



**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**

Ms. Ingrid Brostrom  
Center on Race, Poverty & the Environment  
1999 Harrison Street, Suite 650  
Oakland, California 94612

**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 Ms. Brostrom:

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-FY14/15-02. 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 1322

cc: See next page

Ms. Brostrom  
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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-FY14/15-02  
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

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 (Permit) for the Chemical Waste Management, Inc. (CWM), Kettleman Hills Facility  
16 (KHF or Facility). The Facility is located at 35251 Old Skyline Road, Kettleman City,  
17 California.

18 On June 23, 2014, Ms. Ingrid Brostrom, Senior Attorney, Center on Race,  
19 Poverty & the Environment, also on behalf of El Pueblo para el Aire y Agua Limpio  
20 (Petitioners), filed a Petition for Review<sup>1</sup> (Appeal or Petition).

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

27 <sup>1</sup> The El Pueblo Petition filed with DTSC contained a 72 page Petition and Appendices. An e-mail was  
28 sent to Ms. Brostrom on June 25, 2014 describing the Appendices received. The Appendices missing  
from the submittal were Appendices A, E, F, and Q. The missing documents have not been submitted.

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## **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.

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.

## **III. BACKGROUND**

14

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

15 The Facility is described in the modified Hazardous Waste Facility Permit,  
16 dated May 21, 2014, as follows:

17 "The Chemical Waste Management, Inc. Kettleman Hills Facility is a  
18 commercial hazardous waste treatment, storage and disposal facility. The  
19 Facility contains 1600 contiguous acres, approximately 696.5 of which  
20 have been approved for hazardous waste activity. The Facility accepts  
21 solid, semi-solid, and liquid hazardous and extremely hazardous wastes. It  
22 may not accept Class 1, Division 1.1 or 1.2, or forbidden explosives (Code  
23 of Federal Regulations, title 49, subchapter C, part 173, section 50);  
24 compressed gas cylinders (excluding aerosol cans); radioactive waste that  
25 is not exempt from regulation and licensing or is not expressly authorized  
26 for disposal under the Radiation Control Law, chapter 8 (commencing with  
27 section 114960) of part 9 of division 104 of the Health and Safety Code, or  
28 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 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

1 evaporation in three surface impoundments; disposal into one hazardous  
2 waste landfill; PCB draining and flushing; PCB disposal and storage; and  
3 stabilization, solidification and storage of bulk and drummed wastes. The  
4 Facility is also permitted to construct and operate a neutralization/filtration  
unit and eight one-million gallon above ground evaporation tanks.”

5 **B. PERMIT DECISION**

6 On December 12, 2008, CWM submitted a permit modification request to allow  
7 CWM to increase the footprint of Landfill B-18 from 53 to 67 acres, increase the total  
8 capacity of B-18 from 10,700,000 to 15,600,000 cubic yards, increase the maximum  
9 elevation of B-18 from 965 to 1018 feet above mean sea level, add a second surface  
10 water run-off containment basin, extend the side slope liner system with a 3-foot clay  
11 thickness for the secondary composite liner, and alter of the final closure configuration  
12 to include 25-foot wide benches at a maximum vertical interval of 50 feet with a 3.5H:1V  
13 slope between benches. The administrative record provided to the Permit Appeals  
14 Officer by DTSC shows that the public notice (English and Spanish) of the permit  
15 modification request was mailed to the Facility mailing list by CWM on or about January  
16 14, 2009. The public notice initiated a 60-day public comment period and a public  
17 meeting was held on February 10, 2009. The public notice of the permit modification  
18 request was also published in the *Hanford Sentinel*.

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

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

4 On May 21, 2014 DTSC gave notice of a permit modification decision in English  
5 and Spanish. DTSC released its Response to Comments and approved the permit  
6 modification. DTSC in these notices discussed the appeal period and how appeals  
7 could be filed. DTSC approved the permit modification to the CWM Kettleman Hills  
8 Facility.

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

13 **C. PERMIT APPEAL PROCESS**

14 Pursuant to California Code of Regulations, title 22, section 66271.18,  
15 subdivision (a), the period specified in the Notice for filing a petition for review of the  
16 permit modification decision ended on June 23, 2014. Ms. Ingrid Brostrom, Senior  
17 Attorney, Center on Race, Poverty & the Environment, also on behalf of El Pueblo para  
18 el Aire y Agua Limpio (Petitioners, or El Pueblo), filed an Appeal (Petition for Review) on  
19 June 23, 2014.

20 The permit modification decision was stayed on June 27, 2014, pursuant to  
21 California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), until the  
22 Permit Appeals Officer completes review of the appeal and determines which, if any, of  
23 the issues raised in the appeal meet the criteria set forth in California Code of  
24 Regulations, title 22, section 66271.18, for granting review. On June 27, 2014, CWM  
25 KHF, the Office of Permitting, and the Petitioner were notified of the stay.  
26  
27  
28



1 **IV. STANDARD OF REVIEW**

2 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
3 provides that any person who filed comments, or participated in the public hearing on a  
4 draft permit decision, during the public comment period for the draft permit decision,  
5 may petition the Department to review any condition of the final permit decision to the  
6 extent that the issues raised in the petition for review were also raised during the public  
7 comment period for the draft permit decision, including the public hearing. In addition,  
8 any person who did not file comments or participate in the public hearing on the draft  
9 permit may petition the Department for review of the final permit decision, but only with  
10 respect to those changes in the final permit decision from the draft permit decision.

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

13  
14 The petition shall include a statement of the reasons supporting that  
15 review, including a demonstration that any issues being raised were raised  
16 during the public comment period (including any public hearing) to the  
17 extent required by these regulations and when appropriate, a showing that  
18 the condition in question is based on:

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

22 California Code of Regulations, title 22, section 66271.12 specifies the  
23 extent to which issues are required to be raised during the public comment  
24 period for a draft Permit decision. Specifically, this section states that:

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

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

4  
5 Several issues were raised in the Petition that relate to CEQA. CEQA provides a  
6 separate judicial appeal process to resolve disputes concerning compliance with CEQA.  
7 The permit appeal process is not the proper forum to raise CEQA issues, as the  
8 regulation governing permit appeals provides that petitions for review may request  
9 review of permit conditions only. Therefore, any appeals of permit conditions that  
10 pertain to CEQA will not be addressed.

## 11 **V. FINDINGS**

12 The Petition for Review contains sixteen (16) Appeal Comments, identified as  
13 Appeal Comments 1 through 16. DTSC responds to the Appeal Comments as they  
14 appear in the Petition.

### 15 **Appeal Comment 1:**

16 DTSC's permit approval violates state and federal civil rights laws. (Pages 3 to 18 of the  
17 Petition)

- 18 a. DTSC's approval of the KHF expansion will violate California  
19 Government Code section 11135.
- 20 b. DTSC's approval of the KHF expansion will violate California Regulations by  
21 perpetuating King County's discrimination.
- 22 c. DTSC's approval of the KHF expansion will violate California regulations by  
23 discriminating against Kettleman City residents in permitting the selection of  
24 the site of the KHF expansion.
- 25 d. DTSC violations of the California Health & Safety Code have led to pervasive  
26 patterns of discriminatory siting statewide.
- 27
- 28

- 1 e. DTSC's approval of the KHF expansion will violate Title VI of the Civil Rights  
2 Act of 1964.
- 3 f. DTSC's approval of the KHF expansion will violate the Equal Protection  
4 Clause.

5 **Response:**

6 This Appeal Comment broadly requests review of General Conditions 2(B) and 3 of the  
7 Permit. However, Condition 2(B) does not directly address civil rights issues. To the  
8 extent that parts of this Appeal Comment appear to pertain to the CEQA process for this  
9 project, CEQA provides a separate judicial appeal process to resolve disputes  
10 concerning compliance with CEQA. Pursuant to CCR 66270.41, only permit conditions  
11 that are subject to the permit modification are open to review. Because General  
12 Condition 2(B) is part of the original permit and not subject to the permit modification, it  
13 is not open to review. Therefore, DTSC finds that Petitioner has failed to meet the  
14 burden to establish that the Department should grant review of this issue pursuant to  
15 the criteria set forth in California Code of Regulations, title 22, section 66271.18,  
16 subdivision (a). For this reason, the Department denies the petition for review of this  
17 Appeal Comment.

18

19 DTSC takes civil rights matters seriously. However, this appeal process is not the right  
20 forum to address civil rights matters. Additionally, as stated in the Response to  
21 Comments, these complaints claim a pattern of discrimination based on the siting of  
22 hazardous waste facilities, a process over which DTSC does not have control. For  
23 these reasons, the Department denies the petition for review of this Appeal Comment.

24

25 **Appeal Comment 2:**

26 DTSC lacks criteria to make permit decisions. (Pages 18 to 20 of the Petition)

27 **Response:**

1 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
2 However, Condition 2(B) requires criteria be utilized to make a permit modification  
3 decision. DTSC followed the guidelines set forth in the Health and Safety Code and in  
4 its regulations for approving a hazardous waste facility permit modification. Pursuant to  
5 CCR 66270.41, only permit conditions that are subject to the permit modification are  
6 open to review. Because General Condition 2(B) is part of the original permit and not  
7 subject to the permit modification, it is not open to review. Therefore, DTSC finds that  
8 Petitioner has failed to meet the burden to establish that the Department should grant  
9 review of this issue pursuant to the criteria set forth in California Code of Regulations,  
10 title 22, section 66271.18, subdivision (a). For this reason, the Department denies the  
11 petition for review of this Appeal Comment.  
12

13 **Appeal Comment 3:**

14 DTSC's decision violates its Environmental Justice policies. (Pages 20 to 24 of the  
15 Petition)

16 a. Precautionary Principle

17 b. DTSC fails to comply with their Environmental Justice Policies cumulative  
18 impacts

19 **Response:**

20 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
21 However, Condition 2(B) does not refer to nor does it require review of DTSC's  
22 environmental justice policies to make a permit modification decision. Pursuant to CCR  
23 66270.41, only permit conditions that are subject to the permit modification are open to  
24 review. Because General Condition 2(B) is part of the original permit and not subject to  
25 the permit modification, it is not open to review. Therefore, DTSC finds that Petitioner  
26 has failed to meet the burden to establish that the Department should grant review of  
27 this issue pursuant to the criteria set forth in California Code of Regulations, title 22,  
28

1 section 66271.18, subdivision (a). For this reason, the Department denies the petition  
2 for review of this Appeal Comment.

3  
4 In its Response to Comments, DTSC states that it concluded that the facility is not  
5 causing health impacts to Kettleman, based on analyzed investigations and studies.  
6 DTSC added permit conditions regarding truck age to remedy health impacts and  
7 environmental justice concerns. DTSC takes environmental justice matters seriously.  
8 However, this appeal process is not the right forum to address environmental justice  
9 matters. For this reason, the Department denies the petition for review of this Appeal  
10 Comment.

11  
12 **Appeal Comment 4:**

13 DTSC should deny the permit based on CWM's compliance history. (Pages 24 to 33 of  
14 the Petition)

- 15 a. DTSC should deny the permit based on CWM's Repeating or  
16 Recurring Pattern of Violations and Noncompliance, in violation of  
17 Health & Safety Code Section 25186.
- 18 b. DTSC should deny the permit based on CWM's Violations of its Permit
- 19 c. DTSC failed to adequately consider CWM's Compliance History pursuant to  
20 CEQA.
- 21 d. DTSC did not conduct a comprehensive compliance review.

22 **Response:**

23 This Appeal Comment broadly requests review of General Condition 2(B), 3, and other  
24 permit condition not defined of the Permit. To the extent that parts of this Appeal  
25 Comment appear to pertain to the CEQA process for this project, CEQA provides a  
26 separate judicial appeal process to resolve disputes concerning compliance with CEQA.  
27 For other issues, DTSC has exercised its discretion and decided not to revoke CWM's  
28 permit. Pursuant to CCR 66270.41, only permit conditions that are subject to the permit

1 modification are open to review. Because General Condition 2(B) is part of the original  
2 permit and not subject to the permit modification, it is not open to review. 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 Although Health and Safety Code section 25186 and California Code of Regulations,  
9 title 22, section 66270.43 allow for the revocation and denial of permits, neither citation  
10 requires the denial of a permit under these circumstances. DTSC carefully reviewed the  
11 entire compliance record for the Facility before making this decision. None of the  
12 Facility's violations, including the most recent failure to report spills, threatened public  
13 health or the environment. CWM has corrected all violations and DTSC's review  
14 determined that the Facility is able and willing to take steps to ensure that it operates in  
15 full compliance with its permit conditions. For this reason, the Department denies the  
16 petition for review of this Appeal Comment.  
17

18 **Appeal Comment 5:**

19 The proposed expansion meets other criteria for permit denial. (Pages 33 to 35 of the  
20 Petition)

- 21 a. Failure to report spills is akin to misrepresentation of relevant facts.
- 22 b. Permitted activity would endanger public health and cannot be adequately  
23 regulated. DTSC's failed to address the non-attainment status of the San  
24 Joaquin Valley Air Basin as it relates to the facility and did not consider the air  
25 quality impacts of the addition of 400 trucks per day due to the landfill  
26 expansion.

27 **Response:**  
28

1 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
2 While this Appeal Comment presents concerns regarding Part V. Special Conditions  
3 that Apply to All of the Facility's Units, Special Condition 6, Heavy-duty diesel trucks, it  
4 does not request a review of said permit condition. The DTSC has decided that this  
5 issue does not warrant additional analysis. Pursuant to CCR 66270.41, only permit  
6 conditions that are subject to the permit modification are open to review. Because  
7 General Condition 2(B) is part of the original permit and not subject to the permit  
8 modification, it is not open to review. Therefore, DTSC finds that Petitioner has failed to  
9 meet the burden to establish that the Department should grant review of this issue  
10 pursuant to the criteria set forth in California Code of Regulations, title 22, section  
11 66271.18, subdivision (a). For this reason, the Department denies the petition for  
12 review of this Appeal Comment.

13  
14 This Appeal Comment asserts that the Facility misrepresented facts related to 72 spills  
15 at the Facility such that permit denial would be appropriate. Although Health and Safety  
16 Code section 25186 and California Code of Regulations, title 22, section 66270.43 allow  
17 for the revocation and denial of permits, DTSC has exercised its discretion and decided  
18 that facility spills are not the types of violations they would consider denying this permit  
19 request for, as they do not result in a threat to human health or the environment. Neither  
20 citation requires the denial of a permit under these circumstances. To the contrary, they  
21 allow DTSC to exert its discretion to not exercise such action.

22  
23 This Appeal Comment states that the expansion of the KHF would endanger public  
24 health and cannot be adequately regulated. The Appeal Comment appears to  
25 reference permit condition Part V(6) when it states, as an example, that the use of  
26 trucks no older than 2007 would not eliminate pollution from diesel vehicles. However,  
27 it does not provide any supporting information as to how it reached this conclusion or  
28

1 why it considers this an example of a permit condition that cannot be adequately  
2 regulated.

3  
4 The diesel emissions reduction, Permit Condition, Part V (6), is not a mitigation  
5 measure. This permit condition could reduce NO<sub>x</sub> emissions by as much as 165,000  
6 pounds per year and PM<sub>10</sub> emissions by as much as 7,000 pounds per year in  
7 Kettleman City, Avenal and the San Joaquin Valley Air Basin. DTSC considers these to  
8 be significant reductions to diesel truck emissions that will occur as a result of this  
9 permit condition being placed in effect. For these reasons, the Department denies the  
10 Petition for Review of the Appeal Comment.

11 **Appeal Comment 6:**

12 DTSC has insufficient information on Kettleman City health to approve an additional  
13 pollution source in the area. (Pages 35 to 37 of the Petition)

14 **Response:**

15 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
16 Pursuant to CCR 66270.41, only permit conditions that are subject to the permit  
17 modification are open to review. Because General Condition 2(B) is part of the original  
18 permit and not subject to the permit modification, it is not open to review. 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 DTSC is not required to conduct a health survey of Kettleman City for the purposes of  
25 this permitting process. In its Response to Comments, DTSC notes that it analyzed a  
26 wide range of evidence that suggests CWM facility operations have not contributed to  
27 health problems in Kettleman City.



1 **Appeal Comment 7:**

2 DTSC should not rely upon the flawed birth defect investigation. (Pages 37 to 39 of the  
3 Petition)

4 **Response:**

5 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
6 Pursuant to CCR 66270.41, only permit conditions that are subject to the permit  
7 modification are open to review. Because General Condition 2(B) is part of the original  
8 permit and not subject to the permit modification, it is not open to review. Therefore,  
9 DTSC finds that Petitioner has failed to meet the burden to establish that the  
10 Department should grant review of this issue pursuant to the criteria set forth in  
11 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
12 reason, the Department denies the petition for review of this Appeal Comment.

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

20  
21 **Appeal Comment 8:**

22 DTSC improperly failed to address the need for biomonitoring in Kettleman City.  
23 (Pages 39 to 40 of the Petition)

24 **Response:**

25 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.  
26 DTSC declines to grant review on this issue. Pursuant to CCR 66270.41, only permit  
27 conditions that are subject to the permit modification are open to review. Because  
28 General Condition 2(B) is part of the original permit and not subject to the permit

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

6  
7 In its Response to Comments, DTSC notes that biomonitoring, although useful, would  
8 not address the question of whether any chemicals found could be attributed to the  
9 Kettleman Hills Facility. It would not provide new, helpful information and thus was  
10 declined.

11  
12 **Appeal Comment 9:**

13 DTSC should have prepared a Supplemental or Subsequent EIR, since new Information  
14 which was not known and could not have been known at the time of EIR Certification is  
15 now available. (Pages 41 to 47 of the Petition)

- 16 a. New EPA standards for Short-Term Nitrogen Dioxide emissions  
17 b. Evidence collected during EPA's analysis of the Avenal power plant is  
18 significant new information.  
19 c. CalEnviroScreen identifies significant new information of the vulnerability of  
20 Kettleman City.

21 **Response:**

22 This Appeal Comment broadly requests review of General Condition 3 of the  
23 Permit. However, this Appeal Comment pertains to the CEQA process for this project.  
24 CEQA provides a separate judicial appeal process to resolve disputes concerning  
25 compliance with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the  
26 burden to establish that the Department should grant review of this issue pursuant to  
27 the criteria set forth in California Code of Regulations, title 22, section 66271.18,  
28

1 subdivision (a). For this reason, the Department denies the petition for review of this  
2 Appeal Comment.

3  
4 **Appeal Comment 10:**

5 Substantial changes in the circumstances under which the project is taken require  
6 additional CEQA analysis. (Pages 47 to 56 of the Petition)

- 7 a. The recent Valley Fever epidemic in Kings County is a changed  
8 circumstance that may lead to new or more sever impacts from the KHF  
9 expansion.
- 10 b. The Facility receives far fewer than the 400 trucks estimated in the EIR.
- 11 c. DTSC's Waste Reduction Initiative
- 12 d. The addition of pollution from related projects

13 **Response:**

14 This Appeal Comment broadly requests review of General Condition 3 of the  
15 Permit. However, this Appeal Comment pertains to the CEQA process for this project.  
16 CEQA provides a separate judicial appeal process to resolve disputes concerning  
17 compliance with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the  
18 burden to establish that the Department should grant review of this issue pursuant to  
19 the criteria set forth in California Code of Regulations, title 22, section 66271.18,  
20 subdivision (a). For this reason, the Department denies the petition for review of this  
21 Appeal Comment.

22  
23 **Appeal Comment 11:**

24 DTSC proposes to approve changes to the project which will increase the project's  
25 impacts, and should therefore prepare a supplemental or subsequent EIR. (Pages 56 to  
26 58 of the Petition)

27 **Response:**

1 This Appeal Comment broadly requests review of General Condition 3 of the Permit.  
2 However, this Appeal Comment appears to pertain to the CEQA process for this project.  
3 CEQA provides a separate judicial appeal process to resolve disputes concerning  
4 compliance with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the  
5 burden to establish that the Department should grant review of this issue pursuant to  
6 the criteria set forth in California Code of Regulations, title 22, section 66271.18,  
7 subdivision (a). For this reason, the Department denies the petition for review of this  
8 Appeal Comment.

9  
10 **Appeal Comment 12:**

11 DTSC's CEQA findings are clearly erroneous. (Pages 58 to 61 of the Petition)

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

15 **Response:**

16 This Appeal Comment broadly requests review of General Condition 3 of the Permit.  
17 However, this Appeal Comment pertains to the CEQA process for this project. CEQA  
18 provides a separate judicial appeal process to resolve disputes concerning compliance  
19 with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the burden to  
20 establish that the Department should grant review of this issue pursuant to the criteria  
21 set forth in California Code of Regulations, title 22, section 66271.18, subdivision (a).  
22 For this reason, the Department denies the petition for review of this Appeal Comment.

23  
24 **Appeal Comment 13:**

25 DTSC fails to analyze impacts from the whole of the project, including related projects,  
26 as required by CEQA. (Pages 62 to 63 of the Petition)

27  
28 **Response:**

1 This Appeal Comment broadly requests review of General Condition 3 of the Permit.  
2 However, this Appeal Comment pertains to the CEQA process for this project. CEQA  
3 provides a separate judicial appeal process to resolve disputes concerning compliance  
4 with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the burden to  
5 establish that the Department should grant review of this issue pursuant to the criteria  
6 set forth in California Code of Regulations, title 22, section 66271.18, subdivision (a).  
7 For this reason, the Department denies the petition for review of this Appeal Comment.  
8

9 **Appeal Comment 14:**

10 DTSC's proposed mitigation analyses should have taken place before project approval,  
11 as required by CEQA. DTSC's Mitigation Monitoring and Reporting Plan fails to reduce  
12 project impacts to the extent feasible or to less than significant levels. (Pages 63 to 64  
13 of the Petition)

14 **Response:**

15 This Appeal Comment broadly requests review of General Condition 3 of the Permit.  
16 However, this Appeal Comment appears to pertain to the CEQA process for this project.  
17 CEQA provides a separate judicial appeal process to resolve disputes concerning  
18 compliance with CEQA. Additionally, these monitoring requirements are not mitigation,  
19 as claimed by El Pueblo, and are meant to allow DTSC to gather more information as it  
20 tracks facility operations. Therefore, DTSC finds that Petitioner has failed to meet the  
21 burden to establish that the Department should grant review of this issue pursuant to  
22 the criteria set forth in California Code of Regulations, title 22, section 66271.18,  
23 subdivision (a). For this reason, the Department denies the petition for review of this  
24 Appeal Comment.  
25

26 **Appeal Comment 15:**

27 DTSC's Permit Process Restricts Public Participation. (Pages 65 to 67 of the Petition)  
28

- 1 a. DTSC's did not provide an adequate notice period for the Sept. 13, 2013  
2 public hearing or provide a long enough period before the close of the public  
3 comment period.  
4 b. DTSC's CEQA documents were not written in plain language.

5 **Response:**

6 This Appeal Comment broadly requests review of General Conditions 2(B) and 3  
7 of the Permit. Public notice and comment is a required and an important portion of the  
8 permitting process. DTSC satisfied public notice requirements. Additionally, CEQA  
9 provides a separate judicial appeal process to resolve disputes concerning compliance  
10 with CEQA Pursuant to CCR 66270.41, only permit conditions that are subject to the  
11 permit modification are open to review. Because General Condition 2(B) is part of the  
12 original permit and not subject to the permit modification, it is not open to review.  
13 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the  
14 Department should grant review of this issue pursuant to the criteria set forth in  
15 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this  
16 reason, the Department denies the petition for review of this Appeal Comment.

17 DTSC is required to provide 45 days of public comment period, not 45 days  
18 notice of the end of the period as suggested by Appeal Comment. Additionally, notice  
19 was given on August 8, 2013 of the public hearing for September 18, 2013, more than  
20 30 days prior to the hearing as required.

21  
22 **Appeal Comment 16:**

23 DTSC's permit conditions are inadequate to protect public health and the environment.  
24 (Pages 67 to 72 of the Petition)

- 25 a. DTSC should decide the location of air monitoring stations, as opposed to  
26 CWM.  
27 b. DTSC should explicitly prohibit the use of VOC contaminated soils as landfill  
28 cover.

- 1 c. DTSC should include a permit condition to address nuisance odors from  
2 landfill B-18.
- 3 d. DTSC should include a permit condition to prohibit overloaded trucks from  
4 delivering to landfill B-18.
- 5 e. DTSC should PCBs as a prohibited waste at the CWM Kettleman Hills  
6 Facility.
- 7 f. DTSC should include a permit condition to prohibit the incineration of waste at  
8 the CWM Kettleman Hills Facility.
- 9 g. DTSC should require financial assurances and increased duration of liability  
10 from CWM for the Kettleman Hills Facility.

11 **Response:**

12 After careful review, DTSC was unable to find any discussions in either the hearing  
13 transcript or as part of its submitted written comments for Appeal Comments 16(e), (f),  
14 and (g) as it pertains to extending post-closure care indefinitely. Therefore, DTSC finds  
15 that Petitioner has failed to meet the burden to establish that the Department should  
16 grant review of this issue pursuant to the criteria set forth in California Code of  
17 Regulations, title 22, section 66271.18, subdivision (a).

18

19 Appeal Comment 16(a) requests review of General Condition 4(A)(1)(e) and requests  
20 that DTSC, not CWM, should select the location of an additional ambient air monitoring  
21 station. The general regulatory scheme for hazardous waste facility permits has the  
22 Permittee propose an activity for review and approval by DTSC, with specified  
23 opportunities for input from interested parties. DTSC will select the air monitoring  
24 station location either by approving the initial location proposed by CWM or a  
25 subsequent alternative location. The Petitioner has not shown that General Condition  
26 4(A)(1)(e) of the permit is based on a fact or conclusion of law which is clearly  
27 erroneous or is an exercise of discretion or an important policy consideration which the  
28 Department should review. Appeal Comment 16(b) requests review of Landfill units B-