

June 19, 2008

Kings County Planning Agency  
RE: Conditional Use Permit No. 05-10  
Kings County Government Center, Building No. 6  
1400 W. Lacey Boulevard  
Hanford, CA 932230

## **OPPOSITION TO PROPOSED CONDITIONAL USE PERMIT NO. 05-10**

El Pueblo Para El Aire y Agua Limpio/People for Clean Air and Water, Lucha Por Salud Justicia Ambiental, Kids Protecting Our Planet, Greenaction for Health and Environmental Justice and the Center on Race, Poverty and the Environment submit these comments in opposition to Kings County Planning Agency's "Intent to Adopt A Subsequent Environmental Impact Report" for the proposed expansion, continued operation and closure of the existing Class I/II B-18 Landfill and construction, operation, and closure of a new Class I/II B-20 Landfill.

We object to the proposed projects at the Chemical Waste Management facility in Kettleman City, including expansion of what is already the largest hazardous waste landfill facility in the western United States, on the grounds that the DSEIR and the entire permit process is defective, inadequate, biased and racially discriminatory:

- 1) The proposed action has not been properly noticed as the "Notice of Intent" and related notices are defective due to key inaccurate, biased, misleading and confusing statements;
- 2) The proposed action to adopt the SEIR threatens the health and environment of Kings County residents as the DSEIR is defective due to its failure to accurately evaluate the potential health and environmental impacts from the proposed action;
- 3) The low-income communities of color most affected by the proposed project have been systematically and intentionally excluded from this permit process by Kings County officials and agencies due to the failure to provide adequate Spanish translation of documents, exclusion of Latinos from the Local Assessment Committee, the blatant pro-Chem Waste bias evident in the selection of membership of the LAC, the failure to hold all LAC meetings in Kettleman City and limiting access by holding many meetings in the middle of the work day in Hanford;
- 4) The county's permit process has been tainted due to improper collusion between county agencies including the Sheriff's Department and Chemical Waste Management, resulting in intimidation of some residents from participating in the permit process;
- 5) The proposed action would have a direct, discriminatory and disproportionate impact on the low-income, Spanish-speaking people of color residents of Kettleman City and Avenal, the two communities closest to the hazardous waste facility, and therefore violates and is prohibited by Title VI of the United States Civil Rights Act of 1964;

- 6) The proposed action would have a direct, discriminatory and disproportionate impact on the low-income, Spanish-speaking people of color residents of Kettleman City and Avenal, the two communities closest to the hazardous waste facility, and therefore violates and is prohibited by California Government Code Section § 11135;

**I. The proposed action has not been properly noticed, as the “Notice of Intent” and related notices are defective due to key inaccurate, biased and misleading statements:**

- **Misleading description of the purpose of the proposed project:** The “Notice of Intent” makes the misleading and biased statement that “(T)he proposed project would provide continued disposal capacity for designated and hazardous solid waste from Kings County and surrounding counties...” The language in the notice serves to mislead the public into thinking that the main purpose of the Chem Waste facility is for locally generated waste when in fact the facility is regional and national in scope and has accepted wastes from Mexico, and only a relatively small percentage of the waste disposed of at the facility is from Kings County. This misleading statement biases the public’s perception of the purpose of the facility and could result in less public concern based on misconceptions of the true nature of the facility.
- **The Notice incorrectly states the name of the document and refers to the document under two different names:** The title of the notice is “NOTICE OF INTENT TO ADOPT A SUBSEQUENT ENVIRONMENTAL IMPACT REPORT.” However, the body of the document refers to the document as a “DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT.”

A Subsequent EIR and a Draft Subsequent EIR are two completely different documents. This error in names in the Notice renders the Notice defective, as it is confusing and misleading. The Agency makes no attempts to clarify what they mean.

- **The Notice’s claim that the Draft SEIR complies with the requirements of the California Environmental Quality Act (CEQA) is incorrect:** The Draft SEIR underestimates and improperly characterizes the potential health and environmental threats to local residents and the environment. It also fails to assess at all the environmental justice impacts of the proposed hazardous waste landfill expansion. It also fails to identify and/or adequately evaluate all possible alternatives and all possible mitigation measures.
- **The Notice falsely claims that “(T)he DSEIR identifies and describes mitigation measures for all significant impacts:** This claim is simply not true and is wildly misleading to members of the public who might have provided comments on this document if the truth was stated. The truth is that the DSEIR identifies certain significant impacts that cannot and will not be mitigated. In fact the DSEIR admits that a “Statement of Overriding Considerations” would have to be issued by the County due to the inability to mitigate all significant impacts. The incorrect and misleading statement that “(T)he DSEIR identifies and describes mitigation measures for all significant impacts” is clearly a tremendous and blatant defect in the Notice.
- **The “Public Meetings” announced in this Notice are not legitimate public meetings and are a violation of environmental justice and civil rights:** A key Principle of Environmental Justice is that residents of the communities most impacted by a project should have meaningful participation

in determining any policy or activity that can affect their health and environment. We hereby incorporate the Principles of Environmental Justice (from the first National People of Color Environmental Justice Leadership Summit) as part of our comments, which demonstrate that the Notice and DSEIR, as well as the processes relating to them violate the Principles. The Notice was allegedly published on Thursday March 20, 2008 and announced a “public meeting” on the DSEIR for March 24<sup>th</sup>, just two working days after the Notice supposedly was “published.” Greenaction received the Notice after that public meeting took place despite the fact that the County Planning Agency had the correct address for our two offices (Hanford and San Francisco). The second “Public Meeting,” like the first, was held during the workday and in Hanford, not at night in Kettleman City so the most affected residents could participate. Having a public meeting in the middle of the workday in Hanford, over 30 miles from the affected community, is clearly designed to exclude the meaningful participation of the low-income, Spanish-speaking residents of Kettleman City and Avenal. The County Planning Agency scheduled these daytime public meetings in Hanford despite being well aware, for two decades, of the concerns of residents about their being de facto denied an opportunity to participate in decisions that affect their lives.

Despite numerous requests from Greenaction, community groups and residents for Kings County

to hold the June 20, 2008 public meeting on the DSEIR in Kettleman City in the evening, the Planning Agency has once again decided to hold the meeting at a time and place that they know a lot of residents cannot attend, and they set this important meeting for the middle of the workday in Hanford. We believe this is a violation of federal and state laws prohibiting violations of civil rights of low-income people of color communities who are disproportionately being impacted by actions that seem designed to discriminate against them.

- **Notice containing the Revised Project Description is confusing and was sent in the midst of the public comment period:** A “Revised Project Description” was sent by the Kings County Planning Department in the midst of the public comment period. This caused confusion about the documents needing to be commented upon, and should have resulted in a much longer public comment period. In addition, on June 18, 2008, just two days before the end of the comment period, an email was sent by Chuck Kinney of the Planning Agency entitled “Revised Notification for the closing of the Public Comment Period for the Draft SEIR and the Revised Project Description and Analysis for CUP 05-10” This document was from an entity called the Kings County Environmental Advisory Committee, announcing a “revised agenda” for the public meeting scheduled for June 20, 2008 that was originally noticed by another entity, the Kings County Planning Agency. We do not know who the Kings County Environmental Advisory Committee is, why a revised notice is being sent two days before a hearing, and how this relates to the public meeting noticed by the Planning Agency, and this has a confusing and negative impact on the public’s ability and right to be properly and clearly noticed of meetings and to comment on projects.

For all the above reasons, an accurate, clear and unbiased Notice must be issued with full opportunities for public comment at a time, place and manner designed to allow for full public participation.

## **II. The proposed action to adopt the DSEIR threatens the health and environment of Kings County residents as the DSEIR is defective due to its failure to accurately evaluate the potential health and environmental impacts from the proposed action:**

- **Fifty percent increase in size of hazardous waste facility will have negative impacts:** The DSEIR supports Chem Waste’s goals to obtain permits for an approximately 50% increase in the size of the hazardous waste disposal operations at the Kettleman Hills facility. This massive proposed expansion threatens the health, environment and well-being of Kettleman City and Avenal residents who deal with the daily reality of living near the largest hazardous waste landfill in the western United States.

Residents and over 125 organizations across the country have gone on record denouncing the US EPA’s draft “Environmental Justice Assessment” of the facility and its impacts as an inadequate study that violates environmental justice due to its failure to acknowledge the many negative impacts of living near a giant hazardous waste facility. The DSEIR makes many of the same errors.

- **Health problems have been ignored, and health impacts are underestimated and inaccurately assessed in the DSEIR:** One of the key flaws in the DSEIR and the USEPA’s “assessment” is that no health survey has ever been conducted in Kettleman City despite strong anecdotal evidence of increased health problems among residents in the last few years. USEPA reached conclusions supposedly finding a lack of adverse impacts without ever speaking to residents who indeed suffer numerous negative impacts from the waste disposal facility near their homes and community. County agencies should have conducted a full health survey of residents and Chem Waste workers, and engaged in other activities to properly and accurately assess possible impacts of the Chem Waste facility and the proposed expansion. Without such health data, no accurate analysis can be done.

Residents report many incidences of birth defects, cancer, asthma and reproductive problems that potentially could be linked to exposure to toxic chemicals and other pollutants associated with the Chem Waste facility and their operations, yet no agency has investigated these health complaints.

For example, there apparently have been four cases of cleft palate in infants born in the last year in Kettleman City. We do not have enough information to say if these illnesses are caused by activities related to the Chem Waste facility, but they certainly may be related and indicate that the nearby population may be seriously at risk and health impacted, thus more vulnerable to toxic exposure. The DSEIR should be rejected if for no other reason than the failure to speak to the community members to help ascertain adverse impacts and for making conclusions about potential health impacts without having important facts about community health.

The DSEIR fails to evaluate the full potential impact of toxic and particulate emissions from the Chem Waste facility and from the diesel emissions of trucks going to and from the facility:

- **Full cumulative and synergistic impacts not considered:** The DSEIR fails to evaluate the cumulative impacts of toxic and particulate emissions from the Chem Waste facility, the diesel emissions of trucks going to and from the facility, the pollution from pesticides spraying, from workplace exposure to pesticides for farmworker residents of Kettleman City and Avenal, from the terrible air quality in Kings County, from the possible emissions of the proposed Westlake Farms “biosolids” (sewage sludge) operation next to Kettleman City, and from the thousands of diesel trucks traveling every day near Kettleman City and Avenal residents on the Interstate 5 and Highway 41. Avenal residents are also impacted by emissions associated with the transportation in diesel trucks and dumping of large quantities of garbage at the Avenal Regional Landfill.

Understanding and accurately considering and evaluating the cumulative risks and impacts of a given area is central to understanding the adverse and disproportionate effects a given community may be experiencing and would experience from a proposed action such as expansion of the hazardous waste landfill. The DSEIR fails to make the connection that all of these individual instances of risk may be part of a cumulative, overarching, disproportionately adverse, environmental threat to the community. Another important component of cumulative risk that is ignored in the DSEIR is the likelihood of synergistic effects. The DSEIR neglects the role of synergism between the individual pollutants in affecting environmental quality and health. It is very likely that the combination of certain pollutants is more harmful than each acting individually.

As the residents of Kettleman City and Avenal are exposed to more than one of the criteria and toxic pollutants at a given time, revising the DSEIR methodology to account for such synergism would broaden and deepen the relevance and accuracy of the assessment. The failure to consider cumulative and synergistic impacts results in a non-scientific, inaccurate assessment of health impacts as such a comprehensive evaluation is essential if an accurate analysis of the impact of Chem Waste’s existing and proposed pollution is to be done. Anything other than a full evaluation of all cumulative impacts results in a flawed and defective conclusion that underestimates the risk to residents.

- **DSEIR’s “Project Purpose and Objectives” misleading:** This section deceptively claims that a key project purpose is to provide hazardous waste disposal for the county. This is not accurate, as the expansion never would have been requested if the facility were primarily for local waste. It is a fact that Chem Waste accepts waste from all over the country and from Mexico. This facility is not and was never intended to be primarily for hazardous waste generated in Kings County. The statement and premise that the Chem Waste Kettleman Hills facility is primarily for Kings County’s waste false, and is nothing more than propaganda and company public relations. This misleading and false claim in the DSEIR invalidates the document and its conclusions.
- **Significant impacts cannot be mitigated and threaten public health and the environment:** The Kings County Planning Agency wants to approve this project despite significant and unavoidable impacts on air quality, greenhouse gas emissions/climate change and traffic impacts that the DSEIR admits cannot be mitigated. This is an unacceptable threat to the health of residents and the environment:

- **Ozone, PM 10 and PM 25 impacts would exceed standards:** The DSEIR admits that the County is
  - for the ozone 1-hour standard designated as state “non-attainment/severe;
  - for the ozone 8-hour federal standard, is designated as nonattainment serious and designated state nonattainment;
  - for PM 10, the County is designated federal nonattainment/serious and state non-attainment;
  - for PM 25 the County is designated as federal nonattainment as by the state as “designation to be determined”

The DSEIR found that the proposed Project would exceed the federal and state standard for PM10.

The DSEIR’s conclusion that the proposed project would result in specific and unavoidable significant impacts even after implementation of feasible mitigation measures is an admission that this project should be rejected.

These exceedences and significant impacts directly threaten the health of a community already suffering from terrible air quality, multiple pollutions sources, and high rates of asthma.

- **A “Statement of Overriding Considerations” to allow the significant impacts would be unacceptable and would violate the county’s responsibility to protect its citizens:** The County hopes to issue a “Statement of Overriding Considerations” relative to air quality and health risks to get around these significant impacts. Such an action would jeopardize the health and environment of Kings County residents in order to help Chem Waste avoid the mandates of CEQA and make a bigger profit. These residents have had to deal with being consistently ignored, excluded and manipulated by Chem Waste, county and state-wide agencies, and the federal government who are intent on keeping the interests of a private business over the interest of an entire population of people.

Issuance of a Statement of Overriding Considerations by Kings County in order to excuse significant negative impacts would be an abuse of decision-making power and a violation of the civil rights of residents, resulting in a direct threat to the health, well-being and environment of residents.

- **Hazards and Hazardous Materials:** The DSEIR underestimates the health and environmental risks posed by hazards and hazardous materials related to waste transport, handling, disposal, fire and site security. Accidents do happen, as is evidenced by the explosion of a propane tank in Kettleman City on June 13, 2008 that caused the evacuation of residents from their homes. The same day a truck carrying hazardous materials had a spill along the Interstate 5 not far from Kettleman City.
- **Chem Waste’s Violations Ignored by DSEIR:** The DSEIR claims that the Project would operate in accordance with federal and state regulations, yet this cannot be guaranteed or

assumed. Chem Waste has in the past been cited by US EPA for serious monitoring violations at the Chem Waste Kettleman Hills facility, and the company has had many violations at their other facilities across the country.

- **Liner Breakage Ignored by DSEIR:** It is undisputed that a landfill liner at the Kettleman Hills facility had a large break several years ago resulting in what was described as a toxic waste avalanche. The liner problem occurred apparently as a result of animals eating through the liner. The DSEIR must acknowledge and evaluate the possibility of a similar occurrence in the future, yet failed to do so.
- **Toxic threat to Kettleman City Elementary School Ignored:** The DSEIR claims that the expansion activities proposed by Chem Waste would not impact the school, but that is simply and clearly incorrect. The DSEIR claims that all expansion activities would take place 3.5 miles away, but in fact, activities related to the expansion, such as hazardous waste disposal and diesel truck traffic, could have a considerable impact on the school and the children. Many trucks emitting diesel pollution and carrying hazardous wastes travel less than two blocks away from the Kettleman City School, a lot closer than the 3.5 miles described in the DSEIR. A fire at the landfill could spread toxic pollution more than 3.5 miles from the facility. An accident on the densely traveled Highway 41 could have profound impacts on the nearby school, children, teachers and residents.

In addition, the significant diesel emissions from trucks going to and from the facility would emit toxic and criteria pollutants that can contribute to cancer and asthma. This exposure would happen less than two blocks from the school, not 3.5 miles away.

- **Hydrology and Water Quality:** The DSEIR incorrectly concludes that there would not be a significant impact to groundwater or surface water resources, including the important California Aqueduct located only 3 miles east of the hazardous waste facility. Parts of Highway 41 in Kettleman City are just a few feet from the Aqueduct. A fire or explosion resulting from an accident at the site or a fire, explosion or spill involving a truck transporting hazardous waste next to the Aqueduct could directly impact and harm the Aqueduct and groundwater. The DSEIR should have, yet did not, evaluate and assess the potential negative impacts on the Aqueduct from these possible occurrences.
- **Noise:** The DSEIR incorrectly concludes that the proposed Project would not result in additional truck-related noise impacts along local and regional roadways. The proposed Project would result in additional truck related noise (and pollution) impacts as these truck trips would not happen if the proposed permit were not issued and there was no expansion of the facility. The expansion would inevitably increase the amount of waste going into the facility for many years to come, subsequently increasing noise and transportation impacts for many years to come.
- **Transportation/Traffic:** The DSEIR's discussion of transportation and traffic impacts admits that the proposed Project would contribute to a significant impact on SR-41 from the KHF entrance to I-5 and on I-5 beginning in 2026 through 2043. The DSEIR admits that there will be a cumulative, significant and unavoidable impact, which would have an

unacceptable, discriminatory, and disproportionate impact on the low-income people of color residents of Kettleman City.

We challenge the conclusion that there would not be a significant impact through 2018 for the reasons described above.

- **Greenhouse Gas Emissions and Global Climate Change:** The DSEIR acknowledges the stark reality that greenhouse gas emissions from human activity are contributing to climate change that could lead to widespread consequences that would affect many of California's important resources.

The DSEIR states that the proposed Project would contribute approximately 17,550 tons per year of CO<sub>2</sub>, a significant addition to climate change pollution problems.

The DSEIR tries to whitewash the significance of this climate change pollution by incorrectly claiming that since there still will be hazardous waste generated in California, the carbon emissions from waste transport would still need to be transported for disposal – so why not to Kettleman City, their argument follows. If the DSEIR acknowledged reality and science, and actually understood and acknowledged what Environmental Justice means, it would know that because of large disparities in socio-economic and cumulative environmental and health conditions present among these many populations in the Valley, the negative effects of something bad, like ozone, will likely effect people living in different socio-economic conditions and in different local environments very differently. We recommend the siting of smaller hazardous waste landfills closer to the point of generation, in the nearest affluent community where the heads of government agencies and CEO's of toxic-generating industries live. This will cut down on transportation risks and be an incredible incentive for pollution prevention measures.

We agree with the finding in the DSEIR that the proposed Project would result in Project-specific and cumulatively significant greenhouse gas emissions. We agree with the DSEIR that even with the implementation of mitigation measures, the proposed Project would produce greenhouse gas emissions that will result in a significant contribution to the impact of global climate change.

However, we strongly challenge the DSEIR's suggestion and the County's plan to issue a statement of overriding considerations relative to greenhouse gases and climate change. The State of California is on record acknowledging that urgent steps are needed to combat climate change and educe greenhouse gases, yet Kings County improperly is attempting to approve a permit that they admit would increase greenhouse gases that contribute to climate change and affect health.

No government agency, especially in California – a state very aware and allegedly concerned about climate change – should seek to adopt a statement of overriding concerns to excuse and permit increasing greenhouse gas emissions in order to justify expanding a toxic waste dump.

- **Cumulative Project Impact Summary:** We agree with the DSEIR’s conclusion that the Project would have significant cumulative impacts on air quality, public health, transportation, traffic, greenhouse gases and climate change, and some cancer risk. We believe that protection of public health and the environment mandate the proposed project be rejected due to the significant cumulative impacts.

The DSEIR did only a partial cumulative analysis that is inadequate as it did not consider things like community and worker exposure to pesticide drift, pesticide exposure at work for farmworkers, diesel emissions, poor drinking water quality, potential dumping of sewage sludge, and other pollution sources. This failure to conduct a full and comprehensive cumulative risk analysis results in an incomplete assessment.

- **No Project Alternative:** The DSEIR identified the project objectives in a way that the “no project” alternative could not be chosen. The real goals of a project for hazardous waste disposal should be to ensure the safe handling and disposal of hazardous waste without the significant impacts on health and the environment. A project whose objectives are allegedly met while having significant impacts on health and the environment does not deserve to be approved.

The DSEIR does admit that the “No Project” alternative is the environmentally superior alternative, yet does not embrace that. The County should only adopt the safest and environmentally superior alternative – the “No Project” alternative.

**III. The low-income communities of color most affected by the proposed project have been systematically and intentionally excluded from this Planning Agency’s permit process by Kings County officials and agencies due to the failure to provide adequate Spanish translation of documents, by the exclusion of Latinos from the Local Assessment Committee, the blatant pro- Chem Waste bias evident in the selection of membership of the LAC, the failure to hold all LAC meetings in Kettleman City and limiting access by holding many meetings in the middle of the work day in Hanford. The Kings County’s Local Assessment Committee Process for the Proposed Conditional Use Permit is Racially Discriminatory and Biased towards Chemical Waste Management:**

- **Defects, Bias and Racism of the LAC Process Demonstrate a Pattern and Practice of Civil Rights and Make a Mockery of the LAC and Permitting Process:**

The duties of the LAC pursuant to Section 25199.7 (d) of the California Health and Safety Code, according to the Planning Agency, is to advise the county on how the proposed expansion of the hazardous waste facility may be acceptable to the community. The LAC is required to “Represent generally, in meetings with CWMI, the interests of the residents of the County of Kings and the interests of adjacent communities.” Unfortunately, but not surprisingly, Kings County has once again excluded the low-income Latino residents of Kettleman City and Avenal from a critical aspect of a permit process and stacked the LAC with non-Latino, pro-Chem Waste members who do not meet the “representative” requirement of the California Health and Safety Code.

The LAC process is blatantly and improperly biased in favor of Chem Waste, a bias evident in the selection of membership of the LAC and in the inadequate, biased and defective LAC process.

The LAC is supposed to be representative of the community, thereby representing their interests, but the Planning Agency instead picked members who are not representative of the demographic composition of the community and who are overwhelmingly biased towards industry.

The low-income communities of color most affected by the proposed project have been systematically and intentionally excluded from this permit process by Kings County officials and agencies due to the complete exclusion of Latinos from the Local Assessment Committee (LAC).

Not one Latino is part of the LAC, despite the fact that the community next to the Chem Waste Kettleman Hills facility, Kettleman City, is over 95% Latino and heavily Spanish-speaking. The exclusion of Latinos, who comprise virtually the entire population of Kettleman City and are a large part of Kings County, especially when the Planning Agency has long been well-aware of the serious interest in this issue among Latino residents, is blatant and intentional racial discrimination.

In addition to the two seats on the LAC reserved for industry and the industry background of the chair, at least one other seat (if not more) are clearly industry representatives. For example, Ceil Howe served as a so-called "Community Representative" on the LAC even though he represents Westlake Farms, a large company that is currently battling Kettleman City residents over his controversial plan to use sewage sludge (i.e. "biosolids") on farm land in Kettleman City. He was allowed to be improperly sitting on the LAC as a "community representative" even though his company's permit application for a polluting activity next to Kettleman City is still active in the permit process. The fact that he recently was switched over to be an "industry representative" on the LAC instead of a "community representative" after we challenged him and the LAC does not remedy the problem. Mr. Howe has a demonstrated bias due to his conflict with residents of Kettleman City over the biosolids/sewage sludge issue. In addition, the fact that he served on the LAC improperly as a "community representative" can only be remedied by starting the entire LAC process from the beginning with proper representation as required by the Tanner Act.

The LAC chair, Vern Grewal, has lived in Hanford for a short period of time and before moving to Kings County lived in the Silicon Valley, where he was a representative for a company that emitted toxic pollution and generated hazardous wastes. Despite being LAC Chair, Mr. Grewal seems under-informed about the environmental justice issues impacting Kettleman City and Avenal residents, about Chem Waste's track record, and about the source of much of the waste shipped to and dumped at the Chem Waste facility. Until Mr. Grewal can become more familiar with the issues relevant to this process he should not be on the LAC, especially as Chair.

The County picked two people for the LAC's "environmental or public interest group" seats individuals who cannot legitimately be said to be an active environmental or public interest group. Both apparently have ties to the Agricultural Commission. These two members are apparently affiliated with a local group based in Hanford, for which there is no publicly available contact information. This group has never worked on issues related to Kettleman City and is neither known to nor representative of the Kettleman City community members long involved in their community's environmental issues. Kelly Deming, an LAC member who is one of the "environmental or public

interest group” representatives stated at the May 29, 2008 LAC meeting that her organization does not have and would not have a public phone number or email address, and she refused to make any contact information available. She also confirmed that her organization has never worked on Kettleman City issues. She also has failed to respond to requests from Greenaction and El Pueblo to arrange a meeting with her “group” so we could learn more about any work they claim to do.

An organization that does not have a way for the public to contact them and that categorically refuses to provide a contact number cannot seriously claim to be an organization acting in the public interest or representing the interests of the affected community. They can in no way legitimately be considered as acting in the interests of the community if they refuse to provide a way for the public to contact them. Key environmental and public interest groups with a long history of involvement in this issue and which are clearly representative of many community members were excluded from the LAC. These groups, all known to the County Planning Agency, are El Pueblo Para el Aire y Agua Limpio/People for Clean Air and Water (Kettleman City), Lucha Por Salud y Justicia Ambiental (Avenal), Kids Protecting Our Planet (Kettleman City), Greenaction for Health and Environmental Justice and Center for Race, Poverty and the Environment (CRPE). Despite claims by Planning Department staff that no Latinos applied to the LAC, in fact a Latino representative of CRPE who lives in Kings County had applied to the LAC for membership but was rejected.

In addition to the complete exclusion of Latino residents from the LAC, only one Kettleman City resident is on the LAC, an individual who is one of the only non-Latinos in Kettleman City who also is unique in her approximately twenty year history of outspoken support for Chem Waste.

No more than a few residents of Kettleman City (apparently less than 1%) or Avenal (none) were notified about the LAC process or meetings, despite the undisputed fact that hundreds of residents have attended prior county and state meetings and hearings regarding this facility and were assured they would be notified of opportunities for public comment and participation.

County officials and the LAC failed to provide agendas in Spanish, and even recently said they would not do that. Yet they were able to send out the agenda for the scheduled June 12, 2008 in Spanish. Interestingly, that meeting was cancelled. The failure to send out notices of LAC meetings to affected residents, in English or Spanish, served to prevent public participation in this process, and undermined the ability of the LAC to fulfill its mandate to represent the community they did not bother to notify.

In addition, until the May 22, 2008 LAC meeting, the County held every LAC meeting during the day in Hanford, at a time and place that made it virtually impossible for the farmworkers and other working residents of Kettleman City and Avenal to attend LAC meetings, even if they had been notified, which they were not. Having the LAC meetings in Hanford during the workday clearly benefits Chem Waste, to the detriment of the residents of the affected communities. When a LAC meeting was finally held in Kettleman City on May 22<sup>nd</sup>, dozens of concerned residents showed up and many spoke to the LAC raising their concerns about the proposed dump expansion and their outrage at the biased LAC process. If the LAC was truly interested in public input, it would have all the meetings in the evening in the affected community, but obviously the LAC does not want to hear from the public.

- **Failure and Refusal of Kings County Planning Department to Translate the EIR documents violates the Civil Rights of the low-income people of color residents most impacted by the proposed project:** The failure to translate the EIR documents into Spanish is puzzling as well as discriminatory. Kings County lost a court case regarding a similar permit process in the early 1990's involving the same hazardous waste facility and Kettleman City residents. The court found that the Spanish speaking residents were denied their right to participate fully in the permit process due to the failure to translate some of the EIR into Spanish, yet today the County is making the same error and stubbornly refusing to provide adequate translation of key documents.

#### **IV. The county's permit process is tainted and biased due to improper collusion between county agencies including the Sheriff's Department and Chemical Waste Management:**

On April 19, 2008, Chemical Waste Management held a "picnic" and offered free food to Kettleman City residents in Kettleman City Park. This event was clearly held and timed to coincide with the public comment period on the DSEIR that would allow a huge expansion of the hazardous waste landfill in an attempt to silence opposition with the offer of free food.

Unfortunately, the Kings County Sheriff's Department and Fire Department participated in Chem Waste's public relations event, clearly associating county agencies that should be neutral about the dump expansion with supporters for the dump expansion. The participation of the County Sheriffs in this Chem Waste event demonstrated an improper pro-Chem Waste bias.

In addition, the participation of the Sheriff's Department was seen by several Latino Spanish-speaking residents as an attempt to intimidate residents from protesting against Chem Waste. Several residents expressed concern that if they were to voice their opposition to Chem Waste they could suffer harassment or risk arrest due to the participation of the Sheriff's Department in this Chem Waste event. These fears were well founded due to the numerous and documented reports of Sheriff's deputies following cars and pedestrians going to and from an environmental justice conference at the Kettleman City school in November, 2007.

These actions, taken in combination with other violations and biased actions discussed in these comments, document a pattern and practice of county bias and civil rights violations negatively impacting the affected community's ability to participate in the permit process.

#### **V. Kings County's Permit Process and the Intent to Adopt the SEIR Violate Title VI of the U.S. Civil Rights Act of 1964:**

The actions taken by the Kings County Planning Agency, the DSEIR and the Intent to Adopt the SEIR illustrate and document a pattern and practice of actions that violate and are prohibited by Title VI of the United States Civil Rights Act of 1964. Title VI prohibits agencies that receive federal funding from taking actions that discriminate or have a disproportionate impact on communities of color or low-income populations. Kings County Planning Agency has received federal funding, and is thus subject to the prohibitions of Title VI.

As a recipient of federal funds, Kings County is prohibited from taking actions that would have a direct, discriminatory and disproportionate impact on the low-income, Spanish-speaking people of color residents of Kettleman City and Avenal, the two communities closest to the hazardous waste facility.

The proposed action would have a direct, discriminatory and disproportionate impact on the low-income, Spanish-speaking people of color residents of Kettleman City and Avenal, the two communities closest to the hazardous waste facility, and therefore violates and is prohibited by Title VI of the United States Civil Rights Act of 1964.

Approving a project that threatens public health and the environment, despite significant and unavoidable impacts on air quality, greenhouse gas emissions/climate change and traffic impacts that are acknowledged and cannot be mitigated is unacceptable and discriminatory as these impacts directly and disproportionately affect the health, environment and well-being of the low-income people of color residents of Kettleman City and Avenal, the two communities closest to the hazardous waste facility.

For at least twenty years, the Kings County Planning Agency and the Board of Supervisors have been engaged in a series of actions and have made consistently unanimous decisions to favor Chemical Waste Management instead of protecting the health, environment and well-being of low-income, Spanish-speaking Latino communities closest to the Chem Waste facility.

This pattern of discriminatory actions and actions that have or would have a disproportionate impact on low-income people of color residents is blatantly continuing with the current permit process.

The County's permit process and their "Notice of Intent to Adopt a Subsequent Environmental Impact Report" to allow the expansion and continued dumping of hazardous waste at the Kettleman Hills facility is, like similar actions by Kings County for two decades, based on biased, discriminatory and improper actions and permit processes that put residents at risk and violate the basic civil rights laws of our country.

#### **VI. Kings County's Permit Process and the Intent to Adopt the SEIR Violate California Government Code Section § 11135 Prohibiting Discrimination:**

For the reasons set forth in these comments, the Kings County Permit Process, including but not limited to the LAC process, and the Intent to Adopt the SEIR, violate state law and perpetuate the continued discrimination against the low-income communities of color in Kettleman City and Avenal.

As a recipient of state funds, Kings County is prohibited from violating California Government Code Section § 11135.

California Government Code Section § 11135 provides:

*"No person in the state of California, shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color or disability, be unlawfully denied full and equal access*

*to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is conducted, operated or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. [...].”*

*“It is a discriminatory practice for a recipient, in carrying out any program or activity directly, or through contractual, licensing or other arrangements, on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability to utilize criteria or methods of administration that perpetuate discrimination by another recipient on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability to make permit selections of sites or locations of facilities that have the purpose or effect of excluding persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity.”*

According to Cal. Govt. Code § 11135, a recipient is defined as “any contractor, local agency, or person who regularly employs five or more persons and who receives state support, in an amount in excess of \$10,000 in the aggregate per state fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or indirectly through another recipient.”

The regulations state that all actions undertaken by a local agency that receives state funds will be covered by section 11135 (regardless of whether the specific program at issue is itself funded with state financial assistance).

Kings County’s reliance on the dump expansion is relying on environmental review documents and a process that discriminates and has disproportionate impacts based on ethnic group identification and color, violating California Govt. Code § 11135.

For all the reasons stated above, the defects in the Notice of Intent, the DSEIR and in the LAC process have a clear, discriminatory and disproportionate impact on the low-income people of color residents of Kettleman City and Avenal, violating the civil rights of residents, Title VI of the Civil Rights Act and California Government Code Section § 11135.

## **Conclusion:**

Kings County must reject the DSEIR and the proposed hazardous waste expansion project for Chemical Waste Management for the reasons documented in these comments. The County is required to conduct a fair, comprehensive, factual, unbiased and non-discriminatory process for permit applications and that simply and clearly has not occurred in this proposed project.

Please notify us of any and all responses to these comments and of any and all opportunities for public comment on this project in writing, sent to the following addresses:

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