

October 29, 2007

Deputy Director of DTSC, Hazardous Waste Management Division
Department of Toxic Substance Control
Permit Appeals Board
P.O. Box 806
Sacramento, CA 95812-806

APPEAL OF PERMIT MODIFICATION FOR CHEMICAL WASTE MANAGEMENT FACILITY IN KETTLEMAN CITY

El Pueblo Para El Aire y Agua Limpio/People for Clean Air and Water, Lucha Por Salud Justicia Ambiental and Greenaction for Health and Environmental Justice are filing this appeal of the September 2007 permit modification issued to Chemical Waste Management by the Department of Toxic Substances Control.

We appeal this decision on two grounds:

- 1) DTSC's determination that this project would not have a significant impact on the environment or on the health and well-being of nearby communities is flawed and factually incorrect; and
- 2) DTSC's determination would have a significant, discriminatory and disproportionate impact on the mostly low-income, Spanish-speaking people of color communities most affected by the Chem Waste dump, in violation of Title VI of the United States Civil Rights Act of 1964 and the California Environmental Protection Agency's own environmental justice mandates.

DTSC "Response to Comments" contains many inaccuracies and non-responses to many of the comments made on this proposed permit modification by members of the public.

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

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

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

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

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

DTSC’s “responses” entitled “General Issue 3: Accessibility of Information and Notice to the Public” are inadequate and an admission of discriminatory impact on the Spanish-speaking residents.

On page 6 of DTSC’s “responses”, you admit that DTSC will be changing its procedures when mailing out “fact sheets” in predominantly Spanish-speaking Kettleman City and Avenal. This change of procedure is in response to comments from residents that the fact sheet they received had English first, resulting in some Spanish-speaking/reading residents not receiving adequate notice. As DTSC is essentially admitting that the notices for this project could have been improved to achieve better notification to residents, the DTSC’s response should be to start this process again with proper notice.

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

DTSC’s “response” entitled “General Issue 5: Types of Bioreactors in California” is also biased and flawed. DTSC tries to make it appear that this bioreactor would be like others in use

elsewhere, ignoring the fact that it would be built on top of an old PCB landfill unit. DTSC fails to cite an example of a bioreactor located elsewhere on top of a toxic waste landfill.

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

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

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

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

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

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

In "response" 3.0 DTSC states that the increased capacity of the landfill as a result of permitting a bioreactor will be 377,000 tons. This is an enormous amount of additional waste that would be dumped in Kettleman City, adding years of additional negative impacts and potential future problems for the nearby communities.

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

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

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

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

Conclusion:

We request that DTSC grant our appeal due to your inadequate and biased "Responses to Comments," the failure to ensure that the permit will be protective of public health and the environment, and the discriminatory and disproportionate impact this project will have on the low-income people of color, Latino and primarily Spanish-speaking residents in Kettleman City and Avenal.

Please send communications regarding this appeal to:
Bradley Angel
Greenaction for Health and Environmental Justice
1095 Market Street, Suite 712
San Francisco, CA 94103

For environmental justice,

Bradley Angel and Anna Martinez
Greenaction for Health and Environmental Justice

Maricela Mares Alatorre
El Pueblo Para El Aire y Agua Limpio/People for Clean Air and Water

Mauricio Cuadra

Lucha Por Salud Justicia Ambiental

Miguel Alatorre
Kids Protecting Our Planet