

1 STATE OF CALIFORNIA
2 ENVIRONMENTAL PROTECTION AGENCY
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of:) Docket No.: PAT-FY08/09-07
5)
6 CHEMICAL WASTE MANAGEMENT,) ORDER DENYING PETITION FOR
7 INC., KETTELMAN HILLS FACILITY) REVIEW AND VACATING STAY
8 35251 Old Skyline Road)
Kettleman City, California) California Code of Regulations,
9) Title 22, Section 66271.18(c)
EPA Id. No.: CAT 000 646 117

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I. INTRODUCTION

On March 5, 2009, the Department of Toxic Substances Control's Operating Facilities Team (DTSC) issued a Temporary Authorization for a Class 3 permit modification to Chemical Waste Management, Inc. (CWM) for its Kettleman Hills Facility (herein referred to as "Facility"). The Facility is located at 35251 Old Skyline Road, Kettleman City, California. The Temporary Authorization decision approved modifications to the bench slope design for Landfill B-18 at the Facility. On April 17, 2009, Mr. Bradley Angel, Executive Director, Greenaction for Health and Environmental Justice; El Pueblo Para El Aire y Aqua Limpio/People for Clean Air and Water; and, Kids Protecting Our Planet (collectively "Petitioner") filed a Petition for Review (Appeal) of the Temporary Authorization decision.

Pursuant to California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), the Temporary Authorization decision has been stayed pending determination whether the appeal meets the criteria for granting a review. In the interim, CWM continues to be authorized to operate the Facility under the terms and conditions of its Hazardous Waste Facility Permit 02-SAC-03 issued with an effective date of June 16, 2003, as modified September 21, 2007.

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, sections 25200 et seq. and 25186.1(b)(1) and California Code of Regulations, title 22, sections 66270.30 and 66271.18.

III. BACKGROUND

A. FACILITY DESCRIPTION:

The Facility is described in the modified Hazardous Waste Facility Permit, dated September 21, 2007, as follows:

The Chemical Waste Management, Inc., Kettleman Hills Facility is a commercial hazardous waste treatment, storage and disposal facility. The Facility contains 1,600 contiguous acres, 499 of which have been approved for hazardous waste activity. The Facility accepts solid, semi-solid, and liquid hazardous and extremely hazardous waste. It may not accept Class 1, Division 1.1 or 1.2, or forbidden explosives (Code of Federal Regulations, title 49, subchapter C, part 173, section 50); compressed gas cylinders (excluding aerosol cans); radioactive waste that is not exempt from regulation and licensing or is not expressly authorized for disposal under the Radiation Control Law, chapter 8 (commencing with section 114960) of part 9 of division 104 of the Health and Safety Code, or any successor statute that may replace the Radiation Control Law, or is prohibited from disposal under article 1 (commencing with section 114705) of chapter 5 of part 9 of division 104 of the Health and Safety Code or any successor statute that may replace article 1, or is prohibited from disposal by any government agency; biological agents or infectious wastes. The Facility conducts the following activities: solar evaporation in three surface impoundments; disposal into one hazardous waste landfill; PCB draining and flushing; PCB disposal and storage; and stabilization, solidification and storage of bulk and drummed wastes. The Facility is also permitted to construct and operate a neutralization/filtration unit and eight one-million gallon above ground evaporation tanks.

III

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1 **B. TEMPORARY AUTHORIZATION DECISION**

2 On October 10, 2008, CWM submitted a Temporary Authorization request to
3 allow CWM to modify the bench slope design for Landfill B-18 to accommodate an
4 increased probable maximum precipitation (PMP) from 7.4 inches to 10.3 inches. The
5 administrative record provided to the Permit Appeals Officer by DTSC shows that the
6 public notice (English and Spanish) of the Temporary Authorization request was mailed
7 to the facility mailing list by CWM on or about October 16, 2008. The public notice of
8 the Temporary Authorization request was also published in the *Hanford Sentinel*
9 newspaper on October 14, 2008.

10 DTSC issued the approval letter for the Temporary Authorization on
11 March 5, 2009. The approval letter describes the changes in the run-off control bench
12 and slope design as follows:

- 13 • 28-foot wide bench, instead of the approximately 23-foot wide bench
14 (at the waste grade);
- 15 • Approximately 3.5H:1V slopes, instead of the approximately 3.6H:1V
16 slopes between individual benches;
- 17 • Bench sloped longitudinally at 2 percent, instead of 3 percent for
18 surface water drainage of the cover; and,
- 19 • The plans for the asphalt-lined V-ditch channel and gravel in the
20 original design are no longer required with the above modifications of
21 the bench channel to accommodate the increased flow from the PMP.

22
23 DTSC issued the Notice of a Temporary Authorization Decision (Notice) in
24 English and Spanish by mailing it to the facility mailing list on or about March 16, 2009.
25 The Notice was also published in the *Hanford Sentinel* newspaper on March 20, 2009.
26 The Spanish version of the Notice was published in the *Vida En El Valle* newspaper for
27 the week of March 25, 2009. The Notice states that the Temporary Authorization

1 documents are available at the Kettleman City Library, Avenal Library, and Hanford
2 Library and also on DTSC's website www.envirostor.dtsc.ca.gov.

3 A Notice of Exemption was prepared for the Temporary Authorization decision,
4 based on the Categorical Exemption (Cal Code of Regs., tit 14, § 15301) for minor
5 alterations to the operation of an existing facility to comply with the California
6 Environmental Quality Act. The Notice of Exemption was filed with the State
7 Clearinghouse on March 25, 2009.

8 **C. PERMIT APPEAL PROCESS**

9 Pursuant to California Code of Regulations, title 22, section 66271.18,
10 subdivision (a), the period specified in the Notice for filing a petition for review (appeal)
11 of the Temporary Authorization decision ended on April 18, 2009. Mr. Bradley Angel,
12 Executive Director, Greenaction for Health and Environmental Justice; El Pueblo Para
13 El Aire y Agua Limpio/People for Clean Air and Water; and, Kids Protecting Our Planet
14 filed an Appeal (Petition for Review) on April 17, 2009.

15 The Temporary Authorization decision was stayed on April 24, 2009, pursuant to
16 California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), until the
17 Permit Appeals Officer completes review of the appeal and determines which, if any, of
18 the issues raised in the appeal meet the criteria set forth in California Code of
19 Regulations, title 22, section 66271.18, for granting review. On April 24, CWM KHF, the
20 Operating Facilities Team, and the Petitioner were notified of the stay.

21
22 **IV. STANDARD OF REVIEW**

23 California Code of Regulations, title 22, section 66271.18, subdivision (a),
24 provides that any person may petition the Department to review a temporary
25 authorization decision. California Code of Regulations, title 22, sections 66271.18,
26 subdivision (a) also provides, in pertinent part, that:

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

- 6 (1) a finding of fact or conclusion of law which is clearly erroneous, or
7
8 (2) an exercise of discretion or an important policy consideration which
9 the Department should, in its discretion, review.

10 V. FINDINGS

11 The Petition for Review can be characterized as containing two (2) distinct
12 Appeal Comments, identified as Appeal Comment 1 and Appeal Comment 2. The full
13 text of the Petition for Review is provided in the two Appeal Comments.

14 Appeal Comment 1:

15
16 Greenaction for Health and Environmental Justice, El Pueblo Para El Aire
17 y Agua Limpio/People for Clean Air and Water, and Kids Protecting Our
18 Planet file this appeal of the “Temporary Authorization” of a Class 3 Permit
19 Modification issued by DTSC for the Chemical Waste Management
20 Kettleman Hills Facility.

21 We challenge this “Temporary Authorization” as it violates DTSC/Cal
22 EPA’s environmental justice policies and civil rights laws. These violations
23 resulted from (1) DTSC’s failure to provide public comment opportunities
24 to the public, especially to the low-income people of color residents of
25 Kettleman City and Avenal who live closest to the hazardous waste facility
26 and are most directly impacted by the facility, and (2) the continued
27 dumping of hazardous waste at this facility made possible by this decision.

28 DTSC’s failure to provide an opportunity for public comment violated
29 DTSC/Cal EPA’s own environmental justice policies. DTSC and Cal EPA
30 have a stated commitment to environmental justice and a mandate not to
31 take actions that have a discriminatory or disproportionate impact on low-
32 income people of color. There is no reason that at least some opportunity
33 for public participation in this decision could have been made available.

1 DTSC's approval of the requested modification without public comment
2 opportunities has a disproportionate and discriminatory comment on the
3 low-income people of color residents, and therefore is illegal under state
4 and federal civil rights laws.

5 The discriminatory and disproportionate impact of this decision includes
6 the exclusion of residents from decision-making processes about this
7 facility that poses a threat to public health. The Chemical Waste
8 Management facility is the largest hazardous waste landfill in the western
9 United States, and government decision-making regarding this facility has
10 a several decade-long and well-documented history of systemic and de
facto exclusion of residents from meaningful participation in permit and
regulatory decisions. DTSC is well aware of this ongoing problem and
concern, yet chose to issue a Temporary Authorization without any public
input.

11 Adding insult to injury, DTSC announced the decision in the midst of at
12 least other three permit tracks for this facility taking place at the exact
13 same time – resulting in confusion in the community and limiting the ability
14 of residents to challenge this decision. In fact, the issuance of a
Temporary Authorization was believed by some residents to be the permit
decision for the proposed hazardous waste dump expansion.

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Response:

16 The Petitioner has failed to meet the burden to establish that the Department
17 should grant review of this issue pursuant to the criteria set forth in California Code of
18 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department
19 denies the petition for review of this Appeal Comment.

20 The Petitioner claims the Temporary Authorization violates DTSC/Cal EPA's
21 environmental justice policies and civil rights laws by (1) failing to provide public
22 comment opportunities to the public, especially to the low-income people of color
23 residents of Kettleman City and Avenal who live closest to the hazardous waste facility
24 and are most directly impacted by the facility, and (2) the continued dumping of
25 hazardous waste at this facility made possible by this decision.

26 California Code of Regulations, title 22, section 66270.42, subdivision (e)(1),
27 allows the Department to grant temporary authorizations, without prior public notice and

1 comment. The Petitioner does not show how DTSC's Temporary Authorization decision
2 pursuant to subdivision 66270.42(e)(1) violates civil rights laws or DTSC/Cal EPA's
3 environmental justice policies. The Petitioner has not provided any specific comment
4 that the Temporary Authorization does not meet the requirements of California Code of
5 Regulations, title 22, section 66270.42, subdivision (e).

6 The administrative record provided by DTSC shows that the public notices of the
7 Temporary Authorization request and final decision, required pursuant to California
8 Code of Regulations, title 22, section 66270.42, subdivisions (e)(2)(C) and (f), were
9 provided in this case. The administrative record does not show that DTSC received any
10 public inquiries or public comments concerning the temporary authorization request. If
11 any public comments were received between October 14, 2008, and March 5, 2009,
12 they could have been considered by DTSC in its decision for the Temporary
13 Authorization.¹ The community notification of a temporary authorization request
14 provides an opportunity for the community to be involved in the decision.

15 The Petitioner further asserts, "...DTSC announced the decision in the midst of at
16 least other three permit tracks for this facility taking place at the exact same time –
17 resulting in confusion in the community and limiting the ability of residents to challenge
18 this decision." However, this does not explain why there were no public inquiries or
19 comments presented to DTSC in this regard. Petitioner has not provided any factual
20 basis for their assertion. It should be further noted that the Temporary Authorization is
21 valid only for 180 days with one possible extension of an additional 180 days. Pursuant
22 to California Code of regulations, title 22, section 66270.42, subdivision (e)(4), the
23 public will have additional opportunities to comment and participate in this matter during
24 the Class 3 permit modification approval process.

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27 ¹ See Elizabeth A. Cotsworth, Acting Director, Office of Solid Waste, U.S. Environmental Protection
28 Agency, letter to Mr. Jose A Boix, Senior Environmental Specialist, Solutia, Inc., April 16, 1998, RCRA
Online 14264. (Attachment 1.)

1 The second part of Petitioner's comment is factually incorrect because the
2 continued dumping of hazardous waste at this facility is not contingent on the
3 Temporary Authorization decision. The Temporary Authorization does not increase the
4 permitted capacity of Landfill B-18. The Temporary Authorization only affects the runoff
5 control design requirements for Landfill B-18. Underlying this part of Petitioner's
6 comment is an assertion that dumping hazardous waste at the Kettleman Hills Facility
7 violates DTSC/Cal EPA's environmental justice policies and civil rights laws. The
8 Petitioner's appeal does not provide any factual basis for this assertion and it is beyond
9 the scope of this appeal decision.

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11 **Appeal Comment 2:**

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13 In addition, this Temporary Authorization was approved by DTSC without
14 the agency investigating the large birth defect cluster that has been
15 discovered in Kettleman City and brought to DTSC's attention. Unless
16 and until DTSC or another appropriate, impartial agency investigates
17 these birth defects and can conclude there is absolutely no connection to
the ongoing dumping of hazardous wastes or trucking of these wastes to
the facility, no new permits should be issued to Chem Waste.

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19 **Response:**

20 The Petitioner has failed to meet the burden to establish that the Department
21 should grant review of this issue pursuant to the criteria set forth in California Code of
22 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department
23 denies the petition for review of this Appeal Comment.

24 The comment is factually incorrect because the Temporary Authorization is not a
25 new permit and does not affect the ongoing dumping of hazardous wastes or trucking of
26 these wastes to the facility. The Temporary Authorization only affects the runoff control
27 design requirements for Landfill B-18.

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The Petitioner's appeal does not provide any factual basis for its assertion that DTSC, or another agency, must investigate the birth defects prior to DTSC making a temporary authorization decision.

VI. ORDER

For the reasons set forth above, the Permit Appeals Officer denies the Petition for Review. The stay of the Temporary Authorization is hereby vacated and all provisions of the Temporary Authorization issued by DTSC on March 5, 2009, shall be effective upon the issuance date of this Order.

Dated: May 19, 2009

//original signed by//

Mohinder S. Sandhu, P.E.,
Permit Appeals Officer
Department of Toxic Substances Control

Attachment 1

Attachment 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Jose A. Boix
Senior Environmental Specialist
Solutia, Inc.
F.M. 2917
P.O. Box 711
Alvin, Texas 77521

Dear Mr. Boix:

You recently suggested a change to the temporary authorization language found in 40 CFR 270.42(e)(2)(iii). As you are aware, this section of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations requires the permittee to send a notice to persons on the facility mailing list within seven days of submission of the temporary authorization request.

EPA is committed to providing opportunities for meaningful public participation in the RCRA permitting program. The intent of the referenced notice is to inform members of the community that the facility is seeking temporary authorization to implement a change to the equipment or operations prior to submitting a formal Class 2 Permit Modification. This early notification allows the community to be informed of the potential anticipated changes. Community members may then provide supplemental information or voice any potential concerns or support to the permitting authority, prior to action being taken on the request.

Rather than the notification becoming "useless" if the permitting authority denies the request, as you suggest, we believe that the notification provides an important notice to the community so that they may be involved in the permitting decision. In fact, information supplied by the community may be considered in the decision made by the permitting authority on the temporary authorization request.

Your suggestion that the notice would be more effective if it were provided after the permittee receives approval for their temporary authorization request is counter to our policy of providing early public participation opportunities. Instead, it might be useful for facilities to provide an additional notice to persons on the mailing list of the temporary authorization decision. RCRA facilities in many cases are finding that going beyond the minimum public participation requirements makes good business sense.

If you have any further questions on RCRA permitting topics, please feel free to

contact Vernon Myers of my staff at (703) 308-8660.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

Solutia Inc.
FM. 2917
PO Box 711
Alvin, Texas 77512
Tel 281-581-2161

March 24, 1998

**CERTIFIED MAIL - Z197212095
RETURN RECEIPT REQUESTED**

Ms. Elizabeth Cotsworth, Acting Director
US EPA - Office of Solid Waste
401 M Street SW

Washington. D.C. 20460

SUBJECT: SOLUTIA INC. - CHOCOLATE BAYOU PLANT
ISW REG.: 30138
HW PERMIT: 50 189-001
EPA ID: TXD001700806

Dear Ms. Cotsworth:

This letter is to propose a modification to the language used for provision 40 CFR 270.42(e)(2)(iii) under the title Temporary Authorizations.

As written, the permittee must send notice "*within seven days of submission of the authorization request.*" However, since the Director may deny (40 CFR 270.42(e)(3)) the request for temporary authorization, the effort of notification becomes useless. It would seem more effective to provide the required notification "*within seven days of receipt of the approval from the Director.*"

We continue to appreciate your support in our efforts to effectively manage our industrial solid waste program. If you have any questions,-please contact me by phone 281.228.4313, FAX 281.228.4317 or EMail "jaboix@solutia.com".

Sincerely,

Jose A. Boix
Senior Environmental Specialist
Formerly the chemical businesses of Monsanto Company