  
9 provides a separate judicial appeal process to resolve disputes concerning compliance with  
10 CEQA. The Permit appeal process is not the proper forum to raise CEQA issues, as the  
11 regulation governing Permit appeals provides that petitions for review may request review of  
12 Permit conditions only.

#### 13 **V. FINDINGS**

14 DTSC has reviewed the Petition and responds below to each Appeal Comment. DTSC  
15 responds to the sixteen (16) Appeal Comments in the order they appear in the Petition.

#### 16 **Appeal Comment 1**

17 DTSC's determination that this project would not have a significant impact on the  
18 environment or on the health and well-being of nearby communities is flawed and factually  
19 incorrect.

#### 20 **Response:**

21 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
22 DTSC finds that Petitioner has failed to meet the burden to establish that the Department should  
23 grant a review of this issue pursuant to the criteria set forth in California Code of Regulations,  
24 title 22, section 66271.18(a). Further, this Appeal Comment appears to pertain to the CEQA  
25 documents for this project. A separate judicial appeal process exists to resolve disputes  
26 concerning compliance with CEQA. For these reasons, the Department denies the petition for  
27 review of the issues raised in this Appeal Comment.  
28

1 **Appeal Comment 2**

2 DTSC's determination would have a significant, discriminatory and disproportionate  
3 impact on the mostly low-income, Spanish-speaking people of color communities most affected  
4 by the Chem Waste dump, in violation of Title VI of the United States Civil Rights Act of 1964  
5 and the California Environmental Protection Agency's own environmental justice mandates.

6 In your "response" to public comments on environmental justice ("General Issue I:  
7 Environmental Justice") DTSC failed to directly respond to important facts and concerns  
8 submitted into the record. The fact that DTSC may not have authority over land use in Kings  
9 County does not absolve DTSC of responsibility for the impacts of its decisions or the biases  
10 and inadequacies of the permit process itself that this permit decision was based on.

11 DTSC claims in the "Response to Comments" that "DTSC considers all possible health  
12 and environmental impacts on the surrounding areas and communities....." but unfortunately  
13 this claim is false. DTSC does not consider all possible health and environmental impacts as it  
14 still does not consider or evaluate the potential cumulative and synergistic effects of additional  
15 pollution or risks that might be associated with the proposed modification. In addition, DTSC  
16 does not consider the body burden of chemicals already in the bodies of many residents who  
17 are exposed on a daily basis to pollution from multiple sources such as pesticides, diesel  
18 pollution and toxic chemicals.

19 **Response:**

20 The comment does not request review of a condition of the Permit. DTSC finds that  
21 Petitioner has failed to meet the burden to establish that the Department should grant a review  
22 of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section  
23 66271.18(a) and, for these reasons, the petition for review is denied.

24 Although this Appeal Comment seems to be predicated on the environmental impacts of  
25 the project and, therefore, pertains to the CEQA documents for this project, which are  
26 reviewable in a separate judicial appeal process, DTSC notes that the CEQA EIR prepared for  
27 the proposed project found that only air quality impacts would remain significant after mitigation.  
28 The air quality impacts of the project were analyzed by modeling the ground-level

1 concentrations of pollutants at the KHF site boundary. As stated in the DSEIR, results showed  
2 that the Project itself will not exceed federal or state standards at the KHF boundary. However,  
3 because the San Joaquin Valley Air Basin exceeds state and federal guidelines for many project  
4 emissions, the proposed project is found to have a Project-specific and a cumulative impact on  
5 air quality. See, for a discussion of the issue, DSEIR section 3.7.3.3.1.

6 Because there is no evidence that the significant effects of the project will be felt  
7 disproportionately by the residents of either Kettleman City or Avenal, DTSC does not find a  
8 discriminatory impact on those residents.

9 **Appeal Comment 3**

10 In your “response to comments” section entitled “General Issue 2: Off-Site Migration and  
11 Health Impacts to the Community” the DTSC improperly ignores public concern about possible  
12 health impacts from living near the Chem Waste facility. DTSC fails to respond to comments  
13 about odors from the dump.

14 DTSC bases its claim that there has been no off-site migration from the dump on “all the  
15 data gathered...” DTSC should be aware that Chem Waste has had problems with monitoring  
16 at the facility. DTSC is also aware that not all emissions can necessarily be captured by the  
17 existing monitoring equipment. DTSC is also aware, and did not consider, that “all the data  
18 gathered” is not a comprehensive, complete evaluation of any and all possible migration points.

19 DTSC then has the nerve to say it sympathizes with those who are sick, yet we know  
20 DTSC officials would never move their families near the toxic waste dump. DTSC says it  
21 sympathizes, but continues to ignore residents who have testified about the increased illnesses  
22 in Kettleman City. In fact, DTSC has not bothered to investigate the concerns of residents  
23 about possible increased health problems in their community located next to the largest toxic  
24 dump in the western United States. DTSC’s insensitive “response” is a classic example of  
25 environmental racism.

26 **Response:**

27 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
28 DTSC finds that Petitioner has failed to meet the burden to establish that the Department should

1 grant a review of this issue pursuant to the criteria set forth in California Code of Regulations,  
2 title 22, section 66271.18(a). Further, this Appeal Comment appears to pertain to a CEQA  
3 document for this project. A separate judicial appeal process exists to resolve disputes  
4 concerning compliance with CEQA. For these reasons, the Department denies the petition for  
5 review of the issues raised in this Appeal Comment.

6 It should be noted that in its Response, DTSC acknowledged the health concerns of  
7 residents and stated that:

8  
9 Nevertheless, all the data gathered at the Kettleman Hills Facility shows that  
10 there has been no off-site migration of hazardous waste. DTSC does not have  
11 evidence of hazardous waste constituents migrating into soil, air, or water  
anywhere beyond the Facility. If anyone has evidence to show otherwise, the  
DTSC will evaluate the data.

12 No additional data has been provided.

13 The risks associated with exposure to toxic landfill gases are discussed in the Air Quality  
14 section of the DSEIR at section 3.7.3.3.3, titled "Health Risk Assessment." Further, the issue of  
15 odor generation is discussed in detail in the Air Quality section of the DSEIR at section  
16 3.7.3.3.4, titled "Odor Impact." The petitioner has made general comments and statements but  
17 has not provided any data or evidence that DTSC's response to comments is erroneous.

18 **Appeal Comment 4**

19 DTSC's "responses" entitled "General Issue 3: Accessibility of Information and  
20 Notice to the Public" are inadequate and an admission of discriminatory impact on the  
21 Spanish-speaking residents.

22 On page 6 of DTSC's "responses", you admit that DTSC will be changing its  
23 procedures when mailing out "fact sheets" in predominantly Spanish-speaking Kettleman  
24 City and Avenal. This change of procedure is in response to comments from residents  
25 that the fact sheet they received had English first, resulting in some Spanish-  
26 speaking/reading residents not receiving adequate notice. As DTSC is essentially  
27 admitting that the notices for this project could have been improved to achieve better  
28

1 notification to residents, the DTSC's response should be to start this process again with  
2 proper notice.

3 **Response:**

4 The comment does not request review of a condition of the Permit. Further, the Petition  
5 does not claim that DTSC failed to meet the regulatory requirements for public notice contained  
6 in California Code of Regulations, title 22, section 66271.9. DTSC finds that Petitioner has  
7 failed to meet the burden to establish that the Department should grant a review of this issue  
8 pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a)  
9 and, for these reasons, the petition to review is denied.

10 Although the Fact Sheets that are mailed to residents are a very effective way of  
11 conveying information to the public but they are not the only method utilized by the Department.  
12 DTSC published a public notice in the *Hanford Sentinel* (in English) and in *Vida en el Valle* (in  
13 Spanish), and also posted many project documents on the Department's web page at the  
14 following link: [http://www.dtsc.ca.gov/HazardousWaste/Projects/CWMI\\_Kettleman.cfm](http://www.dtsc.ca.gov/HazardousWaste/Projects/CWMI_Kettleman.cfm).

15 It should be noted that DTSC intended to mail the fact sheets with the Spanish version  
16 on top of the English version, but it did not occur in all cases. However, we do not find that the  
17 manner in which the Fact Sheets were folded into the envelopes denied anyone in the  
18 community the ability to participate in the public comment period.

19 **Appeal Comment 5**

20 In your "responses" entitled "General Issue 4: Definition of Bioreactor" DTSC again  
21 demonstrates bias by describing alleged "potential environmental benefits" from the bioreactor  
22 without describing potential harms. Even more importantly, several things that DTSC describes  
23 as benefits are in fact harmful impacts to residents. While DTSC officials may believe that  
24 increased landfill capacity is a benefit, many residents do not agree. Residents concerned  
25 about continued importing and dumping of waste in their community for years to come see this  
26 as harm, not a benefit. If DTSC officials lived next to a dump, would you think that years of  
27 additional dumping is a benefit? Continued dumping benefits the bank account of corporate  
28 giant Chem Waste and benefits those who use Kettleman City as a dumping ground. It does not

1 benefit Kettleman City or Avenal. DTSC's "response" is thus biased, inaccurate and yet another  
2 example of environmental racism.

3 **Response:**

4 The Petition does not request review of a condition of the Permit and has failed to meet  
5 the burden to establish that DTSC should grant review of this issue pursuant to the criteria set  
6 forth in California Code of Regulations, title 22, section 66271.18(a). For this reason, DTSC  
7 denies review of this Appeal Comment.

8  
9 Based on our review of the DTSC's Response to Comments, we find the Response  
10 complies with California Code of Regulations, title 22, section 66271.16(2)(a) and (b).

11 DTSC also recognizes that opinions differ whether creation of increased landfill capacity  
12 is a benefit of the proposed bioreactor. DTSC's response to comments document provided a  
13 link to the U.S. EPA website which provides more information, including negative aspects of  
14 bioreactor operation as follows:

15  
16 **4. Special Considerations of Bioreactor Landfills**

17 Several considerations about bioreactor landfills must be examined and understood  
18 before the EPA can identify specific bioreactor standards or recommend operating  
19 parameters. Bioreactor landfills generally are engineered systems that have higher initial  
20 capital costs and require additional monitoring and control during their operating life, but  
21 are expected to involve less monitoring over the duration of the post-closure period than  
22 conventional "dry tomb" landfills. Issues that need to be addressed during both design  
23 and operation of a bioreactor landfill include:

- 24 • Increased gas emissions
- 25 • Increased odors
- 26 • Physical instability of waste mass due to increased moisture and density
- 27 • Instability of liner systems
- 28 • Surface seeps
- Landfill fires

Reference to publicly available technical documents demonstrates that each of these  
concerns was addressed.

1 The source of the information was the U.S. EPA bioreactor information webpage found at:

2 <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/bioreactors.htm>.

3 DTSC provided the link in its Response as a resource for interested persons.  
4

5 **Appeal Comment 6**

6 DTSC's "response" entitled "General Issue 5: Types of Bioreactors in California" is also  
7 biased and flawed. DTSC tries to make it appear that this bioreactor would be like others in use  
8 elsewhere, ignoring the fact that it would be built on top of an old PCB landfill unit.

9 **Response:**

10 The Petition does not request review of a condition of the permit and has failed to meet  
11 the burden to establish that DTSC should grant review of this issue pursuant to the criteria set  
12 forth in California Code of Regulations, title 22, section 66271.18(a). For this reason, DTSC  
13 denies review of this Appeal Comment.

14 Based on our review of the DTSC's Response to Comments, we find compliance with  
15 California Code of Regulations, title 22, section 66271.16(2)(a) and (b). Further, review of the  
16 publicly available technical documents demonstrates that CWMI considered the unique aspects  
17 of locating a bioreactor adjacent to a Class I landfill cell when developing the project. As an  
18 example, section 5.1.4 of the Joint Technical Document discusses the potential impacts of  
19 bioreactor leachate temperature and chemistry on the integrity of the separation liner. Notably,  
20 the Petition fails to directly challenge any of the analysis or conclusions contained in the project  
21 documents relating to the proximity of the proposed bioreactor to the Class I landfill cell.  
22

23 **Appeal Comment 7**

24 DTSC's "response" entitled "General Issue 6: Additional Liquids" is also flawed and  
25 inadequate. DTSC tries to assure the public that monitoring by Chem Waste will protect the  
26 environment, yet DTSC is aware of problems and violations by Chem Waste in the past  
27 regarding monitoring.  
28

1 **Response:**

2           The Petition does not request review of a condition of the permit and has failed to meet  
3 the burden to establish that DTSC should grant review of this issue pursuant to the criteria set  
4 forth in California Code of Regulations, title 22, section 66271.18(a). For this reason, DTSC  
5 denies review of this Appeal Comment.

6 **Appeal Comment 8**

7           DTSC’s “response” entitled “General Issue 7: Stability of the Landfill” ignores the fact  
8 that landfill’s can become unstable, and DTSC should have evaluated the fact that there has  
9 been at least one major landfill liner failure at the Chem Waste facility that was never predicted  
10 in its “state of the art” liner.

11 **Response:**

12           The Petition does not request review of a condition of the Permit and has failed to meet  
13 the burden to establish that DTSC should grant review of this issue pursuant to the criteria set  
14 forth in California Code of Regulations, title 22, section 66271.18(a). For this reason, DTSC  
15 denies review of this Appeal Comment.

16           The Response to Comments advised the reader that a detailed discussion of the site  
17 geology, faulting, and seismicity is presented in the proposed Landfill Unit B-19 Modified  
18 Closure Plan and Joint Technical Document, which were available for review by the public as  
19 parts of the administrative record.

20           By way of clarification, DTSC is aware that in 1988 a slip event occurred in Phase IA of  
21 Landfill B-19. While there was a horizontal and vertical movement of waste in the prism, the  
22 composite liner contained the hazardous waste and there was no release to the environment.  
23  
24  
25  
26  
27  
28

1           The slip event has been the subject of extensive analysis, both by CWMI and by the  
2 academic community, as illustrated by the reports<sup>3</sup> and papers<sup>4</sup> on the event in the public  
3 domain.

4           **Appeal Comment 9**

5           DTSC’s “response” entitled “General Issue 8: Closure of the Hazardous Waste Portion”  
6 claims that post-closure care requirements will be protective of public health and the  
7 environment, but DTSC fails to consider that the waste will remain toxic for more years than  
8 Chem Waste is required to monitor the site.

9           **Response:**

10           The Petition does not request review of a condition of the Permit and the Petition does  
11 not claim that the monitoring requirements contained in the modified Closure Plan are  
12 inconsistent with the regulations contained in California Code of Regulations, title 22 and  
13 title 27. Thus the petitioner has failed to meet the burden to establish that DTSC should grant  
14 review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22,  
15 section 66271.18(a). For this reason, DTSC denies review of this Appeal Comment.

16           It should be noted that post-closure care, including site monitoring, will be required as  
17 long as necessary to protect public health and the environment.

18           **Appeal Comment 10**

19           DTSC’s “response” entitled “General Issue 10: United States Environmental  
20 Protection Agency Notice of Noncompliance” acknowledges but attempts to minimize  
21 defects in Chem Waste’s analytical procedures and calibration for measuring PCBs in  
22 leachate, stormwater and incoming wastes at the Kettleman Hills facility. The fact is that  
23 US EPA issued a Notice of Violation to Chem Waste for these problems with monitoring  
24 at the Kettleman facility, and this proves that monitoring is not always accurate and can  
25 result in inaccurate readings regarding detection of toxic contamination.

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28 <sup>3</sup> Seed et. al., (June 29, 1988), Slope Stability Failure Investigation: Landfill Unit B-19, Phase I-A,  
Chemical Waste Management Inc. Facility, Kettleman Hills, California

<sup>4</sup> Byrne, et. al., (1992) Cause and Mechanism of Failure, Landfill B-19 Kettleman Hills Facility, Phase IA

1 **Response:**

2 The Petition does not request review of a condition of the permit and has failed to meet  
3 the burden to establish that DTSC should grant review of this issue pursuant to the criteria set  
4 forth in California Code of Regulations, title 22, section 66271.18(a). For this reason, DTSC  
5 denies review of this Appeal Comment.

6 The EPA press release regarding the June 26, 2007, Notice of Noncompliance issued to  
7 the Facility stated it was for “procedural discrepancies, a minor violation, with federal  
8 [polychlorinated biphenyl] PCB requirements. The notice of noncompliance requires the facility  
9 to address this minor violation.”

10 In its Response to General Issue No. 10, DTSC further stated that:

11 These inconsistencies in analytical procedures and calibration resulted in over-  
12 reporting of low concentration PCBs which would normally have been non-  
13 detects. PCBs greater than 50 parts per million (EPA’s threshold limit) would  
14 have been accurately detected, but to date, this limit has not been exceeded at  
15 the Facility. (emphasis supplied)

16 Thus, DTSC’s characterization of the violation as “minor” is consistent with the  
17 assessment of the enforcing authority, US EPA, as stated in its press release. Notwithstanding  
18 the nature of the past violation, future periodic inspections by DTSC and other interested  
19 regulators are designed to ensure compliance with standards that are protective of health and  
20 the environment.

21 **Appeal Comment 11**

22 DTSC’s “response” entitled “General Issue 12: Impact of Traffic (Permitted  
23 Trucks through Kettleman City)” is defective as it fails to acknowledge the potential  
24 significant impact of increased diesel truck traffic through the Kettleman City. The  
25 proposed increase would allow over 50% more trucks through Kettleman City, spewing  
26 their diesel exhaust, increasing the risk of accidents and increasing traffic. DTSC fails to  
27 respond directly to the concern about increased truck traffic.

28 **Response:**

This Appeal Comment does not request review of a condition of the Permit. DTSC finds  
that Petitioner has failed to meet the burden to establish that the Department should grant a

1 review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22,  
2 section 66271.18(a). Further, this Appeal Comment appears to pertain to the CEQA documents  
3 for this project. CEQA provides a separate judicial appeal process to resolve disputes  
4 concerning compliance with CEQA. For these reasons, the Department denies the petition for  
5 review of the issues raised in this Appeal Comment.

6 Kings County and the CIWMB had previously considered and approved Permit  
7 modifications accounting for increased truck traffic.

8 **Appeal Comment 12**

9 DTSC's "response" entitled "General Issue 13: Business relationship between the  
10 local communities and the facility" is another example of DTSC's severe bias in favor of  
11 Chem Waste. DTSC's "response" states that "Some of these comments also urged the  
12 permit application to be approved" – yet you failed to mention that many people (and the  
13 majority of those testifying) urged a permit denial.

14 **Response:**

15 The Appeal Comment does not request review of a condition of the Permit and has  
16 failed to meet the burden to establish that DTSC should grant review of this issue pursuant to  
17 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For this  
18 reason, DTSC denies review of this Appeal Comment.

19 The Petition objects to the following language from the Response to Comment  
20 document:

21 Several comments were made not specific to the project but relating to the  
22 business relationship with the Facility and the Facility's contributions to the  
23 community. Some of these commenters also urged the permit application to be  
24 approved. Comments noted.

25 A full reading of the Response to Comments clearly shows that some commenters  
26 opposed the Permit modification.

27 **Appeal Comment 13**

28 In "response" 3.0 DTSC states that the increased capacity of the landfill as a result of  
permitting a bioreactor will be 377,000 tons. This is an enormous amount of additional waste

1 that would be dumped in Kettleman City, adding years of additional negative impacts and  
2 potential future problems for the nearby communities.

3 **Response:**

4 This Appeal Comment does not request review of a condition of the permit. Therefore,  
5 DTSC finds that Petitioner has failed to meet the burden to establish that the Department should  
6 grant a review of this issue pursuant to the criteria set forth in California Code of Regulations,  
7 title 22, section 66271.18(a). Further, this Appeal Comment appears to pertain to the CEQA  
8 documents for this project. CEQA provides a separate judicial appeal process to resolve  
9 disputes concerning compliance with CEQA. For these reasons, the Department denies the  
10 petition for review of the issues raised in this Appeal Comment.

11 As set forth in the Response to Comments, the issue of allowing additional municipal  
12 waste to be received at the facility was a subject considered by the Kings County Department of  
13 Public Health and the CIWMB when issuing the facility its Solid Waste Facility Permit.

14 **Appeal Comment 14**

15 DTSC's "response" 10.0 fails to respond to the defects in the DTSC's public  
16 notice for the hearing on this project.

17 **Response:**

18 This Appeal Comment does not request review of a condition of the permit. Further, the  
19 Petition does not claim that DTSC failed to meet the regulatory requirements for public notice  
20 contained in California Code of Regulations, title 22, section 66271.9. Therefore, DTSC finds  
21 that Petitioner has failed to meet the burden to establish that the Department should grant a  
22 review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22,  
23 section 66271.18(a). For these reasons, the Department denies the petition for review of the  
24 issues raised in this Appeal Comment.

25 DTSC notes that although the Petition raises concerns about notification of the public  
26 hearing, the Petition does not assert that the public notification process resulted in any  
27 conditions within the modified Permit that should be reviewed or rescinded. Additionally, the  
28

1 Petition does not claim that DTSC failed to meet the regulatory requirements for public notice  
2 contained in California Code of Regulations, title 22, section 66271.9.

3 Although DTSC is not granting review of the issues raised in this appeal comment, we  
4 agree that DTSC did not directly respond to the comments and suggestions on how public  
5 notification to the Spanish speaking community could have been improved. In the future,  
6 DTSC's Hazardous Waste Management and Public Participation Programs should squarely  
7 address suggestions for improving its processes.

8 The analysis set forth in Appeal Comment 4 is incorporated by reference.

9 **Appeal Comment 15**

10 DTSC's "response to comment" 10.1 is an example of environmental racism,  
11 directly contradicting the testimony and concerns of Spanish-speaking residents who  
12 testified about poor translation and paraphrasing of testimony. DTSC claims the  
13 translation was "quite adequate," yet admits that paraphrasing did occur. Paraphrasing  
14 is not equivalent to full and accurate translation, and the result is that Spanish-speaking  
15 residents were denied their right to fully understand everything being discussed about  
16 this issue that will impact their community, health, families and environment. Apparently  
17 DTSC's interpretation of environmental justice and public participation is based on a  
18 double standard – one for English speakers and another less rigorous standard for the  
19 Spanish-speaking residents living closest to the dump. This is a bold and clear violation  
20 of environmental justice mandates and Title VI of the Civil Rights Act.

21 DTSC also admits now that translation equipment would have been better,  
22 acknowledging yet another defect in your permit process that had a discriminatory and  
23 disproportionate impact on the Spanish-speaking residents attempting to participate in  
24 the process.

25 **Response:**

26 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
27 DTSC finds that Petitioner has failed to meet the burden to establish that the Department should  
28 grant a review of this issue pursuant to the criteria set forth in California Code of Regulations,

1 title 22, section 66271.18(a). For this reason, the Department denies the petition for review of  
2 the issues raised in this Appeal Comment.

3 DTSC notes that although the Petition raises concerns about the public hearing, the  
4 Petition does not assert that the public participation process resulted in any conditions within the  
5 Permit that should be reviewed or rescinded. Further, the Petition does not request that the  
6 entire Permit be rescinded based on public hearing issues. Additionally, the Petition does not  
7 claim that DTSC failed to meet the regulatory requirements for a public hearing contained in  
8 California Code of Regulations, title 22, section 66271.11.

9 The interpreter retained by DTSC for the public hearing had been certified as an  
10 Administrative Hearing interpreter, though we could not find evidence of a recent certification.  
11 We note that DTSC public participation guidelines recommend the use of “certified interpreters”  
12 and recommend that DTSC staff “[e]nsure that the interpreter interprets everything said in the  
13 meeting so that everyone can have their questions and concerns addressed.”

14 In the future, DTSC’s Hazardous Waste Management and Public Participation Programs  
15 should re-double efforts to verify that the interpreter is appropriately certified to a level of  
16 competence commensurate with translating in a public setting.

17 **Appeal Comment 16**

18 DTSC’s “response” to comment 11.0 (made by Chemical Waste Management)  
19 demonstrates even more bias in your evaluation. DTSC prints extensive comments from Chem  
20 Waste, but did not print similar long excerpts from dump opponents.

21 **Response:**

22 This Appeal Comment does not request review of a condition of the permit. Therefore,  
23 DTSC finds that Petitioner has failed to meet the burden to establish that the Department should  
24 grant a review of this issue pursuant to the criteria set forth in California Code of Regulations,  
25 title 22, section 66271.18(a). For this reason, the Department denies the petition for review of  
26 the issues raised in this Appeal Comment.

27 Based on our review of the DTSC’s Response to Comments, we find the Response  
28 complies with California Code of Regulations, title 22, section 66271.16(2)(a) and (b). The

1 document is intended to be a brief and accurate summary of comments received, and to provide  
2 information for the reader to make an evaluation. Having read the Response to Comments in its  
3 entirety, we do not find evidence of a bias toward the facility.

4 **VI. ORDER**

5 For the reasons set forth above, the Department has determined that Petitioners have  
6 failed to demonstrate that the Petitioners' Appeal Comments meet the criteria for granting a  
7 review pursuant to California Code of Regulations, title 22, section 66271.18(a). Therefore, the  
8 Department is denying further review of the Petition for Review. The temporary stay of the  
9 Permit pursuant to California Code of Regulations, title 22, section 66271.14 (b) (2), is hereby  
10 lifted, and the Permit modification is immediately and fully effective and enforceable as of the  
11 date of mailing of this Order. This Order constitutes the Department's final decision on the  
12 merits of the Petition for Review and its constituent Appeal Comments.  
13

14 Dated: January 30, 2008

15 // Original Signed By //

16 \_\_\_\_\_  
17 Mohinder Sandhu, P.E., Chief  
18 Standardized Permitting and Corrective Action Branch  
19 Hazardous Waste Management Program  
20 Department of Toxic Substances Control  
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