

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

The Department of Toxic Substances Control (DTSC) issues this Findings of Fact for the project listed below pursuant to the California Environmental Quality Act (CEQA, California Public Resources Code, Division 13, Section 21081) and implementing Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15091 et seq.)

Project Title: Class III Hazardous Waste Facility Permit Modification for the Chemical Waste Management, Kettleman Hills B-18 Landfill Expansion Project (the Project)

State Clearinghouse Number: 2005041064

Responsible Agency Contact Person: Wayne Lorentzen, Project Manager, Department of Toxic Substances Control

Project Location: Kettleman Hills Facility (the Facility), 3.5 miles southwest of Kettleman City, 6.5 miles southeast of the City of Avenal, and about 2.5 miles west of Interstate (I)-5, Kings County

Project Description: The Project is DTSC's approval of the B-18 Hazardous Waste Facility landfill expansion permit modification under the Chapter 6.5 of the California Health and Safety Code, Section 25200 and Title 22 of the California Code of Regulations, Section 66270.42 that includes the following activities:

- Increase in the B-18 Unit footprint area from 53 to 67 acres;
- Increase in total capacity from 10,700,000 to about 15,600,000 cubic yards;
- Increase in maximum waste elevation from 965 to 1018 feet, Mean Sea Level;
- Addition of a second surface water run-off containment basin;
- Extension of the sideslope liner system, with the same design as B-18 Landfill Phase II except for the secondary composite liner having the regulation-required 3-feet instead of 3.5-feet clay thickness;
- Final closure configuration includes approximately 25-foot wide benches at a maximum vertical interval of 50 feet with about a 3.5H:1V slope between the individual benches.

The Department of Toxic Substances Control (DTSC) considered the Addendum and Initial Study/Environmental Checklist (Addendum) for the B-18/B-20 Hazardous Waste Disposal Project, Kettleman Hills Facility Final Subsequent Environmental Impact Report (FSEIR) due to the changes proposed for the engineering plans for the B-18 landfill expansion area. DTSC determined that the Addendum prepared is appropriate pursuant to Cal. Code Regs., tit. 14, § 15164 because the proposed Project includes the following minor changes as follows:

- The B-18 expansion will commence in 2014 rather than 2010,

- The B-18 expansion will occur in two phases. Construction of the Phase III liner system will be completed in one continuous sequence as presented in the FSEIR followed by:
- Submittal of a Construction Quality Assurance (CQA) certification report for a 3.5-acre area in the northwestern portion of the expansion (referred to as Phase IIIA). After securing approval from DTSC and other required regulatory agencies, the Facility will begin placement of waste within the initial approved limits;
- At the same time as Phase IIIA, construction of the remaining portions of the liner system (referred to as Phase IIIB) will continue and will be expected to be completed within six (6) months of the initiation of waste placement in the Phase IIIA area. A separate CQA certification report will be prepared and submitted to DTSC for approval for the Phase IIIB area.
- Phases IIIA and IIIB will be constructed in accordance with the specifications and CQA Plan contained in the Engineering and Design Report for the B-18 area. The submittal of the two CQA reports does not modify the construction requirements for the liner system. The design of Phase III ties into the existing leachate collection and removal system. The Phase IIIA leachate collection and removal system (LCRS) will function as designed without the need for interim controls. An interim 10-foot high soil berm will be constructed between Phase IIIA and Phase IIIB along the existing perimeter road. This berm will provide a physical delineation between the two phases as well as provide run-on and run-off control of storm water. The berm design will be consistent with the design considered by the FSEIR and regulatory requirements. Other storm water controls, such as the perimeter channel and brow ditches, within the watershed of Phase IIIA will be constructed for run-on and run-off control during the interim period. The South Containment Basin will be constructed during Phase IIIB.
- Other project elements as detailed in the Revised Project Description in the FSEIR remain the same.

Project Background: The FSEIR addressed the Project design for the expansion of the Facility's hazardous waste disposal units B-18 and B-20, the Resource Conservation and Recovery Act (RCRA) hazardous waste disposal unit requirements, and the construction activities that will occur under the Project to execute the Facility expansion and closure. The specific construction schedule for the B-18 expansion was not included in the FSEIR although the FSEIR stated that the current B-18 capacity is expected to be reached in 2010 and that the Project would occur in phases. It is specifically noted in the FSEIR (page ES-5, of the *KHF B-18/B-20 Hazardous Waste Disposal Project Recirculated Draft SIER*) that: "Construction is expected to last approximately 100 days and will occur in discrete phases starting in 2010 for the expansion of the B-18 Landfill, and then in three phases A to C) for the new B-20 Landfill." The B-20 proposal is not being considered at this time. The May 2013 Addendum is tiered from the FSEIR project description and is supplemental to the FSEIR. Minor and less than significant changes to the FSEIR regarding the B-18 landfill expansion permit modification Project to be approved by DTSC include those provided in the project description above. DTSC concludes that the proposed permit modification is equally protective of human health and the environment as the B-18 landfill expansion design plans considered in the FSEIR.

Findings of Fact:

As a Responsible Agency, DTSC reviewed the following documents prepared by Kings County as the Lead Agency for the overall B-18/B-20 landfill expansion project to assess impacts as they relate to the Project now before DTSC for consideration:

- Kings County Planning Agency, *Draft Subsequent Environmental Impact Report, B-18/B-20 Hazardous Waste Disposal Project, Kettleman Hills Facility*, March 2008 (SCH# 2005041064);
- Kings County Planning Agency, *Revised Project Description and Analysis Environmental Impact Report, B-18/B-20 Hazardous Waste Disposal Project, Kettleman Hills Facility*, May 2008 (SCH# 2005041064);
- Kings County Community Development Agency, *Recirculated Portions of Draft Subsequent Environmental Impact Report, B-18/B-20 Hazardous Waste Disposal Project, Kettleman Hills Facility*, May 2009 (SCH# 2005041064);
- Kings County Community Development Agency, *Final Subsequent Environmental Impact Report, B-18/B-20 Hazardous Waste Disposal Project, Kettleman Hills Facility*, September 2009 (SCH# 2005041064);
- Exhibit A of Draft Planning Commission Resolution No. 09-13, *CEQA Findings of Fact and Statement of Overriding Considerations for the B-18/B-20 Hazardous Waste Disposal Project*, October 2009.

DTSC also prepared and considered the CEQA Addendum and Initial Study/Environmental Checklist as part of its evaluation of the SEIR for the project, *Addendum and Initial Study/Environmental Checklist, to the Subsequent Environmental Impact Report Prepared for the Existing B-18 Class I/Class II Landfill Expansion Project, Kettleman Hills Facility, Department of Toxic Substances Control May 2013*.

The above-referenced documents are incorporated by reference.

Using its independent judgment, DTSC makes the following findings:

The above documents adequately addressed the proposed impacts of the Project now before DTSC for decision and are adequate for use by DTSC for assessing the potential impacts of the Project design and schedule. Following is a summary of DTSC's statements of facts and findings concerning its review and analysis of these documents:

For the B-18 Class 1/Class II hazardous waste Facility landfill expansion Project Addendum, DTSC, using its independent judgment as the Responsible Agency for the Project, considered the B-18 expansion activities in the context of the FSEIR and Addendum, and determined that no new significant effects would result from the changes included in the B-18 expansion phased approach and that these changes did not constitute a "substantial change to the Project that would require "major revisions." Further, DTSC determined that the FSEIR adequately analyzed the potential effects associated with the B-18 expansion phased approach, that the FSEIR included mitigations

appropriate for the DTSC project activities, and that a subsequent EIR or Negative Declaration is not required pursuant to Cal. Code Regs., tit. 14, § 15162. Therefore, DTSC concluded that the B-18 expansion phased approach does not constitute a “substantial change” to the Project that would require “major revisions” to the FSEIR due to new or increased impacts (Cal. Code Regs., tit. 14, § 15162 (a)(1)). Nor does implementing the Project for the B-18 expansion under a phased approach constitute a “substantial change.” The circumstances under which the project would be undertaken are not substantially different than those described in the FSEIR (Cal. Code Regs., tit. 14, §15162(a)(2)) because the FSEIR discussed similar-type concepts and methods to expand the B-18 area construction activities and analyzed their impacts.

In assessing impacts associated with the B-18/B-20 expansion Project, Kings County concluded that approval of the overall expansion project for B-18/B-20 would have significant and unavoidable impacts to the following environmental issue areas: air quality, greenhouse gas, lifetime cancer risk under a hypothetical worst case scenario at the Facility property boundary for toxic air contaminants, and transportation. Consequently, Kings County adopted a Statement of Overriding Considerations for these environmental issue areas. Additionally, DTSC adopts a Statement of Overriding Considerations for these Project effects as provided below. The alpha-numeric system used in the FSEIR for Project impacts is used in the findings narrative below. In considering the impacts of the Project that includes the B-18 expansion and permit modification scheduling and design changes, DTSC makes the following CEQA findings:

Significant and Unavoidable Impacts

Air Quality – (AQ-1) Periodic Construction and (AQ-2) Operations and Long-Term (Cumulative) Operations Impacts

DTSC concludes that approval of the Project would not change the FSEIR significance finding for air quality. The FSEIR concludes that impacts would be significant and unavoidable for periodic construction and operations impacts for the B-18/B-20 expansion and for cumulative impacts. Project impacts include significant impacts from equipment operation on particulate matter (PM) 10 microns and 2.5 microns or less in diameter, reactive organic gas, nitrous oxide, and ozone. Mitigation measures (AQ-MM.1 and AQ-MM.2) are identified in the FSEIR to reduce project impacts to the extent feasible. DTSC incorporates these mitigation measures (changes) for the Project which will be implemented as part of the project to reduce impacts to the extent feasible. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by Kings County.

Transportation – Cumulative:

TT-2, Level of Service (LOS) reduced to D or below by 2017 and 2018 on I-5 North and south-bound of SR 41 and SR 41 west of I-5 to/from the Facility entrance (Less than significant of a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region)

TT-3, LOS reduced to D or below for 2026 and 2028 on I-5 north and south-bound of SR 41, and SR 41 west of I-5 to/from the Facility entrance (Less than Significant of a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

TT-4, LOS reduced to D or below for 2034 and 2036 on I-5 north and south-bound of SR 41, and SR 41 west of I-5 to/from the Facility entrance (Less than Significant on a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

TT-5, LOS reduced to D or below for 2043 on I-5 north and south-bound of SR 41, and SR 41 west of I-5 to/from the Facility entrance (Less than Significant of a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

TT-6 (A), LOS reduced to D or below for 2026 at the intersection of the I-5 northbound on- and off-ramps and SR-41 (Less than Significant on a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

TT- 6 (B), LOS reduced to D or below for 2026 on southbound SR-41 at the I-5 northbound on- and off-ramps (Less than Significant on a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

TT-6 (C), LOS reduced to D or below for 2026 on the I-5 northbound off-ramp to SR-41 (Less than Significant on a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

TT- 6 (D), LOS reduced to D or below for 2034 on northbound SR-41 at the I-5 northbound on- and off-ramps (Less than Significant on a Project basis, but cumulatively significant and unavoidable without mitigation based on growth in the region).

DTSC's approval of the Project would not change the FSEIR significance findings for transportation. The FSEIR concluded that the LOS impacts by 2017 and at various intervals through 2043 would deteriorate to LOS D to F over time. These effects occur on either a project and/or cumulative basis on the following roadways: Interstate (I)-5 north and south-bound of State Route (SR)-41 and SR-41 west of I-5 to /from the Facility entrance; intersection of the I-5 northbound on- and off-ramps and SR-41; southbound SR-41 at the I-5 northbound on- and off-ramps. The cumulative impacts would occur with or without the project if roadway improvements are not made under the California Department of Transportation's (Caltrans's) authority. Because improvements to these routes are subject to Caltrans's jurisdiction and Chemical Waste Management (owner of the Facility) cannot guarantee that planned roadway improvements will occur, impacts are considered significant and unavoidable.

Mitigation measures (TT-MM.1, TT-MM.2, and TT-MM.3) for the roadway improvements include preparation and approval of a construction traffic management plan and Chemical Waste Management's fair share contribution toward specified future roadway improvements on SR-41 and I-5. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by another agency or can and should be adopted by such other agency.

Greenhouse Gas – Cumulative GHG-3 Result in increased exposure to one or more of the potential adverse effects of global warming identified in the California Global Warming Solutions Action of 2006 (Less than Significant with Mitigation on a Project basis but Cumulative Significant and Unavoidable)

DTSC's approval of the Project would not change the FSEIR significance findings for greenhouse gas. The FSEIR concluded that development of the B-18/B-20 hazardous waste landfill project could result in an incremental contribution to the significant impact of global climate change on a cumulative basis. These impacts are significant and unavoidable. Mitigation measures are included in the project (AQ-MM.1 and AQ-MM.2) to reduce significant impacts to the extent

feasible. DTSC incorporates these mitigation measures (changes) for the Project. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by Kings County.

Public Health Risk (AQ-5, Toxic Air Contaminants - Cumulative)

DTSC concludes that approval of the Project would not change the FSEIR significance findings for public health risk due to toxic air contaminants. The FSEIR concluded that the lifetime cancer risk, under a hypothetical worst case scenario at the Facility property boundary would result in a significant and unavoidable impact on a cumulative basis. This impact is reduced to a less than significant level 2,000 feet from the Kettleman Hills Facility property boundary. The health risk analysis is a function of the modeled ground level concentrations of the various toxic constituents included in the assessment. The acute and chronic risks for the B-18/B-20 landfill areas are based on the maximum emission scenarios, including construction emissions. Cancer risk calculations assume continuous exposure to the pollutant concentration over a period of 70 years, 350 days per year 24 hours per day, 7 days per week. At the Facility, the concentrations of toxic compounds to which an individual would be exposed would vary over the 70 years as a result of changes to the Facility. No human receptors currently live near the property boundary. DTSC agrees with the FSEIR conclusions for public health, and mitigation measures (changes) are included in the project to control emissions to the extent feasible (AQ-MM.1 and AQ-MM.2). DTSC incorporates these mitigation measures (changes) for the Project. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by Kings County.

No Impact Areas and Less Than Significant Environmental Impact Areas and Impacts that are Less Than Significant with Mitigation

DTSC reviewed all other environmental issue areas, and found the Project impacts to be consistent with those evaluated in the FSEIR, and DTSC agrees with the FSEIR environmental impact conclusions regarding the remaining environmental issue areas. The following environmental impact issue areas were found to have a less than significant impact, less than significant impact with mitigation, or no impacts from the project as discussed in the FSEIR.

No Impact Areas

No impacts for the following environmental impact issue areas were found:

- Agriculture,
- Recreation,
- Public Facilities,
- Housing,
- Utilities and Service Systems, and
- Mineral Resources.

Less than significant impacts

Aesthetics

Local Mobile Source Carbon Monoxide

Odor impacts

Naturally Occurring Asbestos

Toxic Air Contaminants at the Facility boundary and at a distance of 2,000 feet from the Facility boundary

Loss of Habitat for Special-Status Plant Species (nevertheless land set aside is included for the project for suitable habitat for plant species)

Geology and Soils

Hazards and Hazardous Materials

Hydrology and Water Quality

Land Use and Transportation (except transportation LOS-related as listed above)

Noise

Greenhouse gas on a project-specific basis

Less than significant with mitigation

Mitigation Measures (MM) are included in the FSEIR CEQA Findings, October 2009, for each environmental impact issue area listed below that is expected to be affected by the project:

Biological Resources - loss of potential habitat and effect on San Joaquin kit fox - direct and indirect (BR-MM.1 – BR-MM.9), loss of potential habitat for Blunt-Nosed Leopard Lizard (BR-MM.10 & BR-MM.11), disturbance of loggerhead shrike during nesting /breeding habitat (BR-MM.12), loss of habitat for American badger (BR-MM.1 & BR-MM.2) and cumulative biological resources effects (BR-MM.1 – BR-MM.12). Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by Kings County or can and should be adopted by this agency.

Cultural Resources - disturbance of unidentified archaeological resources (CR-MM.1& CR-MM.2, disturbance of unidentified paleontological resources (CR-MM. 3 – CR-MM.5), cumulative impacts (CR-MM. 1 – CR-MM.5). Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by Kings County or can and should be adopted by this agency.

Toxic Air Contaminants - project specific and cumulative 2,000 feet and beyond the project boundary- (AQ-MM.1 & AQMM.2). Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FSEIR. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not DTSC. These changes have been adopted by Kings County or can and should be adopted by this agency.

Mitigation measures identified in the FSEIR have been adopted for the Project, as described above, to reduce significant impacts to the extent feasible or to less than significant levels. No additional mitigation measures are necessary in order for DTSC to approve the Project, and no additional monitoring plan is required pursuant to Public Resources Code Section 21081.6. DTSC adopts the Kings County mitigation measures and mitigation monitoring plan, which is incorporated by reference, for the Project.

Statement of Overriding Considerations

DTSC specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible (including the incorporation of feasible mitigation measures) and finds that the remaining significant unavoidable impacts of the Project, which are described above, are acceptable because the benefits of the Project set forth below outweigh it.

After review of the entire administrative record, including, but not limited to, the FSEIR, Addendum, and documents incorporated by reference and listed above, DTSC finds that specific economic, legal social, technological and other anticipated benefits of the Project outweigh the significant and unavoidable impacts, and therefore justify the approval of this Project notwithstanding the identified significant and unavoidable impacts. (Pub. Resources Code, § 21081 and Cal. Code Regs., tit. 14 § 15093.) After review of the entire administrative record, DTSC does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

1. The Project will assist the State of California in meeting the objectives set forth in the California Health and Safety Code Section 25135, subdivision (a)(5), Section 25146 and Section 25146.5 for safe and responsible management of hazardous waste. Health and Safety Code Section 25135, subdivision (a)(5) declares that:

“[s]afe and responsible management of hazardous wastes is one of the most important environmental problems facing the state at the present time. It is critical to the protection of the public health and the environment and to the economic growth of the state. If environmentally sound hazardous waste facilities are not available to effectively manage the hazardous wastes produced by the many industries of the state, economic activity will be hampered and the economy cannot prosper.”

Health and Safety Code Section 25146 declares that:

- (e) “It is a matter of urgent public necessity and statewide concern that the number of existing hazardous waste facilities be retained to the extent feasible.
- (f) The availability of land suitable and capable of being developed as hazardous waste disposal sites is decreasing.
- (g) Any decrease in the number of existing hazardous waste facilities increases the distance that it is necessary to transport hazardous waste in order to properly dispose of it.
- (h) An increase in the distance which it is necessary to travel in order to properly dispose of hazardous waste encourages illegal disposal.”

2. To satisfy the objectives codified in the Health and Safety Code, safe, effective, and economical facilities for the management of hazardous wastes must be available when needed. Ongoing increases in the quantities of hazardous wastes generated effectively reduce disposal capacity throughout the state. Although hazardous waste minimization efforts have partially reduced the burden on existing hazardous waste facilities, there still is a need for expansion and development of additional capacity for hazardous waste treatment, storage, and disposal (TSD) facilities within the State of California.
3. In California there are only currently three hazardous waste disposal facilities: the Kettleman Hills Facility, one near the community of Buttonwillow in Kern County and one near Westmoreland in Imperial County. Hazardous waste would continue to be generated in Kings County and throughout California with or without the Project. The need for hazardous waste disposal capacity would still be required and such hazardous waste would need to be transported to another hazardous waste landfill for disposal. Thus, by expanding the current Facility, the Project will continue to provide the disposal capacity necessary to meet the increasing demand and serve California's hazardous waste disposal needs.
4. As part of an existing facility, the Project will allow the Facility to expand to meet demand and eliminate the need to site a new hazardous waste disposal facility in California.
5. The Project will allow the Facility to continue to provide safe waste disposal for residents and business in Kings County, the Central Valley and the State of California for an additional 32 years. Based on the data published by DTSC (1997 through 2002), the amount of hazardous waste landfilled in California increased by 171 percent, with annual increase shown below (DTSC 2003):

1997	376,669 tons
1998	468,235 tons
1999	523,040 tons
2000	784,148 tons
2001	858,720 tons
2002	1,022,253 tons

This trend is expected to continue due to existing as well as future businesses and industry in California that are expected to generate hazardous waste. DTSC states in a report that "total hazardous waste generation continues to increase in California" (DTSC 2006). As one of only three permitted hazardous waste disposal facilities in California, the Project would provide an additional 32 years of disposal capacity, which is necessary to meet the projected future generation of hazardous waste in California.

6. The Project will allow Waste Management to continue to provide safe disposal for hazardous waste generated by United States (U.S.) businesses with facilities in Mexico. Waste Management accepts a very small amount of waste that is generated by U.S. firms with facilities across the border in Mexico. In 2007, Waste Management accepted approximately 80 tons, equivalent to about 4 truckloads, and in 2008, it had received approximately 10 tons, equivalent to half truckload. In accordance with U.S. Environmental Protection Agency (USEPA) regulations and the North American Free Trade Agreement (NAFTA), these American facilities are required to transport this waste generated in Mexico back across the border for disposal in the U.S. at a fully permitted, safe disposal facility. These U.S. business'

are being environmentally responsible by properly disposing of the waste they generate in the manufacturing of goods at a disposal facility such as the Kettleman Hills Facility. The Project would provide for an additional 32 years of waste disposal capacity for these firms and other residents and businesses throughout California.

Based on the above discussion, DTSC has determined that the statewide environmental benefits of the proposed Project outweigh the unavoidable environmental risks of the Project.

A Notice of Determination (NOD) indicating the results of said findings will be filed with the Governor’s Office of Planning and Research, State Clearinghouse pursuant to Section 15096(i) of the State CEQA Guidelines.

Documents and records relating to this Project decision are within the custody of the DTSC and are available for inspection at the following location:

Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826.

Certification:

I hereby certify that the statements furnished above present the data and information used to support the findings made herein pursuant to Cal. Code Regs., tit. 14, § 15091 or 15096 (h), and the facts, statements, and information presented herein, are true and correct to the best of my knowledge and belief.

_____		_____
DTSC Branch Chief Signature		Date
	Supervising Hazardous Substances Engineer II Hazardous Waste Management Program	
Rizgar Ghazi	_____	(916) 255-3572
DTSC Branch Chief Name	DTSC Branch Chief Title	Telephone No.