



**Matthew Rodriguez**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Miriam Barcellona Ingenito  
Acting Director  
700 Heinz Avenue  
Berkeley, California 94710-2721



**Edmund G. Brown Jr.**  
Governor

October 13, 2014

### **CERTIFIED MAIL**

Mr. Bradley Angel  
Greenaction for Health and Environmental Justice  
559 Ellis Street  
San Francisco, California 94109

**ORDER DENYING PETITION FOR REVIEW OF PERMIT MODIFICATION DECISION  
FOR CHEMICAL WASTE MANAGEMENT, INC., KETTLEMAN HILLS FACILITY,  
KINGS COUNTY, CALIFORNIA, EPA ID. NO. CAT000646117**

Dear Mr. Angel:

The Department of Toxic Substances Control (DTSC) has completed analysis of your petition for review (appeal), dated June 23, 2014, of the permit modification decision issued by DTSC on May 21, 2014, for the Kettleman Hills Facility. For the reasons set forth in the attached Order, Docket Number PAT-FY14/15-03. I am denying your petition for review and lifting the stay of the permit modification decision. The Order constitutes DTSC's final permit decision and is effective as of the date of this letter.

If you have any further appeal procedural questions, please contact me at [Barbara.cook@dtsc.ca.gov](mailto:Barbara.cook@dtsc.ca.gov) or email us at [appeals@dtsc.ca.gov](mailto:appeals@dtsc.ca.gov).

Sincerely,

Barbara J. Cook, P.E.  
Permit Appeals Officer

Attachment

CERTIFIED MAIL NO.: 7012 0470 0000 6670 1339

cc: See next page

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

4 In the Matter of: ) Docket No.: PAT-FY 14/15-03  
5 )  
6 CHEMICAL WASTE MANAGEMENT, ) ORDER DENYING PETITION FOR  
7 INC., KETTLEMAN HILLS FACILITY ) REVIEW  
8 35251 Old Skyline Road )  
9 Kettleman City, California ) California Code of Regulations,  
10 ) Title 22, Section 66271.18(c)  
11 EPA Id. No.: CAT 000 646 117

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12 **I. INTRODUCTION**

13 On May 21, 2014, the Department of Toxic Substances Control (DTSC) issued a  
14 Hazardous Waste Facility Permit decision approving a Class 3 permit modification  
15 request (Permit) for the Chemical Waste Management, Inc. (CWM), Kettleman Hills  
16 Facility (KHF or Facility). The Facility is located at 35251 Old Skyline Road, Kettleman  
17 City, California.

18 On June 23, 2014, Mr. Bradley Angel, Executive Director, Greenaction for Health  
19 and Environmental Justice (Petitioner) filed a Petition for Review (Appeal or Petition).

20 Pursuant to California Code of Regulations, title 22, section 66271.14,  
21 subdivision (b)(2), the Permit decision has been stayed pending determination whether  
22 the Appeal meets the criteria for granting a review. In the interim, CWM continues to be  
23 authorized to operate the Facility under the terms and conditions of its Hazardous  
24 Waste Facility Permit 02-SAC-03 issued with an effective date of June 16, 2003, as  
25 modified March 5, 2009.

26 **II. JURISDICTION**

27 The Department has jurisdiction over hazardous waste facility permits and the  
28 imposition of conditions on such permits pursuant to the California Health and Safety

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

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

### 9 **III. BACKGROUND**

#### 10 **A. FACILITY DESCRIPTION:**

11 The Facility is described in the modified Hazardous Waste Facility Permit,  
12 dated May 21, 20014, as follows:

13 "The Chemical Waste Management, Inc. Kettleman Hills Facility is a  
14 commercial hazardous waste treatment, storage and disposal facility. The  
15 Facility contains 1600 contiguous acres, approximately 696.5 of which  
16 have been approved for hazardous waste activity. The Facility accepts  
17 solid, semi-solid, and liquid hazardous and extremely hazardous wastes, It  
18 may not accept Class 1, Division 1.1 or 1.2, or forbidden explosives (Code  
19 of Regulations, title 49, subchapter C, part 173, section 50); compressed  
20 gas cylinders (excluding aerosol cans); radioactive waste that is not  
21 exempt from regulation and licensing or is not expressly authorized for  
22 disposal under the Radiation Control Law, chapter 8 (commencing with  
23 section 114960) of part 9 of division 104 of the Health and Safety Code, or  
24 any successor statute that may replace the Radiation Control Law, or is  
25 prohibited from the disposal under the article 1 commencing with section  
26 114705) of chapter 5 of the part 9 of division 104 of the Health and Safety  
27 Code or any successor statue that may replace article 1, or is prohibited  
28 from disposal by any government agency; biological agents or infectious  
wastes. The Facility also has a permit, issued by the California Integrated  
Waste Management Board, to receive municipal/solid wastes into the  
converted landfill Unit B-19. 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."

1  
2 **B. PERMIT DECISION**

3 On December 12, 2008, CWM submitted a permit modification request to allow  
4 CWM to increase the footprint of Landfill B-18 from 53 to 67 acres, increase the total  
5 capacity of B-18 from 10,700,000 to 15,600,000 cubic yards, increase the maximum  
6 elevation of B-18 from 965 to 1018 feet above mean sea level, add a second surface  
7 water run-off containment basin, extend the side slope liner system with a 3-foot clay  
8 thickness for the secondary composite liner, and alter of the final closure configuration  
9 to include 25-foot wide benches at a maximum vertical interval of 50 feet with a 3.5H:1V  
10 slope between benches. The administrative record provided to the Permit Appeals  
11 Officer by DTSC shows that the public notice (English and Spanish) of the permit  
12 modification request was mailed to the Facility mailing list by CWM on or about January  
13 14, 2009. The public notice initiated a 60-day public comment period and a public  
14 meeting was held on February 10, 2009. The public notice of the permit modification  
15 request was also published in the *Hanford Sentinel*.

16 DTSC issued a draft permit modification approval on June 13, 2013, and issued  
17 public notices to the community via the mailing list on July 1, 2013, opening a 60-day  
18 comment period. The Notice was also published in the *Hanford Sentinel* on July 2,  
19 2013. The Spanish version of the Notice was published in the *Vida en el Valle* on July  
20 2, 2013. The Notices stated that the permit modification documents are available at the  
21 Kings County Library, Kettleman City Branch, Kings County Library, Avenal Branch, and  
22 Kings County Library, Hanford Branch and also on DTSC's website,  
23 [www.envirostor.dtsc.ca.gov](http://www.envirostor.dtsc.ca.gov).

24 On August 8, 2013, DTSC mailed a second notice postponing the date for public  
25 hearing to September 18, 2013 and extending the comment period to October 25, 2013.  
26 The public hearing occurred on September 18, 2013.

27 On May 21, 2014, DTSC gave notice of a permit modification decision in English  
28 and Spanish. DTSC released its Response to Comments and approved the permit

1 modification. DTSC in these notices discussed the appeal period and how appeals  
2 could be filed. DTSC approved the permit modification to the CWM Kettleman Hills  
3 Facility.

4 DTSC prepared an Addendum to the Subsequent Environmental Impact Report  
5 for this permit modification request, in compliance with the California Environmental  
6 Quality Act (CEQA). DTSC prepared a CEQA Findings of Fact Sheet with Statement of  
7 Overriding Considerations, issued in May 2014.

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 permit modification decision ended on June 23, 2014. Mr. Bradley Angel,  
12 Executive Director, Greenaction for Health and Environmental Justice (Petitioner) filed  
13 an Appeal (Petition for Review) on June 23, 2014.

14 The permit modification decision was stayed on June 27, 2014, pursuant to  
15 California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), until the  
16 Permit Appeals Officer completes review of the appeal and determines which, if any, of  
17 the issues raised in the appeal meet the criteria set forth in California Code of  
18 Regulations, title 22, section 66271.18, for granting review. On June 27, 2014, CWM  
19 KHF, the Office of Permitting, and the Petitioner were notified of the stay.  
20

21 **IV. STANDARD OF REVIEW**

22 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
23 provides that any person who filed comments, or participated in the public hearing on a  
24 draft permit decision, during the public comment period for the draft permit decision,  
25 may petition the Department to review any condition of the final permit decision to the  
26 extent that the issues raised in the petition for review were also raised during the public  
27 comment period for the draft permit decision, including the public hearing. In addition,  
28



1 any person who did not file comments or participate in the public hearing on the draft  
2 permit may petition the Department for review of the final permit decision, but only with  
3 respect to those changes in the final permit decision from the draft permit decision.

4 California Code of Regulations, title 22, sections 66271.18, subdivision (a) also  
5 provides, in pertinent part, that:

6  
7 The petition shall include a statement of the reasons supporting that  
8 review, including a demonstration that any issues being raised were raised  
9 during the public comment period (including any public hearing) to the  
10 extent required by these regulations and when appropriate, a showing that  
11 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  
16 extent to which issues are required to be raised during the public comment  
17 period for a draft Permit decision. Specifically, this section states that:

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

24 The Petitioners submitted comments on the draft permit during the public  
25 comment period. Therefore, Petitioners have standing to petition for review of  
26 any issues raised during the public comment period for the draft permit decision.

27 Several issues were raised in the Petition that relate to CEQA. CEQA provides a  
28 separate judicial appeal process to resolve disputes concerning compliance with CEQA.  
The permit appeal process is not the proper forum to raise CEQA issues, as the  
regulation governing permit appeals provides that petitions for review may request

1 review of permit conditions only. Therefore, any appeals of permit conditions that  
2 pertain to CEQA will not be addressed.

### 3 **V. FINDINGS**

4 The Petition for Review contains seventeen (17) Appeal Comments, identified as  
5 Appeal Comment 1 through 17. DTSC responds to the Appeal Comments as they  
6 appear in the Petition.

#### 7 **Appeal Comment 1:**

8 DTSC's permit approval violates state and federal civil rights laws. (Pages 5 to 17 of the  
9 Petition)

- 10 a. DTSC's approval of the KHF expansion will violate California  
11 Government Code section 11135.
- 12 b. DTSC's approval of the KHF expansion will violate California Regulations by  
13 perpetuating King County's discrimination.
- 14 c. DTSC's approval of the KHF expansion will violate California regulations by  
15 discriminating against Kettleman City residents in permitting the selection of  
16 the site of the KHF expansion.
- 17 d. DTSC violations of the California Health & Safety Code have led to pervasive  
18 patterns of discriminatory siting statewide.
- 19 e. DTSC's approval of the KHF expansion will violate Title VI of the Civil Rights  
20 Act of 1964.
- 21 f. DTSC's approval of the KHF expansion will violate the Equal Protection  
22 Clause.

#### 23 **Response:**

24 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
25 However, Condition 2(B) does not directly address civil rights issues. To the extent that  
26 parts of this Appeal Comment appear to pertain to the CEQA process for this project,  
27 CEQA provides a separate judicial appeal process to resolve disputes concerning  
28 compliance with CEQA. Pursuant to CCR 66270.41, only permit conditions that are

1 subject to the permit modification are open to review. Because General Condition 2(B)  
2 is part of the original permit and not subject to the permit modification, it is not open to  
3 review. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
4 that the Department should grant review of this issue pursuant to the criteria set forth in  
5 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
6 reason, the Department denies the petition for review of this Appeal Comment.

7  
8 DTSC takes civil rights matters seriously. However, this appeals process is not the right  
9 forum to address civil rights matters. Additionally, as stated in the Response to  
10 Comments, these complaints claim a pattern of discrimination based on the siting of  
11 hazardous waste facilities, a process over which DTSC does not have control. For these  
12 reasons, the Department denies the petition for review of this Appeal Comment.

13  
14 **Appeal Comment 2:**

15 DTSC lacks criteria to make permit decisions. (Pages 17 to 19 of the Petition)

16 **Response:**

17 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
18 However, Condition 2(B) does not requires criteria be utilized to make a permit  
19 modification decision. DTSC followed the guidelines set forth in the Health and Safety  
20 Code and in its regulations for approving a hazardous waste facility permit modification.  
21 Pursuant to CCR 66270.41, only permit conditions that are subject to the permit  
22 modification are open to review. Because General Condition 2(B) is part of the original  
23 permit and not subject to the permit modification, it is not open to review. Therefore,  
24 DTSC finds that Petitioner has failed to meet the burden to establish that the  
25 Department should grant review of this issue pursuant to the criteria set forth in  
26 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
27 reason, the Department denies the petition for review of this Appeal Comment.

1  
2 **Appeal Comment 3:**

3 DTSC's decision violates its Environmental Justice policies. (Pages 19 to 27 of the  
4 Petition)

- 5 a. DTSC's "Environmental Justice Review" was flawed, inadequate and biased  
6 towards CWM.  
7 b. DTSC fails to minimize cumulative impacts to Kettleman City as required by  
8 DTSC's Environmental Justice Policies  
9 c. DTSC ignores Cal EPA's CalEnviroScreen Cumulative Impact Methodology  
10 which proves Kettleman City residents are highly vulnerable and at-risk from  
11 additional pollution

12 **Response:**

13 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
14 However, Condition 2(B) does not refer to nor does it require review of DTSC's  
15 environmental justice policies to make a permit modification decision. Pursuant to CCR  
16 66270.41, only permit conditions that are subject to the permit modification are open to  
17 review. Because General Condition 2(B) is part of the original permit and not subject to  
18 the permit modification, it is not open to review. Therefore, DTSC finds that Petitioner  
19 has failed to meet the burden to establish that the Department should grant review of  
20 this issue pursuant to the criteria set forth in California Code of Regulations, title 22,  
21 section 66271.18, subdivision (a). For this reason, the Department denies the petition  
22 for review of this Appeal Comment.

23  
24 In its Response to Comments, DTSC states that it concluded that the facility is not  
25 causing health impacts to Kettleman, based on analyzed investigations and studies.  
26 DTSC added permit conditions regarding truck age to remedy health impacts and  
27 environmental justice concerns. DTSC takes environmental justice matters seriously.  
28 However, this appeal process is not the right forum to address environmental justice

1 matters. For this reason, the Department denies the petition for review of this Appeal  
2 Comment.

3  
4 **Appeal Comment 4:**

5 DTSC should deny the permit based on CWM's compliance history. (Pages 27 to 32 of  
6 the Petition)

- 7 a. DTSC should deny the permit based on CWM's Repeating or  
8 Recurring Pattern of Violations and Noncompliance, in violation of  
9 Health & Safety Code Section 25186.
- 10 b. DTSC should deny the permit based on CWM's Violations of its Permit, in  
11 violation of 22 CCR Section 66270.43.
- 12 c. DTSC did not conduct a comprehensive compliance review.

13 **Response:**

14 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
15 DTSC has exercised its discretion and decided not to revoke CWM's permit. Pursuant  
16 to CCR 66270.41, only permit conditions that are subject to the permit modification are  
17 open to review. Because General Condition 2(B) is part of the original permit and not  
18 subject to the permit modification, it is not open to review. Therefore, DTSC finds that  
19 Petitioner has failed to meet the burden to establish that the Department should grant  
20 review of this issue pursuant to the criteria set forth in California Code of Regulations,  
21 title 22, section 66271.18, subdivision (a). For this reason, the Department denies the  
22 petition for review of this Appeal Comment.

23 DTSC carefully reviewed the entire compliance record for the Facility before making this  
24 decision. Records reviewed included the Regional Water Quality Control Board, San  
25 Joaquin Valley Air Pollution Control District, and the Kings County Environmental Health  
26 Department records and the last fifteen (15) years of the Toxic Substances Control Act  
27 (TSCA) compliance history for the Facility. The Facility's compliance history with these  
28

1 other agencies does not show a recurring pattern of non-compliance nor represent a  
2 threat of harm to human health or the environment. None of the Facility's violations,  
3 including the most recent failure to report spills, threatened public health or the  
4 environment. CWM has corrected all violations and DTSC's review determined that the  
5 Facility is able and willing to take steps to ensure that it operates in full compliance with  
6 its permit conditions. In its Response to Comments, DTSC states that it does not  
7 consider CWM a serial violator, nor does it consider any of the previous violations to  
8 have posed a threat to human health or safety or the environment. DTSC also states  
9 that the facility's compliance history does not show a clear unwillingness or inability to  
10 comply with environmental laws. Given these factors, DTSC has decided not to revoke  
11 CWM's permit.

12  
13 **Appeal Comment 5:**

14 The proposed expansion meets other criteria for permit denial. (Pages 32 to 35 of the  
15 Petition)

- 16 a. Misrepresentation of relevant facts.  
17 b. Permitted activity would endanger public health and cannot be adequately  
18 regulated.

19 **Response:**

20 While this Appeal Comment presents concerns regarding Part V. Special Conditions  
21 that Apply to All of the Facility's Units, Special Condition 6, Heavy-duty diesel trucks, it  
22 does not request a review of said permit condition. Therefore, DTSC finds that  
23 Petitioner has failed to meet the burden to establish that the Department should grant  
24 review of this issue pursuant to the criteria set forth in California Code of Regulations,  
25 title 22, section 66271.18, subdivision (a). For this reason, the Department denies the  
26 petition for review of this Appeal Comment.

1 This Appeal Comment asserts that the Facility misrepresented facts related to 72 spills  
2 at the Facility such that permit denial would be appropriate. Although Health and Safety  
3 Code section 25186 and California Code of Regulations, title 22, section 66270.43 allow  
4 for the revocation and denial of permits, DTSC has exercised its discretion and decided  
5 that these spills are not the types of violations that they would consider denying this  
6 permit request for, as they do not result in a threat to human health or the environment.  
7 Neither citation requires the denial of a permit under these circumstances. To the  
8 contrary, they allow DTSC to exert its discretion to not exercise such action.

9  
10 This Appeal Comment states that the expansion of the KHF would endanger public  
11 health and cannot be adequately regulated. The Appeal Comment appears to  
12 reference permit condition Part V (6) when it states, as an example, that the use of  
13 trucks no older than 2007 would not eliminate pollution from diesel vehicles. However,  
14 it does not provide any supporting information as to how it reached this conclusion or  
15 why it considers this an example of a permit condition that cannot be adequately  
16 regulated.

17  
18 The diesel emissions reduction, Permit Condition Part V (6), is not a mitigation  
19 measure. This permit condition could reduce NO<sub>x</sub> emissions by as much as 165,000  
20 pounds per year and PM<sub>10</sub> emissions by as much as 7000 pounds per year in Kettleman  
21 City, Avenal and the San Joaquin Valley Air Basin. DTSC considers these to be  
22 significant reductions to diesel truck emissions that will occur as a result of this permit  
23 condition being placed in effect. For these reasons, the Department denies the Petition  
24 for Review of the Appeal Comment.

25 **Appeal Comment 6:**

26 DTSC improperly relied on the State's scientifically flawed "Environmental Exposure"  
27 Study to incorrectly conclude that Chemical Waste Management Facility could not have  
28 caused the birth defects plaguing Kettleman City. (Pages 35 to 37 of the Petition)

1 **Response:**

2 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
3 DTSC finds that Petitioner has failed to meet the burden to establish that the  
4 Department should grant review of this issue pursuant to the criteria set forth in  
5 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
6 reason, the Department denies the petition for review of this Appeal Comment.  
7

8 In its Response to Comments, DTSC addresses the concerns with the birth defect  
9 study, noting that although the study was inconclusive as to the cause of the birth  
10 defects, enough evidence existed to exclude facility emissions as the cause. DTSC  
11 also notes the study specifically addressed the potential for dissipation of PCBs, finding  
12 that concentrations of the PCBs were unlikely to have changed in the time since the  
13 spills occurred and when the study took place.  
14

15 **Appeal Comment 7:**

16 DTSC improperly failed to conduct biomonitoring. (Pages 37 to 38 of the Petition)

17 **Response:**

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

24 In its Response to Comments, DTSC notes that biomonitoring, although useful, would  
25 not address the question of whether any chemicals found could be attributed to the  
26 Kettleman Hills Facility. It would not provide new, helpful information and thus was  
27 declined.  
28



1 **Appeal Comment 8:**

2 DTSC should have prepared a Supplemental or Subsequent EIR. (Pages 38 to 40 of  
3 the Petition)

4 **Response:**

5 This Appeal Comment does not request review of a condition of the Permit. This Appeal  
6 Comment pertains to the CEQA process for this project. CEQA provides a separate  
7 judicial appeal process to resolve disputes concerning compliance with CEQA.

8 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the  
9 Department should grant review of this issue pursuant to the criteria set forth in  
10 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
11 reason, the Department denies the petition for review of this Appeal Comment.

12  
13 **Appeal Comment 9:**

14 New information which was not known and could not have been known at the time of  
15 EIR certification was available. (Page 40 of the Petition)

16 **Response:**

17 This Appeal Comment does not request review of a condition of the Permit. This Appeal  
18 Comment pertains to the CEQA process for this project. CEQA provides a separate  
19 judicial appeal process to resolve disputes concerning compliance with CEQA.

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

24  
25 **Appeal Comment 10:**

26 CalEnviroScreen identifies significant new information on the vulnerability of Kettleman  
27 City residents. (Pages 40 to 41 of the Petition)

1 **Response:**

2 This Appeal Comment does not request review of a condition of the Permit. This Appeal  
3 Comment pertains to the CEQA process for this project. CEQA provides a separate  
4 judicial appeal process to resolve disputes concerning compliance with CEQA.

5 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the  
6 Department should grant review of this issue pursuant to the criteria set forth in  
7 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
8 reason, the Department denies the petition for review of this Appeal Comment.

9  
10 **Appeal Comment 11:**

11 Substantial changes in the circumstances under which the project is taken require  
12 additional CEQA analysis. (Pages 41 to 45 of the Petition)

- 13 a. The recent Valley Fever epidemic in Kings County is a changed  
14 circumstance that may lead to new or more sever impacts from the KHF  
15 expansion.
- 16 b. The Facility receives far fewer than the 400 trucks estimated in the EIR.
- 17 c. The addition of pollution from related projects is a changed circumstance that  
18 may lead to new or more severe cumulative impacts than previously  
19 analyzed.

20 **Response:**

21 This Appeal Comment does not request review of a condition of the Permit. This Appeal  
22 Comment pertains to the CEQA process for this project. CEQA provides a separate  
23 judicial appeal process to resolve disputes concerning compliance with CEQA.

24 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the  
25 Department should grant review of this issue pursuant to the criteria set forth in  
26 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
27 reason, the Department denies the petition for review of this Appeal Comment.

1 **Appeal Comment 12:**

2 DTSC's CEQA findings are clearly erroneous. (Pages 45 to 48 of the Petition)

- 3 a. DTSC's CEQA findings are based on an improper baseline.  
4 b. DTSC's Statement of Overriding Considerations is clearly erroneous and  
5 cannot support project approval.

6 **Response:**

7 This Appeal Comment does not request review of a condition of the Permit. This Appeal  
8 Comment pertains to the CEQA process for this project. CEQA provides a separate  
9 judicial appeal process to resolve disputes concerning compliance with CEQA.

10 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the  
11 Department should grant review of this issue pursuant to the criteria set forth in  
12 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
13 reason, the Department denies the petition for review of this Appeal Comment.

14  
15 **Appeal Comment 13:**

16 DTSC fails to analyze impacts from the whole of the project. (Pages 48 to 49 of the  
17 Petition)

18 **Response:**

19 This Appeal Comment does not request review of a condition of the Permit. This Appeal  
20 Comment pertains to the CEQA process for this project. CEQA provides a separate  
21 judicial appeal process to resolve disputes concerning compliance with CEQA.

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

1 **Appeal Comment 14:**

2 DTSC's permit conditions are inadequate to protect public health and the environment.  
3 (Pages 49 to 50 of the Petition)

4 **Response:**

5 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
6 DTSC finds that Petitioner has failed to meet the burden to establish that the  
7 Department should grant review of this issue pursuant to the criteria set forth in  
8 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
9 reason, the Department denies the petition for review of this Appeal Comment.

10  
11 The Appeal Comment states that the permit conditions are inadequate to protect public  
12 health and the environment. However, it does not provide any supporting information  
13 as to how it reached this conclusion nor why it considers the permit conditions  
14 inadequate. As discussed in Appeal Comment 4 above, DTSC has reviewed the  
15 compliance history of CWM and none of the Facility's violations, including the most  
16 recent failure to report spills, threatened public health or the environment. CWM has  
17 corrected all violations and DTSC's review determined that the Facility is able and  
18 willing to take steps to ensure that it operates in full compliance with its permit  
19 conditions.

20  
21 DTSC has concluded that the KHF is not causing any health impacts to Kettleman City  
22 residents and that the proposed expansion operated in accordance with DTSC's permit  
23 conditions are protective of public health and the environment, which is the basis for the  
24 permit decision. For these reasons, the Department denies the Petition for Review of  
25 the Appeal Comment.

1 **Appeal Comment 15:**

2 State is breaking its promise to reduce pollution in Kettleman City. (Page 50 of the  
3 Petition)

4 **Response:**

5 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
6 DTSC finds that Petitioner has failed to meet the burden to establish that the  
7 Department should grant review of this issue pursuant to the criteria set forth in  
8 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
9 reason, the Department denies the petition for review of this Appeal Comment.  
10

11 **Appeal Comment 16:**

12 Defective public notice and invalid public comment period-DTSC failed and refused to  
13 provide the legally required notice to Greenaction, Kettleman City residents and your  
14 mandatory notice list for the Chemical Waste Management Kettleman Hills Facility.  
15 (Pages 51 to 53 of the Petition)

- 16 a. DTSC's initial notice defect.
- 17 b. DTSC failed to notify residents & contact list where to submit written  
18 comments
- 19 c. July 31, 2013 DTSC "Open House" was improperly noticed, and was biased  
20 in favor of CWM due to inaccurate and misleading "information" and  
21 problematic meeting format:
- 22 a. Defective notice for open house
- 23 b. Meeting format
- 24 c. Misleading and omitted "information"
- 25 d. Four overlapping public comment periods undermine public's ability to fully  
26 comment and participate in the DTSC permit process.

27 **Response:**

28

1 This Appeal Comment does not request review of a condition of the Permit. Therefore,  
2 DTSC finds that Petitioner has failed to meet the burden to establish that the  
3 Department should grant review of this issue pursuant to the criteria set forth in  
4 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
5 reason, the Department denies the petition for review of this Appeal Comment.  
6

7 DTSC considers community involvement and public participation to be an integral and  
8 invaluable part of its process. To that end, DTSC mailed Community Notices on July 1,  
9 2013 and August 8, 2013 which promoted the submittal of public comments. DTSC  
10 extended the public comment period from 45 to 78 days to ensure that any interested  
11 parties had the opportunity to participate in this process. An Open House, a Drop in  
12 Session to talk to DTSC staff and a public hearing were all scheduled as part of the  
13 public participation. DTSC satisfied the public notice requirements. For these reasons,  
14 the Department denies the Petition for Review of the Appeal Comment.

15 **Appeal Comment 17:**

16 DTSC's description of key permit issues is false and misleading. (Pages 53 to 54 of the  
17 Petition)

18 **Response:**

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


25 It appears that Petitioner is referring to DTSC's July 31, 2013 "Open House" and its  
26 concerns regarding information provided at that Open House. The concerns do not  
27  
28

1 appear related to the permit conditions nor the permit decision. For this reason, the  
2 Department denies the petition for review of this Appeal Comment.

3  
4 **VI. ORDER**

5 For the reasons set forth above, the Permit Appeals Officer denies the Petition  
6 for Review. The stay of the Class 3 Permit Modification Request is hereby vacated and  
7 all provisions of the Class 3 Permit Modification Request issued by DTSC on May 21,  
8 2014 shall be effective upon the issuance date of this Order.

9  
10  
11 Dated: 10/13/2014

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14 \_\_\_\_\_  
15 Barbara J. Cook, P.E.  
16 Permit Appeals Officer  
17 Department of Toxic Substances Control  
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