California Rural Legal Assistance, Inc.
Rural Roots, Justice for All

September 24, 2025

Attention: Katherine M. Butler, Director
California Department of Toxic Substances Control (DTSC)
1001 I Street, Sacramento
CA 95814

Submitted via electronic mail to:
<Katherine.Butler@dtsc.ca.gov>

RE: Comments on Kettleman Hills Facility Draft Hazardous Waste Facility Permit

Dear Director Butler:

El Pueblo Para El Aire y Agua Límpia (El Pueblo) respectfully submits the following comments on the Kettleman Hills Facility (Facility or KHF)'s Draft Hazardous Waste Facility Operations Permit (Permit Renewal Application, Permit Application, or Draft Permit).

El Pueblo para El Aire y Agua Límpia was formed in 1987 by residents of Kettleman City who were and continue to be extremely concerned about the environmental as well as community health and safety impacts of the Kettleman Hills Facility, a hazardous waste facility owned and operated by Chemical Waste Management, Inc. (Chem Waste). Kettleman City is a disadvantaged unincorporated community in Kings County that faces some of the worst environmental and socioeconomic burdens in California. Kettleman City is located in a census tract that ranks in the 92nd percentile on CalEnviroScreen 4.0.[1] 97% of the community is Latine, 100% speak Spanish or are monolingual Spanish speakers, and 26.8% are living below the federal poverty threshold.[2]

El Pueblo's primary interest is in protecting the health of Kettleman City residents as well as in preserving and enhancing the environment and promoting justice for Kettleman City. This interest includes ensuring much-needed infrastructure and other improvements in the community.

[1] State of California Office of Environmental Health Hazard Assessment (OEHHA), CalEnviroScreen 4.0: Census Tract: 6031001601. *Available at:* https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40 (last visited Sept. 10, 2025).
[2] U.S. Census Bureau, Kettleman City CDP, California. *Available at:* https://data.census.gov/profile/Kettleman_City_CDP,_California?g=160XX00US0638394 (last visited Sept. 10, 2025); Community Update on the Kettleman Settlement Agreement Civil Rights Analysis (October 2023), at 1. *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2023/KHF-Community-Update-CRA-English-Final_ada.pdf [*hereinafter* Civil Rights Analysis Community Update].

In order for Chem Waste to operate the Kettleman Hills Facility, it is required to obtain an operations permit and subsequent renewal permits from DTSC.[3] DTSC first approved KHF's operations permit in 1988.[4] DTSC last approved the Facility's permit in June 2003.[5] As KHF's operations permit expired, Chem Waste submitted a permit application on February 12, 2013. The 2013 permit application pertains to new and continued hazardous waste processing, treatment, storage, and disposal, including the continued disposal of hazardous waste at Landfill Unit B-18 (Unit B-18 or Landfill B-18).[6] While the 2003 permit expired more than twelve years ago, DTSC provided administrative approval for the Facility's 2013 permit application, which allowed the Facility to continue operating under the expired and outdated 2003 permit.[7]

Eleven years after the 2003 permit expired, DTSC issued the Draft Permit for the Facility on April 3, 2024. DTSC proposes to approve KHF's permit renewal as early as January 2026.[8] If approved, this permit will allow the Facility to operate for up to an additional 10 years.

The 2016 Civil Rights Settlement Agreement

On May 21, 2014, DTSC also approved KHF's application to expand the hazardous waste landfill capacity at Unit B-18 to 15,600,000 cubic yards.[9] On March 19, 2015, El Pueblo filed an administrative complaint with the United States Environmental Protection Agency (US EPA) under Title VI of the Civil Rights Act of 1964 against DTSC for approving KHF's request to expand B-18.[10] The parties reached a settlement agreement regarding the administrative complaint on August 10, 2016 (2016 Title VI or civil rights settlement agreement).[11]

In the 2016 civil rights settlement agreement, DTSC first agreed to work with KHF to improve air quality controls in the renewal of the Facility's permit.[12] Second, DTSC agreed to strengthen environmental monitoring and enforcement as well as support public health assessment and programs in Kettleman City during the three years following the effective date of the settlement agreement.[13] Third, DTSC agreed to use its best efforts to request expedited review and implementation of a community drinking water improvement project and provide Kettleman City residents updates on this project.[14]

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[3] Cal. Health and Safety Code § 25200.
[4] *See* Chemical Waste Management Inc. Kettleman (CAT000646117), Facility Information and History. *Available at:* https://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report.asp?global_id=CAT000646117 (last visited September 21, 2025)[*hereinafter* KHF EnviroStor Page].
[5] *Id.*
[6] Draft Permit at 12-33. *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/04/KHF-Draft-RCRA-Permit_English_ada.pdf.
[7] Department of Toxic Substances Control, Hazardous Waste Facilities Operating Permit Decision Status Report, Appendix A, 1 of 4 (October 2024). *Available at:* https://bes.dtsc.ca.gov/wp-content/uploads/sites/42/2024/10/BES-Report-with-Appendices-ADA-October-2024.pdf.
[8] KHF EnviroStor Page.
[9] *Id.*
[10] 42 U.S.C. §§ 2000d to 2000d-7; 50 C.F.R. Part 7.
[11] Department of Toxic Substances Control, Kettleman Title VI Settlement Agreement (August 10, 2026). *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2019/02/Kettleman_TitleVI_Settlement.pdf [*hereinafter* 2016 Title VI Settlement Agreement].
[12] 2016 Title VI Settlement Agreement at 4.
[13] 2016 Title VI Settlement Agreement at 4-6.
[14] 2016 Title VI Settlement Agreement at 6.

Additionally, DTSC committed to considering several factors before issuing or denying Chem Waste's 2013 permit application.[15] The factors DTSC must consider include:

> 1. Kettleman City's vulnerability as identified by CalEnviroScreen indicators for such vulnerability, including pollution levels, income, health, linguistic isolation and language access needs;
> 2. Whether the decision on the permit application and processes undertaken in relation to the permit decision are consistent with applicable civil rights laws;
> 3. Enforcement actions against KHF since the last permit issuance;
> 4. Violations or noncompliance that show a repeating or recurring pattern.[16]

We appreciate DTSC's efforts to fulfill the terms of the 2016 civil rights settlement agreement. DTSC characterizes its obligation to do so as "ongoing".[17] However, as we discuss in detail below, DTSC has failed to complete or show that it is implementing several terms within this agreement.

As DTSC considers KHF's permit application, members of El Pueblo and other residents of Kettleman City continue to experience and remain very concerned about the adverse air quality, traffic and safety, water quality, hazardous materials, and community health and safety impacts that the Facility would have on Kettleman City if it is allowed to continue operating.

Furthermore, even though KHF has generated significant revenue from operating near Kettleman City for more than four decades, Chem Waste has not implement sufficient pollution reduction and measures nor environmental and public health monitoring, and has not provided sufficient community improvements to ensure the health, safety, and well-being of the Kettleman City community.

In response to the Draft Permit, Members of El Pueblo provided verbal public comments highlighting the above concerns during the public comment workshops/meetings on May 9 and May 15, 2024. Unfortunately, DTSC has not updated its Draft Permit to address these concerns. We therefore expand on these concerns as well as legal violations and procedural issues that it must address before deciding whether to approve the Draft Permit.

In particular:

I. DTSC fails to sufficiently mitigate impacts related to air quality, traffic and safety, noise, water quality, and hazardous materials in the Draft Permit.

II. DTSC fails to and must ensure that Chem Waste improves community reporting of the Facility's monitoring efforts, violations, and any enforcement actions against the Facility.

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[15] 2016 Title VI Settlement Agreement, at 4 (DTSC also committed to consider these factors if Chem Waste applies to expand a hazardous waste management unit at KHF within 3 years of the effective date of the agreement).
[16] *Id.*
[17] Waste Facilities Status Report, at Appendix A, 2 of 4.

III. DTSC fails to and must require Chem Waste to ensure environmental monitoring in Kettleman City.
IV. DTSC fails to and must require Chem Waste to conduct ongoing studies on potential health impacts the Facility may have on Kettleman City residents. DTSC must also ensure that Chem Waste consults residents on the scope of studies on health impacts and annual health risk assessments. Chem Waste must provide annual updates on the status and results of these studies to the Kettleman City community.
V. DTSC must update the 2024 vulnerability evaluation in compliance with SB 673.
VI. DTSC must consider KHF's previous violations and enforcement actions against the Facility as it evaluates whether to issue or deny the Draft Permit.
VII. DTSC must prepare a subsequent environmental impact review for the Facility's permit application.
VIII. DTSC must ensure its decision on the Facility's permit will not disproportionately impact racial minority and low-income communities including Kettleman City, in compliance with civil rights laws.
IX. DTSC must improve its community engagement process as it considers the Draft Permit.
X. DTSC must update the Draft Permit to ensure the proper closure of Unit B-18 and the Facility.

I. DTSC fails to sufficiently mitigate impacts related to air quality, traffic and safety, and water quality, and hazardous materials in the Draft Permit.

First, DTSC has failed in its Draft Permit to adequately address the likely significant environmental, health, and safety impacts from the Kettleman Hills Facility. DTSC's failure is extremely concerning given the Facility's well-documented, historic and ongoing violations of environmental and health standards. In particular, DTSC has failed to meet several terms of its 2016 civil rights settlement agreement with El Pueblo that require the agency to adequately address the environmental, health, and safety impacts from the Facility. We also discuss DTSC's failure to do so under the California Environmental Quality Act in Section VII below.

A. DTSC fails to and must adequately improve air quality controls for the Facility.

In the 2016 civil rights settlement agreement, DTSC agreed to use its regulatory authorities to analyze how to reduce air pollution emissions from KHF and in Kettleman City in the Facility's Permit Application. DTSC committed to consider the following:

1) The use of emissions control devices for vehicles and equipment used on-site and in association with the hazardous waste operations at KHF;
2) Rerouting trucks associated with KHF's hazardous waste operations either by avoiding the use of Highway 41 by those trucks within Kettleman City limits or by requiring the trucks to use a bypass;
3) Coordinating with the California Air Resources Board and the San Joaquin Valley Air Control District to reduce illegal diesel vehicle idling; and

4) Monitoring and enforcement of permit conditions.[18]

DTSC proposes several special conditions related to air pollution control in the Draft Permit.[19] Additionally, DTSC stated in its 2024 evaluation of Kettleman City's vulnerability to the Facility's operations (Vulnerability Evaluation or Assessment) that: "based on public feedback on the proposed draft permit, other potential conditions that DTSC may consider that could further reduce air pollution related to the presence of KHF include additional truck route restrictions or further air monitoring requirements."[20] However, the proposed permit conditions are insufficient to address significant air pollution impacts that KHF will have on Kettleman City and the surrounding areas. We recommend that DTSC incorporate the below updates to the draft permit conditions in order to reduce the Facility's air pollution impacts and comply with the 2016 civil rights settlement agreement.

i. DTSC fails to and must require all heavy-duty diesel trucks coming in and out of the Facility to meet more stringent vehicle emission standards.

DTSC proposes that all heavy-duty diesel trucks carrying waste in and out of KHF must meet 2010 model year vehicle emission standards. However, current model year heavy-duty vehicles emit significantly less nitrous oxide, ozone, and other air pollutants than what the 2010 emission standards allow, and heavy-duty truck emissions are consistently improving.[21] Therefore, we recommend that DTSC require all heavy-duty diesel trucks at KHF meet more stringent vehicle emission standards. We would welcome additional discussion on this matter.

We also recommend that DTSC not allow an exception to this requirement. As of January 1, 2023, trucks over 14,000 pounds with diesel engines older than the 2010 model year have been banned with few exceptions.[22] The 2014 modification permit for the Facility already states that diesel trucks with engines older than model year 2010 were no longer allowed after January 1, 2018.[23] It would also be cumbersome and unrealistic to track violating vehicles. As such, the proposed exception in the Draft Permit is also no longer appropriate or necessary.

DTSC should amend Condition 35 as follows: "The Permittee shall prohibit entry to the facility of any heavy-duty diesel truck delivering material with a hazardous waste manifest if that truck is equipped with a *pre-2010* model year emission equivalent engine. ~~However, the Permittee may allow a heavy duty diesel truck equipped with a pre-2010 model year emission equivalent engine to enter the facility once, provided that the Permittee shall notify the driver and the trucking company of this requirement and document such notification. After this notification,~~

[18] Title VI Settlement Agreement at 4.
[19] Draft Permit at 38-48.
[20] Department of Toxic Substances Control, Chemical Waste Management—Kettleman Hills Hazardous Waste Landfill Permit Application Evaluation of Kettleman City's Vulnerability Using CalEnviroScreen Data, 13 (April 2024). *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/04/Kettleman-CES-English-Final_ada.pdf [*hereinafter* Vulnerability Evaluation].
[21] California Air Resources Board, Heavy Duty Omnibus Regulation Factsheet. A*vailable at:* https://ww2.arb.ca.gov/our-work/programs/heavy-duty-low-nox/heavy-duty-omnibus-regulation-fact-sheet.
[22] California Air Resources Board, Truck and Bus Regulation Compliance Overview (March 16, 2023). *Available at:* https://ww2.arb.ca.gov/sites/default/files/2022-09/ComplianceOverview.pdf.
[23] Vulnerability Evaluation at 12-13.

~~the pre-2010 model year emission equivalent engine may enter the facility once, after which the non-compliant truck will be prohibited.~~"[24]

ii. DTSC fails to and must require Chem Waste to use zero- or reduced- emissions equipment at the Facility.

As discussed above, DTSC agreed in the 2016 civil rights settlement agreement to consider the use of emissions control devices for vehicles and equipment used on-site and in association with KHF's operations.[25] DTSC also states in the Vulnerability Evaluation that it is "committed to working with the community and other agencies who have jurisdiction over air quality in the area or Statewide, such as CARB, to support continued modernization of the KHF on-site mobile sources as well as off-site mobile sources."[26] Despite these commitments, DTSC has not and must also require KHF to use zero-emission heavy equipment on-site. We would welcome additional discussion on this matter.

iii. DTSC must require Chem Waste to re-route all trucks going in and out of KHF away from Highway 41.

DTSC acknowledges that approximately 7 percent of truck traffic to and from KHF goes through Highway 41, which likely contributes to Kettleman City residents' exposure to air pollutants including PM2.5 and diesel particulate matter.[27] This is especially alarming given that Kettleman City is subject to significant air pollution, and the San Joaquin Valley Air Basin, which violates a number of federal (ozone, PM2.5) and state (ozone, PM10, PM2.5) ambient air quality standards, has some of the worst air quality in the nation.[28] Kettleman City also ranks in the 77th percentile in terms of air pollution under CalEnviroScreen 4.0.[29]

Unfortunately, DTSC has not required KHF to re-route trucks associated with the Facility's hazardous waste operations from Highway 41. DTSC has not provided any analysis on re-routing and must conduct this analysis in a subsequent environmental impact report (SEIR) in order to comply with the civil rights settlement agreement as well as mitigate air quality impacts from truck traffic. Accordingly, DTSC must re-route KHF-related truck traffic from Highway 41 to reduce air quality and related health impacts from KHF to Kettleman City. If DTSC finds that re-routing is not possible, DTSC must, in the alternative, require KHF to contribute to a community safety and health impact fee for truck traffic impacts on Highway 41 as we discuss in subsection v below.

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[24] Permit, at 47 (Condition 35(A)(emphasis added as we request that DTSC propose a more recent model year).
[25] Title VI Settlement Agreement at 4.
[26] Vulnerability Evaluation at 13.
[27] Vulnerability Evaluation at 12.
[28] Department of Toxic Substances Control, Draft Environmental Document Analysis, 17-20 (May 2019)[*hereinafter* 2019 EDA]; Addendum to the Final Environmental Impact Report for Kettleman Hills Facility, Chemical Waste Management, Inc., 3 (December 31, 2023).
[29] Vulnerability Evaluation at 7.

iv. DTSC must prohibit diesel vehicle idling in and around the Facility, including in and near Kettleman City.

Similarly, DTSC has not conducted any analysis on diesel vehicle idling in and around KHF, including in and near Kettleman City. This failure is in violation of the 2016 civil rights agreement. DTSC must conduct this analysis in a SEIR and incorporate in an updated draft permit the prohibition on the idling of diesel vehicles in and around KHF, including in and near Kettleman City.

v. DTSC must impose a community safety and health impact fee to mitigate air quality, noise, and traffic impacts from all Facility-related truck traffic.

DTSC must also impose a community safety and health impact mitigation fee (community impact mitigation fee) on trucks that use Highway 41 as well as Highway 5 to deliver waste to KHF. This impact mitigation fee is necessary to mitigate air quality, noise, and traffic impacts from the up to 400 truck trips *per day* that would take place should Chem Waste's permit application be approved. Impact mitigation fees are feasible, as traffic-related mitigation measures were incorporated into the 2009 SEIR.[30] While some of the existing mitigation measures could help offset traffic impacts on or near Highway 5, they do not address air quality, noise, and traffic impacts for El Pueblo residents. Therefore, DTSC must create a community safety and health impact mitigation fee that would sufficiently address these community-related impacts. The community impact mitigation fee must directly benefit Kettleman City residents, and be administered by the Kettleman City community. We would welcome additional discussion on this matter.

vi. DTSC must analyze the effectiveness of air quality monitoring and enforcement efforts related to the 2003 permit.

Although DTSC committed to considering the monitoring and enforcement efforts related to the Facility under the current 2003 permit, it has failed to conduct this analysis. DTSC must fulfill this term in the civil rights settlement agreement in consideration of the Draft Permit. Please also see Section VI below regarding Chem Waste's violations and enforcement actions against Chem Waste in the past 25 years.

B. DTSC fails to and must require adequate traffic reduction and safety improvement measures.

DTSC provides that current operations at KHF include 120 to 140 daily roundtrips by trucks transporting hazardous waste to the Facility.[31] Yet, DTSC has failed to propose any additional traffic mitigation and safety improvement measures in the Draft Permit.

In the Vulnerability Evaluation, DTSC justifies this failure by stating that only 7 percent of all truck traffic to KHF goes through State Route 41, that KHF is a "minor contributor" to

[30] 2019 EDA at 62-63 (*see* TT-MM.1, 2, and 3; *see also* additional traffic mitigation measures TT-MM.3A, 3B, and 3C).
[31] Vulnerability Evaluation at 21.

traffic in and around Kettleman City, and that the census tract including Kettleman City has a low CalEnviroSceen score.[32] DTSC also cites the installation of a stop light on SR-41 in Kettleman City and the current construction of a bridge over SR-41 as reasons for its not proposing traffic impact-related mitigation measures.[33]

However, DTSC could do more to address traffic impacts to Kettleman City. Since trucks delivering waste and hazardous waste to and from KHF uses SR 41, they impact the road and traffic conditions as well as the safety of residents of Kettleman City. Because KHF's operations impact SR 41 and resident safety, DTSC must require KHF to maintain or pay a community impact mitigation fee toward the maintenance of and safety improvements on SR 41.

Contrary to DTSC assumptions, there is no stop light in Kettleman City; nor has the pedestrian bridge construction begun. DTSC must therefore require that Chem Waste fund the installation of at least one traffic light as well as a safer pedestrian crossing light at Kettleman City. Currently, El Pueblo recommends the installation of traffic light(s) more than a pedestrian bridge as we are concerned that the bridge is costly, may not be used, may not be accessible for seniors or people with disabilities, and may result in misuse as well as additional safety concerns due to its height. Regardless of whether the pedestrian bridge is built, DTSC must require KHF to install and maintain a stop light as well as a safer pedestrian crossing, or pay a community impact mitigation fee toward this measure to protect the safety of Kettleman City residents.

C. DTSC fails to and should require Chem Waste to monitor polychlorinated biphenyls (PCBs), volatile organic compounds (VOCs), and other constituents of concern in groundwater wells in and near Kettleman City.

In the 2016 civil rights settlement agreement, DTSC and CalEPA agreed to provide updates to Kettleman City residents on the status of the Kettleman City Community Services District's Surface Water Treatment Facility drinking water project, as well as request expedited review and implementation of the water project.[34] We were very glad to see the construction of the Kettleman City Water Treatment Facility, and appreciate DTSC's efforts on this project. However, it is our understanding and we are concerned that the Water Treatment Facility currently mixes surface water with groundwater that is contaminated with nitrate, arsenic, and other constituents.

While DTSC states that there is no significant relationship between KHF and groundwater quality in Kettleman City, El Pueblo remains very concerned about KHF's possible contribution to groundwater contamination near Kettleman City. We appreciate DTSC's proposal to require the installation of five new groundwater monitoring wells at the Facility to better determine the flow of constituents of concern and groundwater basins underneath the Facility.[35]

However, Chem Waste has never monitored Kettleman City's well(s) for toxic pollutants that could be emitted from the Facility. Therefore, DTSC should require Chem Waste to monitor

[32] *Id.*
[33] *Id.*
[34] Title VI Settlement Agreement at 6.
[35] Vulnerability Evaluation at 16; 2023 Addendum at 11.

Kettleman City's well(s) for possible contamination from the Facility in order to determine potential health risks that the Facility's operations may pose on the community's drinking water. Chem Waste should monitor for PCBs, various volatile organic compounds (VOCs), and other key constituents of concerned monitored at the Facility.[36]

II. DTSC fails to and must ensure that Chem Waste improves community reporting of the Facility's monitoring efforts, violations, and any enforcement actions against the Facility.

In the 2016 civil rights agreement, DTSC agreed to ensure that Chem Waste improves community reporting of KHF's monitoring efforts, violations, and any enforcement actions. However, Chem Waste's annual reporting is inadequate. For nearly 10 years, DTSC has failed to ensure this basic term is fulfilled, in violation of the settlement agreement.

While Chem Waste provides annual presentations on the Facility's air and water quality monitoring results to the residents of Kettleman City, these presentations are wholly inadequate for the following reasons:

1) Chem Waste downplays measures that exceed regulatory standards as "detections";
2) Chem Waste does not share the actual results of these exceedances, and does not share the potential environmental and health impacts of exceedances;
3) Chem Waste does not regularly share the findings of its health risk assessments;
4) Chem Waste does not summarize hazardous waste incidents, e.g., leaks, spills, explosions, fires, at the Facility, and instead only discusses how to read hazardous waste-related signs.
5) The 2009 conditional use permit also requires Chem Waste to provide an annual workshop to Kettleman City residents on disaster preparedness and share its disaster preparedness plan with residents.[37] Chem Waste fails to do so.
6) Chem Waste also does not report or downplays any violations or enforcement actions by DTSC or other agencies;
7) DTSC has failed to provide a copy of its presentations or a summary of exceedances and health impacts to El Pueblo, despite CRLA's and El Pueblo's numerous requests in 2025.

In light of these inadequacies and failures, we urge DTSC to incorporate the following modification to Conditions 23, 29(D)(8), and 34(D), to ensure that residents are informed of air and water quality monitoring results and what that means to their health and safety, as well as any hazardous waste incidents that could endanger their health and safety.

- Condition 23: "The Permittee shall record and notify DTSC as well as nearby residents including residents of Kettleman City of any ~~unexpected~~ hazardous waste release and

[36] Wood Environment & Infrastructure Solutions, Inc., Chemical Waste Site-Specific Water Quality and Soil-Gas Monitoring Plan 2020 Class I Waste Management Units, Kettleman Hills Facility, Kings County, California, 14, Table 2 (October 5, 2022).
[37] 2009 Kettleman Hills Facility Conditional Use Permit at 16.

instability, including explosions, fires, or reactions at the Facility, and the steps taken to address it."[38]

- Condition 29(D)(8): "The Permittee shall conduct an annual public meeting in Kettleman City with Spanish translation and interpretation to present~~rovide~~ a summary of the environmental monitoring results and other Facility information related to health and safety from the prior year. The summary shall include groundwater and ambient air monitoring results, and the findings from health risk assessments. The summary shall also include any hazardous waste release and instability, including explosions, fires, or reactions at the Facility, and the steps taken to address it. The summary shall also include any violations of the permit and other laws. The permittee shall share any presentations and a summary of the underlying data and analyses with DTSC and members of the public upon request."[39] It is important to note that the requirement for Chem Waste representatives to prepare an annual summary in layperson's terms, in Spanish and English, was already incorporated into the 2009 CUP.[40]
- Condition 34(D): "In the event the Permittee discovers a release or a threat of a release of hazardous waste or constituents or identifies an immediate or potential threat to human health or the environment, the Permittee shall notify DTSC orally within 24 hours of discovery and notify DTSC in writing within 10 days of the release or threat of a release. The Permittee shall also notify residents within a 5-mile radius within 24 hours of discovery through a mobile application alert system and notify residents within a 5-mile radius in writing via mail within 10 days of the release or threat of a release. The written notification shall summarize the findings, including the immediacy and magnitude of any potential threat to human health or the environment . . . ."

III. DTSC fails to and must require Chem Waste to ensure environmental monitoring in Kettleman City.

In the Title VI settlement agreement, DTSC committed to using best efforts to identify and support air and water quality monitoring and testing activities in Kettleman City within 3 years of the effective date of the agreement in 2016.[41] To date, we are not aware of air or water

[38] Draft Permit at 38 (Condition 23).
[39] Draft Permit at 42 (Condition 29(D)(8)).
[40] 2009 Kettleman Hills Facility Conditional Use Permit at 16.
[41] Title VI Settlement Agreement at 4-5. ("1. Efforts to identify potential sources of funding for a neutral, third-party expert to conduct air and water quality monitoring not otherwise funded by Chemical Waste Management, Inc. 2. Providing technical assistance to prepare and submit grant applications, and as appropriate, may apply or co-apply or provide assistance as a supporting agency. 3. Supporting, as needed, community education meetings including written notices of such meetings, in English and Spanish, that help to inform community members about what is being monitored, whether any issues have been identified, how such issues are being addressed, and whether there is progress toward addressing the issues. 4. Supporting community monitoring activities (separate from expert third-party monitoring) by working to identify potential sources of funding for monitoring activities and for a third-party expert to conduct an analysis of the community air monitoring data, providing technical assistance to prepare and submit grant applications, and as appropriate, may apply or co-apply or provide assistance as a supporting agency.").

quality monitoring or testing efforts by DTSC toward fulfilling this term. Thus, DTSC is still responsible for fulfilling this term of the civil rights agreement. DTSC cannot obviate this responsibility simply because the deadline has lapsed.

While DTSC has failed to improve environmental monitoring in Kettleman City, it has the opportunity to do so through this permit process. We recommend that DTSC include conditions that require Chem Waste to conduct or fund the following air, water, and soil monitoring in Kettleman City to determine whether KHF's operations have had or will continue to significant impacts on the community:

- Chem Waste shall place and maintain at least 3 air quality monitoring stations within and near Kettleman City, or provide funding for mobile air quality monitoring in Kettleman City. Stationary or mobile monitoring shall be conducted at least monthly. Air quality monitoring shall include monitoring PCBs, VOCs, and other pollutants known or are likely to be emitted by KHF. Chem Waste shall analyze the monitoring results and provide monitoring data to Kettleman City residents. Chem Waste shall provide monitoring results to Kettleman City residents and members of the public via a mobile phone application and bi-annual updates to Kettleman City residents.
- Chem Waste shall conduct at least quarterly groundwater testing in and near Kettleman City for PCBs, VOCs, and other key constituents of concern related to the Facility.
- Chem Waste shall conduct at least quarterly soil testing in and near Kettleman City for PCBs and other key constituents of concern related to the Facility.

IV. DTSC fails to and must require Chem Waste to conduct ongoing studies on potential health impacts the Facility may have on Kettleman City residents. DTSC must also ensure that Chem Waste consults residents on the scope of studies on health impacts and annual health risk assessments. Chem Waste must provide annual updates on the status and results of these studies to the Kettleman City community.

DTSC also committed to identify and support public health assessments in Kettleman City within 3 years of the effective date of the agreement in 2016.[42] This commitment included "[a] community-based participatory environmental health assessment that analyzes the human health effects in Kettleman City from exposure to pollution, including air pollution, hazardous waste, and other contaminants, as appropriate".[43] DTSC also committed to helping support "an asthma intervention program to help inform and address the asthma issues among the residents of Kettleman City after funding is secured."[44] We are not aware that DTSC has made an effort to take any of these actions to date. DTSC can fulfill this term through placing a new condition in the Draft Permit:

- Chem Waste shall work with academic institutions, residents of Kettleman City, and community groups to conduct ongoing studies regarding human health impacts on Kettleman City residents that may result from the Facility's operations. Chem Waste shall

[42] Title VI Settlement Agreement at 5-6.
[43] *Id*.
[44] *Id*.

consult residents and community groups on the scope and methodology of health impact studies. Chem Waste shall post all health impact studies on its website and provide annual updates regarding the status and results of the studies to the Kettleman City community.

In addition to the above condition, we also urge DTSC to consider the results of the health impact studies in future permit decisions regarding the Facility.

El Pueblo appreciates DTSC's proposal to require Chem Waste to conduct annual health risk assessments (HRAs). However, we are unclear about the scope of the HRAs. To ensure that scope of future HRAs would be relevant to Kettleman City and other vulnerable communities near the Facility, we urge DTSC to require that Chem Waste consult residents and community groups on the scope and methodology of the HRAs. Similar to the health impacts studies, we urge DTSC to require Chem Waste to publish all health impact studies on its website. DTSC must also require KHF to provide annual updates regarding the results of these assessments to the Kettleman City community.

DTSC should update Condition 29(D)(4) accordingly: "To ensure that air emissions do not result in unacceptable risks to human health, the Permittee shall prepare ~~an annual update to the initial~~ an annual Health Risk Assessment (HRA). Chem Waste shall consult Kettleman City residents and community groups on the scope and methodology of the HRAs. Chem Waste shall publish the HRAs on its website and present the results of the HRAs to Kettleman City and other nearby communities annually."[45] Please also see our related, recommended language on Condition 29(D)(8) in Section I above.

V. DTSC must update the 2024 vulnerability evaluation in compliance with SB 673.

Under SB 673, DTSC has the legal obligation to consider community vulnerability, cumulative impact, and risks to health and well-being as criteria for issuance, denial, or suspension of a new or modified permit or a permit renewal.[46] SB 673 was written in part to address DTSC's continued approval of KHF's operations and the expansion of its operations without taking account community needs and concerns.[47]

Specifically, SB 673 required DTSC, by January 1, 2018, to adopt regulations establishing or updating criteria used for the issuance of a new or modified permit or renewal of a permit, which may include criteria for the denial or suspension of a permit.[48] SB 673 further required DTSC to consider the "vulnerability of, and existing health risks to, nearby populations" using available tools, local and regional health risk assessments, the region's federal Clean Air

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[45] Draft Permit at 41-42 (Condition 29(D)(4)).
[46] Health and Safety Code § 25200.21.
[47] California State Legislature Assembly Committee on Environmental Safety and Toxic Materials, SB 673 Bill Analysis, 2 (July 10, 2025). *Available at:* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB673 ("Recent high profile cases involving permitted facilities such as [] the Kettleman Hills Hazardous Waste Facility in Kings County have raised significant environmental justice concerns from the communities surrounding the facilities and have led to criticism of the department's permitting procedures and responsiveness to community concerns.").
[48] Health and Safety Code § 25200.21.

Act attainment status, and other indicators of community vulnerability, cumulative impact, and potential risks to health and well-being".[49]

In the 2016 civil rights settlement agreement, DTSC committed to conducting a vulnerability evaluation for the community of Kettleman City using CalEnviroScreen indicators.[50] DTSC agreed to consider the results of this evaluation as part of its decision regarding the Draft Permit. As required under SB 673, DTSC also committed to adopting regulation criteria consistent with the law's requirements *no later than January 1, 2018*.[51] The civil rights settlement agreement also required DTSC, when developing SB 673 regulations, to: "consider criteria that will include the assessment of vulnerability and existing health risks using available tools, such as CalEnviroScreen, California Health and Safety Code Section 39711, and other appropriate determinations or assessments, including cumulative impact analysis, and actions that can help to address potential impacts from hazardous waste facilities in vulnerable communities."[52]

In May 2021, DTSC proposed an implementation framework on community vulnerability.[53] DTSC has since updated the draft framework. The draft framework includes CalEnviroScreen indicator scores as *one of several* important elements for a community vulnerable assessment.[54] DTSC proposes that the project applicant also *include information regarding local and regional pollution sources, facility environmental monitoring, hazardous waste releases, community benefits, community input, and health impacts*.[55]

In April 2024, DTSC released a report entitled "Chemical Waste Management—Kettleman Hills Hazardous Waste Landfill Permit Application Evaluation of Kettleman City's Vulnerability Using CalEnviroScreen Data" (Vulnerability Evaluation or Vulnerability Assessment).[56] The Vulnerability Evaluation only evaluated Kettleman City's vulnerability using CalEnviroScreen 4.0. DTSC concluded that "KHF's permitted activities do not significantly impact Kettleman City's vulnerabilities."[57] DTSC also stated that it may develop and implement new permit conditions to reduce environmental health impacts and/or benefit community health,

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[49] Health and Safety Code § 25200.21.
[50] Title VI Settlement Agreement at 4.
[51] Title VI Settlement Agreement at 8 (emphasis added).
[52] Title VI Settlement Agreement at 8.
[53] Department of Toxic Substances Control. SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework, 12 (REVISED-May 2021). A*vailable at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2021/07/2021MAY-DRAFT-CI-Regulatory-Framework_Accessible.pdf (defining community vulnerability as "aggregated effect of socioeconomic factors and chronic stressors or biomarkers of stress response (poverty, unemployment, linguistic isolation, housing burdened low income households, and educational attainment) and high rates of underlying chronic health conditions in the community (such as high prevalence of asthma or cardiovascular illnesses, poor birth outcomes) that amplify the vulnerability of residents to impacts from environmental pollution").
[54] SB 673 Track 2 Update, Slide 15 (December 4, 2024). A*vailable at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2025/03/SB-673-Track-2-BES-presentation_Dec-4-2024_rem.pdf.
[55] *Id*.
[56] Department of Toxic Substances Control, Chemical Waste Management—Kettleman Hills Hazardous Waste Landfill Permit Application Evaluation of Kettleman City's Vulnerability Using CalEnviroScreen Data (April 2024). *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/04/Kettleman-CES-English-Final_ada.pdf [*hereinafter* Vulnerability Evaluation].
[57] Vulnerability Evaluation at 2.

and may deny Chem Waste's permit renewal application if DTSC receives new information that demonstrates KHF's operations endanger public health or the environment.[58]

Given SB 673 and DTSC's development of the draft community vulnerability framework, it must do more than simply relying on CalEnviroScreen 4.0 to conduct a community vulnerability evaluation for Kettleman City. While DTSC's SB 673 implementation framework have not yet been finalized, DTSC should not use its own delay as an excuse—especially since the law was written in response to the Kettleman Hills Facility and explicit that implementing regulations should have been adopted by January 1, 2018. In order to meet SB 673's requirements as well as to truly understand Kettleman City's environmental, health, and socioeconomic vulnerability from the Facility, DTSC should update the Vulnerability Evaluation to include all the proposed elements discussed above.

DTSC is also aware of the limitations of CalEnviroScreen 4.0. The census tract in which Kettleman City is located (Census Tract 031001601) covers a large geographic area, compared to the small size of Kettleman City. Given this fact, DTSC's using data for the entire census tract likely dilutes environmental, health, and socioeconomic risks that Kettleman City itself is facing from KHF and other facilities and uses. For instance, DTSC readily acknowledges that the Vulnerability Assessment does not take into account local scale impacts on diesel PM.[59] Similarly, DTSC acknowledges that since Kettleman City has a very small geographic area compared to the overall area of the census tract, it may be experiencing traffic impacts not entirely captured by this indicator on CalEnviroScreen. Additionally, CalEnviroScreen may not contain the most current data. DTSC acknowledges that CalEnviroScreen's diesel particulate matter data could be somewhat outdated, from 2012 to 2016.[60] Due to the scale and data issues that CalEnviroScreen presents, DTSC must not rely solely on this Vulnerability Assessment to determine Kettleman City's vulnerability to KHF's continued operation.

In sum, SB 673, DTSC's existing draft framework on assessing community vulnerability, and CalEnviroScreen's inability to capture the local pollution exposure and socioeconomic burdens that Kettleman City is facing all require DTSC to update the Vulnerability Evaluation.

VI. DTSC must consider KHF's previous violations and enforcement actions against the Facility as it evaluates whether to issue or deny the Draft Permit.

In the 2016 civil rights settlement agreement, DTSC also committed to considering "[e]nforcement actions against KHF since the last permit issuance" and "[v]iolations or noncompliance that show a repeating or recurring pattern" in its decision to issue or deny KHF's permit renewal application.[61] Unfortunately, the Facility has an alarming history of major and minor legal violations in the past 25 years, and DTSC has brought several enforcement actions against Chem Waste for violating California's hazardous waste and other laws.

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[58] *Id.*
[59] Vulnerability Evaluation at 9.
[60] *Id.*
[61] Title VI Settlement Agreement at 4.

In the past 25 years, there have been four enforcement actions and orders against KHF: in 2001, 2011, 2013, and 2020.[62] The 2001 enforcement action is unreported.[63] The enforcement order in 2011 was issued because KHF failed to report to DTSC the release of hazardous waste into the environment in violation of the Health and Safety Code as well as the explicit terms of the 2003 permit.[64] An administrative action was taken against KHF by DTSC due to its failure to report the release of hazardous waste.[65] DTSC ordered Chem Waste to pay a penalty of $46,000.[66]

In 2013, the Attorney General of California brought a civil action on behalf of DTSC against Chem Waste for violating the California Hazardous Waste Control Law (HWCL), among other infractions.[67] In particular, the claims against Chem Waste included failure to comply with applicable land disposal restrictions (Cal. Code Reg. Tit. 22, § 66268.40(a)(1)), failure to reconcile a significant manifest discrepancy within 15 days of discovery (Cal. Code Reg. tit. 22, § 66264.72(c)), and failure to report discovery of releases of hazardous waste and/or hazardous constituent (Health and Safety Code § 25202(a); Cal. Code Reg. title 22, § 66270.30(a); Hazardous Waste Facility Permit Number 02-SAC-03).[68] The parties settled and an injunction as well as monetary damages were granted.[69] The injunction ordered Chem Waste to comply with the HWCL, and the monetary damages were $311,194.[70]

The most recent enforcement action, in 2020, was a consent order from the DTSC.[71] The order alleged that KHF had failed to monitor its facilities in the manner required by law and by its permit.[72] KHF waived its ability to respond and paid the DTSC a penalty of $30,485.[73]

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[62] *Id*.
[63] KHF EnviroStor Page.
[64] Department of Toxic Substances Control, In the Matter of Chemical Waste Management, Incorporated, Docket No. HWCA 20102948, Enforcement Order, 2 (May 20, 2011). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F6854718863%2FCWM_CEI2012_EO052011.pdf.
[65] Department of Toxic Substances Control, In the Matter of Chemical Waste Management, Incorporated, Docket No. HWCA 20102948, Notice of Final Order, 1 (June 14, 2011). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F6189222037%2FCWM_CEI2010_NFO061411.pdf.
[66] *Id.* at 3.
[67] *People of the State of California v. Chemical Waste Management*, Complaint for Civil Penalties and Injunctive Relief, Case No. BC503093, 1-2 (Filed March 18, 2013). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F5938007950%2FCWM_CEI2010_CivilFiling031813.pdf.
[68] *Id.* At 5-6.
[69] *People of the State of California v. Chemical Waste Management*, Case No. BC503093, Final Judgment on Consent and Permanent Injunction, 4-5 (Filed March 22, 2013). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F6648823380%2FCWM_CEI2012_FinalJudg032213.pdf.
[70] *Id.*
[71] In the Matter of Chemical Waste Management, Incorporated, Docket HWCA 20177314l, Consent Order, 1 (July 7, 2020). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F5294522941%2FCWM_NFRR2016_CO_070720.pdf.
[72] *Id.* at 1-2.
[73] *Id*. at 3.

Additionally, KHF has had three Class 1 violations since 1999.[74] The most recent Class 1 violation was in October 2016,[75] where the Facility failed to conduct adequate groundwater well monitoring and reporting.[76] DTSC issued a corrective order for the Facility to comply with monitoring and reporting requirements in the future.[77] KHF has had one Class 2 violation since 1999.[78] The violation is undisclosed, though it occurred in February 2014.[79] Finally, KHF has also had 14 minor violations since February 1999.[80] The most recent minor violation was in October 2024,[81] where the Facility failed to check waste processing tanks daily for corrosion.[82] DTSC ordered the Facility to add "check tanks for corrosion" to the required activity log and to immediately check the tanks for corrosion.[83]

In light of Chem Waste's repeated violations of various laws and the terms of its permit, DTSC must not issue a renewal permit for the Facility unless it requires additional feasible mitigation measures or permit conditions to minimize any future incidents and violations.

DTSC must also require Chem Waste to notify both DTSC and the community if any releases or threats of release of hazardous waste occur, as well as immediately and effectively address the issues. Please see our recommendations in Section I on how DTSC should modify Conditions 23, 29(D)(8), and 34(D) to ensure that Kettleman City and other residents near the Facility will be informed of any hazardous waste releases or incidents.

Finally, DTSC must also significantly increase the penalties it assesses pursuant to its authority under Health and Safety Code Section 25187. DTSC must do so to ensure that Chem Waste complies with any future permits and immediately corrects any permit or other legal violations.

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[74] Chemical Waste Management Inc Kettleman (CAT000646117), Inspection Timeline. *Available at:* https://www.envirostor.dtsc.ca.gov/public/eerp_profile_report?global_id=3002354 [*hereinafter* KHF EnviroStor Inspection Timeline Page].
[75] *Id*.
[76] Department of Toxic Substances Control, Notice of Violation to Chemical Waste Management, Inc. re: Kettleman Hills Facility, 6 (October 13, 2016). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F6576843082%2FCWM_NFRR2016_SOVLtr_101316.pdf.
[77] Department of Toxic Substances Control, Notice of Violation to Chemical Waste Management, Inc. re: Kettleman Hills Facility, 2 (August 10, 2017). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F7239515006%2FCWM_NFRR2016_SOVLtr_081017.pdf.
[78] KHF EnviroStor Inspection Timeline Page.
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] Department of Toxic Substances Control, Summary of Violations re: Kettleman Waste Management Inc Kettleman, 3 (September 10, 2024). *Available at:* https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Feerppublicdocs%2F5252088248%2FCWM-KHF_FCI2024_SOV_091024_ada.pdf.
[83] *Id.*

VII. DTSC must prepare a subsequent environmental impact review for the Facility's permit application.

Under the California Environmental Quality Act (CEQA), a lead agency must prepare a subsequent or supplement environmental impact report if: 1) substantial changes to the project that will warrant major revisions to the EIR; 2) the circumstances around a project have substantially changed that will result in significant or worse environmental impacts; or 3) new information that was not known or could not have been known at the time the EIR was adopted when the EIR was certified as complete becomes available. Pub. Res Code § 21166; 14 CCR § 15162(a). Section 15162(a)(3) further provides that new information includes: a) significant environmental impacts not discussed in the previous EIR, b) significant impacts will be substantially more severe than previously analyzed, c) mitigation measures or alternatives previously found not feasible would in fact be feasible, or d) additional mitigation measures or alternatives would substantially reduce significant impacts.

Whether a subsequent EIR must be prepared for a document must be based on substantial evidence in light of the whole record. Gov't Code §15162 (a). Substantial evidence is defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, or evidence of a ponderable legal significance, reasonable in nature, credible, and of solid value." *Bowman v. City of Petaluma,* 185 Cal. App. 3d 1065, 1072 (1986). The lead agency's determination must be supported by facts. See *River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* 37 Cal. App. 4th 154, 177 (1995).

In 2023, DTSC prepared an Addendum (2023 Addendum) to the 2009 Subsequent Environmental Impact Report (2009 SEIR), which in turn relied in part on an environmental impact report that was approved in 1985 (1985 EIR). In the 2023 Addendum, DTSC concluded that: "Based on the totality of the record before it, DTSC finds that the Proposed Project involves only *minor technical changes* to the existing Facility as previously analyzed in the SEIR, and *none* of the conditions described in section 15162 of the CEQA Guidelines have occurred."[84] DTSC stated that the "minor technical changes" proposed are "mainly comprised of the installation of the additional monitoring wells, as well as process changes, such as repackaging of wastes in specific areas".[85]

However, DTSC has failed to and must prepare a SEIR for this Draft Permit for several reasons: a) substantial changes have been made to the Facility and its operations since the original EIR was adopted in 1985; b) the Draft Permit includes substantial changes not contemplated in the 2009 SEIR, including Chem Waste's current proposal to process, treat, and dispose hazardous waste and other waste on-site in ways that would likely result in additional, significant environmental impacts; c) substantial changes in circumstances have occurred since 2009, and d) new information including feasible mitigation measures that were not known when the EIR or SEIR was adopted is now available. Any of these substantial changes and new information require DTSC to complete a SEIR for the Draft Permit under Section 15162.

[84] 2023 Addendum at 13 (emphasis added).
[85] 2023 Addendum at 14.

A. DTSC must prepare a SEIR given the extremely outdated, 1985 EIR. DTSC should also continue its practice of preparing SEIRs to ensure informed decision-making.

For approximately the past 40 years, DTSC has been improperly relying on an extremely outdated EIR that was certified by Kings County in 1985. The 1985 EIR and related conditional use permit allowed KHF expanded the Facility site to 1,600 acres, and allowed the operation of the B-17, B-18, and B-19 Landfills.[86] The 2009 Subsequent Environmental Impact Report relied in part on the 1985 EIR. However, DTSC must at least prepare a SEIR for the Draft Permit given that substantial changes have been made to the Facility since 1985, including the environmental setting around the Facility, DTSC's and the public's understanding of environmental impacts, legal and regulatory requirements, and technological advancements.

Indeed, most other changes to the Facility's operations between 1985 and 2009 triggered SEIRs by DTSC. DTSC must now prepare a SEIR for this proposed project to ensure that its decision is informed by a full understanding of the environmental and health impacts of the continued operations given the substantial changes to the Facility's operations, changed circumstances, and new information that could reduce the significant impacts of the Facility.

B. The Draft Permit includes substantial changes not included in the 2009 SEIR, including the extension of the operational timeframe of the B-18 Landfill to 2042 and the Chem Waste's proposal to process and treat hazardous waste at the Facility.

The current project considered in the Draft Permit has substantially changed from the scope of project considered under the 2009 SEIR in a number of ways. For instance, 2009 SEIR only analyzed the operation and closure of Unit B-18 through 2017, not through 2042 as currently discussed in the Draft Permit. Chem Waste also proposes to make substantial changes including the increase in processing, treatment, and disposal of hazardous and non-hazardous waste on-site, which are substantial changes that will likely create new or worsen significant environmental impacts. We discuss these changes in detail below.

First, the March 2008 Draft SEIR discussed Chem Waste's proposal to expand the B-18 Landfill and allowing it to operate through 2017, after which hazardous waste would be disposed at the proposed B-20 Landfill at the Facility.[87] The September 2009 Recirculated Draft SEIR proposed to increase total disposal capacity at Unit B-18 by 4.9 million cubic yards.[88] However,

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[86] Department of Toxic Substances Control, Addendum & Initial Study/Environmental Checklist to the Final Subsequent Environmental Impact Report Prepared for the Existing B-18 Class I/Class II Landfill Expansion Project Kettleman Hills Facility Chemical Waste Management, Inc. (May 21, 2013).

[87] KHF B-18/B-20 Hazardous Waste Disposal Project Draft Subsequent Environmental Impact Report, ES-3 (March 2008)("As part of the proposed Project, the existing B-18 Landfill would be expanded vertically and laterally in two phases, and the additional capacity is projected to allow the B-18 Landfill to continue to receive hazardous waste and designated waste for disposal through 2017. Also as part of the proposed Project, the initial phase of the new B-20 Landfill would be constructed in 2017, with hazardous waste and designated waste disposal operations expected to shift to the new B-20 Landfill in 2018 as the B-18 Landfill reaches it capacity.").

[88] KHF B-18/B-20 Hazardous Waste Disposal Project Recirculated Draft Subsequent Environmental Impact Report, ES-3 (May 2009).

the 2009 SEIR did not appear to analyze the continuous operation of the B-18 through 2042 as currently proposed in the Draft Permit.

Second, Chem Waste is also proposing new hazardous waste processing activities at the Facility, as well as for the Facility to treat hazardous waste. Despite DTSC's downplaying these proposed changes, they are not "minor technical changes" and are indeed substantial changes that will likely worsen or create new significant environmental impacts.

In particular, Chem Waste proposes to:

1) Add a waste shredder, waste shredding operation, and treatment of waste after shredding;
2) Allow temporary storage of waste in the Final Stabilization Unit mixing tanks;
3) Conduct outdoor bulking, repackaging and storage of waste at the PBC Flushing and Storage Unit, where only indoor repackaging is currently allowed; and
4) Bulk ignitable, liquid, and solid wastes at the Drum Storage Unit (DSU);
5) Bulk liquid and solid wastes for onsite or offsite treatment as well as onsite or offsite disposal, where currently only solid waste bulking is allowed for offsite disposal, and liquid bulking is not allowed at all.[89]

The 2019 Draft Environmental Document Analysis (EDA) and 2023 Draft Addendum (Addendum) incorrectly and conflictingly characterize these proposed changes as major and minor, and erroneously conclude that these activities do not trigger Section 15162 without substantial evidence.[90] The 2019 EDA provides that the changes are "proposed major permit changes".[91] Indeed, these proposed operational activities would substantially change the operations of the Facility and will likely result in significant or worsen significant air quality, water quality, and hazardous waste impacts. DTSC fails to and must analyze and mitigate these impacts in a SEIR.

For instance, Chem Waste proposes to bulk certain ignitable hazardous and non-hazardous wastes at the DSU. It does not appear that the Facility would be allowed to accept hazardous waste for disposal.[92] The 2023 Addendum provides several restrictions, such as that bulking would not occur for PCB wastes or "wastes with high human health risk factors"; bulking would not create "visible emissions above SJVAPCD regulatory limits" or "nuisance odors to facility workers"; and "no wastes would be bulked when wind speeds exceed 20 miles per hour at the DSU."[93] Additionally, the 2023 Addendum provides that handlers of ignitable wastes must wear enhanced safety equipment.[94] Based on these restrictions and the fact that Chem Waste is proposing to bulk *ignitable* wastes, which are inherently volatile and dangerous,

[89] 2023 Addendum at 8-10.
[90] 2019 EDA at 17-20; 2023 Addendum, 14 (2023).
[91] 2019 EDA at 6-8.
[92] Draft Permit at 31-32 (providing that all types of solid hazardous waste are accepted for disposal a Unit B-18 except for reactive or ignitable wastes, among others).
[93] 2023 Addendum at 8.
[94] 2023 Addendum at 8.

this proposed operational activity would likely result in significant environmental and health impact.

Unfortunately, it appears that DTSC proposes to reduce or mitigate potentially significant air, odor, worker safety impacts without having done any analysis on such impacts in the first place. The proposed "restrictions" are essentially mitigation measures, but it would be impossible for DTSC to determine whether they are adequate to address potentially significant impacts without having completed an analysis on the severity of the impacts from these new, substantially different, and dangerous activities.

DTSC also concludes that the proposed project would have no effect on the long-term operation emissions because "no major changes to the quantity of waste or hazardous waste unit operations [] are being authorized"; and that operations emissions will be reduced because "new emissions standards and electrification of both the on-site equipment fleet and off-site truck fleets are implemented".[95] However, these statement are conclusory and DTSC failed to do any analysis on the potential air quality or other environmental impacts of the changes in operations being proposed. Additionally, DTSC attempts to hide behind its proposed mitigation measures on electrifying on-site and off-site vehicles. However, these mitigation measures do not appear in the Draft Permit. Indeed, as we discussed above in Section I, the Draft Permit still proposes the outdated condition of requiring off-site truck fleets to meet 2010 vehicle emission standards, and does not propose any conditions regarding on-site equipment.

Chem Waste's proposal to bulk ignitable waste may also result in significant hazardous materials and wildfire impacts. In the 2019 EDA, DTSC erroneously states that since the Facility does not accept ignitable wastes "there is little potential for fire to occur."[96] However, as the proposed project includes at least processing ignitable waste, it would likely result in increased wildfire risks.

Similarly, Chem Waste's proposal to bulk liquid wastes as well as bulk, treat, and dispose solid wastes on-site could result in more severe air quality impacts, significant water quality impacts, and significant hazardous materials impacts. The EDA explains that new activities are proposed related to the handling and mixing of hazardous materials in outdoor locations, but concludes that there is no risk of new environmental impacts or significantly increased environmental impacts related to the handling of hazardous waste.[97] This conclusion appears to be based entirely on the assertion that no new types of waste will be handled and that there will be secondary containment. The analysis in this section is minimal, conclusory, and fails to cite substantial evidence in the record. The EDA also fails to analyze the increased potential for hazardous waste release into the environment resulting from mixing and storing hazardous materials outside that were previously conducted inside.[98] DTSC must analyze this potential and provide supporting information and facts, such as the number of outdoor environmental releases that have historically taken place at the Facility, or the risk of release.

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[95] 2023 Addendum at 16.
[96] 2019 EDA at 69.
[97] 2019 EDA at 46-47.
[98] 2019 EDA at 46 (Impacts 9a & 9b).

As DTSC acknowledge in the 2019 EDA, closure plans are part of the proposed project and are therefore subject to CEQA requirements.[99] However, DTSC improperly relies in part on the 2009 SEIR's analysis and mitigation measures regarding the closure of B-18, since the 2009 SEIR focused on evaluating the closure of Unit B-18 by or around 2017.

Additionally, the 2019 EDA discusses a closure plan that was updated by Chem Waste 2018, which is also outdated.[100] Finally, the 2023 Addendum was also based on an outdated, 2021 version of the closure plan. In other words, DTSC has not analyzed the current, April 2023 version of the Facility's closure plan. DTSC has thus failed to analyze and mitigate the environmental impacts of the closure and post-closure activities active portions of the Facility including Unit B-18, and has failed to analyze and mitigate the environmental impacts of the final closure of the Facility as well as related post-closure activities. Given that the closure of KHF and units within the Facility is a significant part of the permit, DTSC must complete a SEIR that analyzes the environmental impacts and mitigates significant impacts from closure-related activities under the current, April 2023 proposed closure plan.

Finally, we appreciate that DTSC proposes additional soil and groundwater monitoring wells at the Facility, and analyzed temporary environmental impacts regarding the construction of these monitoring wells in the 2023 Addendum. However, DTSC should have completed and must complete this analysis in an SEIR.

C. Substantial changes in circumstances since the 2009 SEIR was certified require a new SEIR.

DTSC must also complete a SEIR due to numerous, substantial changes in circumstances around the Proposed Project since the 2009 EIR was certified. As DTSC points out in the 2019 EDA, additional projects were proposed or approved around that time. DTSC must conduct a SEIR to analyze and mitigate cumulative impacts from those projects in connection with the Proposed Project. Please see Section VIII below for further discussion.

In addition, legal and regulatory changes regarding hazardous waste storage and disposal, including air quality and water quality control, as well as significant technological advancements, have been made and warrant a new SEIR for the proposed project.

D. New information on environmental impacts and feasible mitigation measures that were not known or incorporated into the 2009 SEIR require a new SEIR.

First, since the 2009 SEIR focused on analyzing the environmental impacts of Unit B-18 through 2017, it did not sufficiently analyze the full scope of environmental impacts from Unit B-18 through 2042. DTSC must now prepare a SEIR to analyze and mitigate impacts from operating Unit B-18 through 2042. Additionally, as Chem Waste estimates that the Facility will close by approximately 2055, DTSC must also analyze and mitigate the impacts of the operations and closure of the Facility through this time.

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[99] 2019 EDA at 3.
[100] Draft Permit at 12.

Second, as discussed earlier, DTSC improperly proposes mitigation measures related to air quality and hazardous materials in the 2019 EDA and 2023 Addendum without first analyzing new or more severe, significant environmental impacts the Facility will have. DTSC also concluded, without support, that no new or worse significant environmental impacts would result from the proposed project, in violation of CEQA. DTSC must first analyze these impacts and propose feasible mitigation measures accordingly.

Third, new information on the Facility's VOC releases requires DTSC to prepare a SEIR to adequately analyze and mitigate likely significant impacts from hazardous materials. The 2019 EDA acknowledges that soil vapor impacts to unsaturated soil may be present, that investigation is ongoing, and that a future CEQA evaluation will take place once the characterization activities are complete.[101] Given that information on past and likely ongoing VOC releases has been made available since the 2009 EIR was certified, DTSC must prepare a SEIR to analyze and mitigate impacts from VOC releases and other hazardous materials. Relatedly, DTSC discusses known soil VOC releases from inactive and closed sites into groundwater underneath the Facility. Alarmingly, DTSC proposes to allow Chem Waste to conduct "monitored natural attenuation, which appears to be a "wait and see" approach to see if "contaminants are likely to be effectively addressed by natural attenuation processes".[102]

Fourth, the 2009 SEIR incorporated mitigation measures that were wholly insufficient to mitigate significant air quality, traffic, and cumulative impacts from the Facility's operations. Most of the existing mitigation measures are also sorely outdated. The key mitigation measures from the 2009 SEIR are:

- *AQ-MM.1:* Requires the Facility's operational equipment meet applicable model year emission standards; proper maintenance of on-site vehicles and equipment; fugitive dust control; and vehicle speed restrictions.
- *AQ-MM.2:* Requires heavy-duty diesel-powered landfill equipment to meet 2014 emission standards.

DTSC must update these mitigation measures to require the Facility to use zero or near-zero emission vehicles and equipment, as discussed in Section I.

- *TT-MM.1:* Requires Chem Waste to pay Caltrans a prorated fair share for traffic improvements near the I-5 and SR-41 junction.
- *TT-MM.2:* Requires Chem Waste to prepare a traffic management plan for SR-41 at the entrance to KHF during project-related construction and closure activities in 2019 and through 2042.
- *TT*-MM.3: Requires Chem Waste to pay a pro rata fair share fee for additional roadway improvements on the SR-41 and I-5 junction.

As discussed above, these mitigation measures do not mitigate air quality, noise, and traffic impacts to Kettleman City residents. Please see our recommendations in Section I.

[101] 2019 EDA at 13.
[102] 2019 EDA at 49-50.

Throughout this letter, El Pueblo proposes additional feasible mitigation measures that will likely reduce significant air, noise, traffic, water quality, hazardous materials impacts, as well as cumulative impacts. DTSC must incorporate these mitigation measures and other feasible mitigation measures in a new SEIR.

DTSC must also complete a SEIR that includes an alternatives section and a cumulative impacts section to comply with its civil rights obligations, as we discuss further in Section VIII below.

IX. DTSC must ensure its decision on the Facility's permit will not disproportionately impact racial minority and low-income communities including Kettleman City, in compliance with civil rights laws.

Under the 2016 Title VI settlement agreement, DTSC agreed to consider whether the decision on the permit renewal application and processes undertaken in relation to the permit decision are "consistent with applicable civil rights laws".[103] DTSC contracted Altshuler Berzon, LLP to conduct this analysis. In October 2023, DTSC released a Draft Civil Rights Analysis.[104]

Relatedly, DTSC also committed to adopting civil rights policies and public participation and language access policies by the end of 2018.[105] DTSC released a public participation plan regarding KHF in November 2023,[106] as well as a civil rights and language access policy in June 2024.[107]

A. The Civil Rights Analysis should focus on disparate impact.

The Draft Civil Rights Analysis states that since Kettleman City's population is more than 97% Hispanic or Latino, it seems "highly likely that any adverse impacts resulting from the renewal of the KHF permit would be borne disproportionately by Hispanic or Latino residents."[108] We agree.

However, we are very concerned that DTSC's characterization in the Draft Civil Rights Analysis that direct adverse impacts on air and quality and on human health resulting from renewal of the KHF permit "may not be sufficiently adverse to be unlawful when considered on their own."[109]

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[103] Title VI Settlement Agreement at 4; *see also* Title VI Settlement Agreement at 6.
[104] Department of Toxic Substances Control, Kettleman Civil Rights Analysis (Oct. 2023). A*vailable at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2023/10/Kettleman-CRA-English-Final_ada.pdf [hereinafter *Draft Civil Rights Analysis*].
[105] Title VI Settlement Agreement at 7.
[106] Department of Toxic Substances Control, Public Participation Plan: the Kettleman Hills Facility Chemical Waste Management Inc. (November 2023). *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/04/KHF-PPP-ENGLISH_ada.pdf.
[107] Department of Toxic Substances Control, Civil Rights and Language Access Implementation Plan (June 2024). *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/12/OCR-Lang-Access-Plan.pdf.
[108] Draft Civil Rights Analysis at 6.
[109] Draft Civil Rights Analysis at 6.

First, disparate impact analysis focuses on whether a recipient of federal funding's "criteria or method of administering its program or activities adversely and disparately affect members of a group identified by race, color, or national origin []".[110] Indeed, the US EPA explains that adverse impacts "could include harmful health effects, odor, noise, decrease in property values, etc."[111] The EPA also clarifies that "[i]f those residents have reason to believe that the recipient's permitting of the power plant will cause them to suffer adverse health and/or non-health impacts, such as odor, noise, or decrease in property values, *at comparatively higher rates* as compared to the larger population of persons not adversely impacted, then this may potentially raise a viable disparate impact claim."[112] However, the Draft Civil Rights Analysis does not at all discuss disparate environmental, health, and economic impacts the Facility may have on Kettleman City in comparison to other populations.

Even in evaluating "sufficiently adverse" impacts, the Draft Civil Rights Analysis relies on the flawed 2009 SEIR and other studies that do not adequately analyze impacts from the Facility on the residents and community of Kettleman City. Additionally, the Draft Civil Rights Analysis fails to analyze air quality, noise, traffic, and other environmental impacts to Kettleman City residents from heavy-duty trucks that traverse through and near the community every single day. It also fails to analyze negative property value impacts due to its proximity to the Facility. Additionally, the Draft Civil Rights Analysis only discusses previous Health Risk Assessments conducted by Chem Waste, but fails to analyze other health impacts from the Facility to the community including neurological impacts, birth defects, and mental health impacts.

The Draft Civil Rights Analysis also states that while there may be air and water quality impacts, DTSC has put in place mitigation measures for the current permit and will propose potential, additional mitigation measures and conditions for the Draft Permit. Due to these current and future mitigation measures and conditions, "any direct adverse impacts resulting from the permit renewal are therefore likely to be relatively small."[113] However, the Draft Civil Rights Analysis's logic that so long as mitigation measures and conditions are required, adverse impacts would likely be "relatively small" is wrong.[114] As we point out throughout this letter, DTSC's environmental review of the proposed project is flawed. DTSC has not sufficiently analyzed nor mitigated air quality, traffic, water quality, hazardous releases, cumulative impacts, and other environmental and health impacts that the Proposed Project will bring. Nor is the Proposed Project simply a renewal of the same or even similar activities currently permitted, as we discuss in Section VII above.

In light of the numerous inadequacies of the Draft Civil Rights Analysis, DTSC must redo this analysis to adequately evaluate the disparate environmental, health, and economic impacts experienced by Kettleman City residents compared to other populations.

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[110] U.S. Environmental Protection Agency, Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions, 12-13 (August 2022). *Available at:* https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant_0.pdf#page=4.
[111] *Id.* at 12.
[112] *Id.* at 7.
[113] Draft Civil Rights Analysis at 7.
[114] *See* Draft Civil Rights Analysis at 7.

B. DTSC's Draft Permit fails to comply with and is not consistent with Title VI.

The Draft Civil Rights Analysis provides that "[e]ven if a renewal would cause a disparate and sufficiently adverse impact, the renewal would still be consistent with civil rights laws if substantial legitimate justification for the decision existed and no comparatively effective, less discriminatory alternatives existed."[115] Furthermore, the Draft Civil Rights Analysis provides that DTSC's compliance will depend on future developments, "including results of DTSC's CalEnviroScreen analysis, EPA's forthcoming guidance on cumulative impacts analysis and Title VI compliance, how DTSC implements its public participation process, and DTSC's ultimate decision on the KHF permit renewal application," as well as the factors involved in that decision.[116] Unfortunately, the Draft Permit is not compliant with and not consistent with Title VI for the following reasons.

i. DTSC has not provided a legitimate substantial justification for considering the approval of the Draft Permit.

A substantial legitimate justification for DTSC to take a disproportionately harmful action exists "if an action is necessary to meet a goal that is legitimate, important, and integral to DTSC's institutional mission."[117] However, DTSC has not presented a substantial legitimate justification on whether approving the permit is necessary to meet a goal that is fundamental to DTSC's mission. Indeed, DTSC' mission is to "*protect California's people, communities, and environment from toxic substances*, to enhance economic vitality by restoring contaminated land, and to compel manufacturers to make safer consumer products."[118] Since the first part of DTSC's mission is to protect people and communities from harm, a decision to continue exposing the residents of Kettleman City and other nearby communities to hazardous materials, significant air pollution, and other environmental health impacts from KHF is counter to its very mission. The Draft Civil Rights Analysis that DTSC would task Altshuler Berzon to review whether "any potential substantial legitimate justification" that DTSC considers complies with civil rights laws.[119]

ii. DTSC has not analyzed comparatively effective, less discriminatory alternatives, including additional mitigation measures.

Second, DTSC has not analyzed comparatively effective, less discriminatory alternatives. The Draft Civil Rights Analysis that DTSC would task Altshuler Berzon to review whether any available alternatives that DTSC considers complies with civil rights laws, where "potential alternatives can include mitigation measures that would further mitigate any disparate impacts or risks caused by the agency's actions."[120]

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[115] Civil Rights Analysis Community Update at 2; Draft Civil Rights Analysis at 6, 8.
[116] Draft Civil Rights Analysis at 2, 10-11.
[117] Draft Civil Rights Analysis at 8.
[118] Department of Toxic Substances Control, About DTSC. A*vailable at*: https://dtsc.ca.gov/who-we-are/ (last visited Sept. 21, 2025).
[119] Draft Civil Rights Analysis at 8.
[120] Draft Civil Rights Analysis at 8.

However, since DTSC failed to complete a SEIR for the Draft Permit, and the 2019 EDA and 2023 Addendum do not discuss alternatives, DTSC has failed to provide itself as well as the public any discussion of alternatives to the Proposed Project. DTSC must therefore prepare a SEIR that includes project alternatives in order to fully evaluate the options it has regarding the Draft Permit.

Additionally, since the 2024 public comment period, DTSC has not presented an updated draft permit that includes alternatives or mitigation measures. DTSC also has not responded to El Pueblo's comments regarding the need for additional mitigation measures to reduce environmental, health, social, and economic impacts of the Facility. DTSC must now complete a SEIR with alternatives to the proposed project, incorporate the recommendations of El Pueblo, including the additional analyses and mitigation measures discussed in this letter, as well as adopt other measures to mitigate environmental health impacts from the project. Only when DTSC takes all the above actions will it truly take affirmative steps toward complying with its civil rights obligations.

iii. DTSC fails to and must conduct a cumulative impacts analysis.

Finally, DTSC has failed to meet its Title VI obligations because it has failed to complete a cumulative impacts analysis for the proposed project. DTSC must conduct an adequate cumulative impacts analysis in a SEIR or in a separate document.

The Draft Civil Rights Analysis states that "EPA has indicated that in assessing adverse impact for purposes of Title VI, an agency should consider not only the direct impacts of the permitting decision itself but also the cumulative impacts to the community."[121] However, we are not aware of a cumulative impacts analysis on the Draft Permit. The 2024 Vulnerability Evaluation discusses whether the Facility's operations, if allowed to continue by DTSC, would significantly impact Kettleman City's vulnerabilities.

DTSC has also failed to complete an updated cumulative impacts analysis in the 2019 EDA and in the 2023 Addendum. The 2019 EDA only provided a cursory, conclusory discussion of cumulative impacts.[122] First, DTSC incorrectly characterizes the Proposed Project's as similar to existing activities in concluding that the proposed project will not result in cumulative impacts.[123] As we discussed in Section VII above, the Proposed Project would bring substantial changes to activities allowed under the 2003 permit. Second, whether DTSC must conduct a new cumulative impacts analysis does not depend on whether a proposed project is similar to the previously permitted one. CEQA requires agencies to analyze the environmental impacts of a proposed projects in connection with the effects of past, current, and probable future projects. CEQA Guidelines Section 15130. Indeed, DTSC identified in the 2019 EDA four projects that were concurrent with the proposed project at that time. Yet, DTSC failed to do any analysis on whether those projects, when viewed in connection with the Proposed Project, would result in significant environmental impacts.

[121] Draft Civil Rights Analysis at 7.
[122] 2019 EDA at 73-74.
[123] 2019 EDA at 74.

DTSC also provides that "mitigation measures associated with prior project site analyses would reduce the potential for cumulative impacts".[124] DTSC points to AQ-MM-1, AQ-MM-2, TT-MM.1, TT-MM.2, and TT-MM.3 from the 2008 Draft SEIR and 2009 Recirculated Draft SEIR. However, as we discussed in Section VII, these measures are wholly inadequate and should not be relied on by DTSC as the only mitigation measures for addressing cumulative impacts. Instead, DTSC must incorporate additional mitigation measures recommended in this letter and additional measures that will adequately mitigate the Facility's environmental impacts as well as protect the health and safety of Kettleman City residents. DTSC fails to discuss cumulative impacts in the 2023 Addendum all together.

DTSC should follow the US EPA's Interim Cumulative Impacts Framework when conducting a cumulative impacts analysis regarding the proposed project. In December 2024, the US EPA issued an Interim Framework for Advancing Consideration of Cumulative Impacts.[125] The US EPA's definition of a cumulative impacts assessment is "the process of evaluating both quantitative and qualitative data that characterize cumulative impacts to inform a decision or set of decisions—requires a systematic approach to characterize the combined effects from exposures to both chemical and nonchemical stressors over time across the affected population group or community."[126]

In Principle 2 of this Framework, the US EPA underscores that the purpose of cumulative impacts work is not just to inform decision-making, but more importantly to "*reduce existing impacts in overburdened and other communities with environmental justice concerns [and] enhance access to environmental benefits* []."[127] Principle 3 clarifies the type of information that should be included in a cumulative impacts analysis and how such information should be gathered: "[t]he data, tools, and approaches used should also be informed by the needs and priorities of affected communities or vulnerable population groups and/or lifestages, while meeting the requirements of Agency statutory authorities and processes".[128] Additionally, Principle 5 states that agencies should act with a sense of urgency in evaluating and addressing cumulative impacts issues affecting communities.[129]

DTSC has failed to do any analysis on the cumulative impacts that the Facility and other nearby polluting facilities will have on the environment, Kettleman City, and nearby vulnerable communities. DTSC must complete the SEIR, including a cumulative impacts analysis section, or a separate cumulative impacts analysis, in order to make progress toward compliance with civil rights laws.

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[124] 2019 EDA at 74.
[125] US environmental Protection Agency, Interim Framework for Advancing Consideration of Cumulative Impacts (Dec. 2024). *Available at:* https://www.regulations.gov/document/EPA-HQ-OLEM-2024-0360-0004 [*hereinafter* Interim Cumulative Impacts Framework].
[126] Interim Cumulative Impacts Framework at 13; *See also id.* At 15 (Cumulative impact considerations include "environmental stressors and environmental health impacts that are already being experienced by individuals and communities. In cumulative impacts analysis, the multiple, disproportionate environmental and climate hazards experienced by overburdened communities, their interaction with and contribution to existing community and structural stressors, and adverse impacts on health and quality of life of individuals living in those communities are considered together as factors to be included in environmental decision-making.").
[127] Interim Cumulative Impacts Framework at 11 (emphasis added).
[128] Interim Cumulative Impacts Framework at 11.
[129] Interim Cumulative Impacts Framework at 12.

C. DTSC must incorporate public comments to protect the health and safety of Kettleman City residents.

As we have discussed throughout this letter, DTSC must continue to improve its community engagement process as it considers revisions to KHF's draft permit and making a final decision regarding this permit. DTSC should not simply share information regarding the Draft Permit and seek public input, but more importantly it must incorporate input from El Pueblo and other Kettleman City residents on how DTSC and Chem Waste should monitor, analyze, reduce and mitigate environmental, health, and other community impacts. Please see Section IX below for specific recommendations on how DTSC should do so.

IX. DTSC must improve its community engagement process as it considers the Draft Permit.

DTSC's public engagement during the Facility's renewal process has been encouraging. We appreciate that DTSC held a public workshop and a comments forum in Kettleman City in May 2024. We also appreciate that DTSC will provide project updates to community members via mail, and that DTSC will hold community briefings and meetings throughout the life of the Facility.[130]

We also appreciate DTSC's commitment to holding a public workshop regarding the Draft Vulnerability Evaluation, and incorporating input from residents.[131] However, El Pueblo is not aware whether DTSC held such a workshop. If DTSC has not done so, it should hold this workshop in advance of any decisions regarding the Draft Permit.

While we are encouraged by DTSC's engagement with El Pueblo and the Kettleman City community regarding the Facility and the Draft Permit, we are concerned that the needs and recommendations of the community, and the recommendations of El Pueblo, have not been considered or incorporated.

As we discussed earlier, DTSC has failed to incorporate Kettleman City community members' and El Pueblo's recommendations in its draft permit. DTSC states that it will provide a Response to Comments, which is insufficient as it is typically released shortly before an agency makes a decision. Instead, DTSC must demonstrate that it is or will incorporate our recommendations in an updated or final draft permit and updated or additional accompanying documents in the coming months, before it makes a final decision on the permit. DTSC must allow at minimum a 60-day public comment period for the updated draft permit. DTSC must also hold a forum in Kettleman City to receive verbal and written comments toward the end of the 60-day public comment period for the updated or final draft permit.

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[130] Department of Toxic Substances Control, Public Participation Plan, The Kettleman Hills Facility Chemical Waste Management (November 2023). *Available at:* https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/04/KHF-PPP-ENGLISH_ada.pdf [*hereinafter* Public Participation Plan].
[131] Public Participation Plan at 30.

In order to ensure that the nearly 100% monolingual or primarily Spanish-speaking residents of El Pueblo can meaningfully participate in the Facility's permit renewal process, DTSC must translate the updated or final draft permit documents into Spanish, or at least translate a summary of the updated or final draft permit documents into Spanish. Finally, DTSC must provide simultaneous Spanish-English interpretation during any future hearings public forums, workshops, or meetings.

X. DTSC must update the Draft Permit to ensure the proper closure of Unit B-18 and the Facility.

DTSC must ensure adequate closing procedures, monitoring, and any clean up needed for Unit B-18 and the Facility in the future in order to ensure the health and safety of Kettleman City and other nearby residents. The Draft Permit does not adequately address the closure of Unit B-18 and the Facility. Nor do the 2009 SEIR, 2019 EDA, and 2023 Addendum.

Of the 15.6 million cubic yards (CY) capacity permitted for Unit B-18, only 2.88 million CY remains.[132] Although the 2023 Addendum provides that Unit B-18 could operate until 2042, it may reach capacity sooner than that given that 4.2 cubic yards of capacity remained in February 2018—only 7 years ago.[133] As discussed above in Section VIII, the 2009 SEIR assumed Unit B-18 would only operate until approximately 2017.

All of these above conflicting timelines demonstrates that DTSC does not and must provide an updated, accurate timeline in an updated draft permit regarding the closure of Unit B-18. This is necessary in order for DTSC to be able to accurately assess the costs of closure and post-closure monitoring and clean up. A clear and accurate closure timeline for Unit B-18 is also necessary for providing transparency and accountability to El Pueblo and Kettleman City residents.

Equally importantly, DTSC must require the Facility to provide at least annual updates to the Kettleman City community regarding the rate of disposal and capacity remaining of the B-18 Landfill. As Unit B-18 reaches capacity, DTSC must also require the Facility to provide at least annual updates to the community regarding the steps it is taking to properly close Unit B-18, monitor the landfill, and actions it is taking to ensure the continued health and safety of residents post-closure.

Currently, DTSC includes in the Draft Permit that closure costs for the entire Facility will be approximately $34,489,420.[134] DTSC also provides that post-closure costs for the Facility would be approximately $23,441,495.[135] Closure cost estimates were made in 2023 dollars, and

[132] Draft Permit at 31.
[133] 2019 EDA at 8.
[134] Draft Permit at 8.
[135] Draft Permit at 8.

include the closure of Units B-18, B-19, as well as some surface impoundments as well as storage and treatment units.[136] Post-closure cost estimates were also made in 2023 dollars.[137]

While Chem Waste provides in the April 2023 Closure Plan that the final closure of the Facility would take place around 2055, it also states that "[t]his estimate does not include the potential extension of facility life due to future advances in waste treatment technology, regulatory changes, or other factors."[138] Given that the Facility may not close down for at least another 30 years, DTSC has hugely underestimated these costs. DTSC must require Chem Waste to update its closure cost estimates to how much these activities would cost in 2055 or longer. DTSC must also require Chem Waste to update its post-closure cost to beyond 2055 as the post-closure period is at minimum 30 years under California Code of Regulations, Title 22, Section 66264.117(B). Finally, as Unit B-18 will likely reach capacity in the next few years, its closure and post-closure costs should be estimated independently and accurately, according to its schedule.

Conclusion

In conclusion, DTSC must carefully analyze and adequately mitigate KHF's environmental, health, and safety impacts before considering approving the Draft Permit. DTSC must also correct historic and ongoing legal and procedural failures related to the Facility, including violations of civil rights laws, the Title VI settlement agreement, the California Environmental Quality Act, and SB 673. Finally, DTSC must ensure that Chem Waste provides sufficient environmental and public health monitoring as well as infrastructure and other improvements in Kettleman City before considering approving the Draft Permit.

We appreciate DTSC's attention to El Pueblo's concerns and recommendations to protect the health and safety of Kettleman City. We look forward to future conversations as you consider the Kettleman Hills Facility's Draft Permit.

Sincerely,



Miguel Alatorre Jr.
Representative, El Pueblo Para el Aire y Agua Límpia

[136] WSP USA Inc., Closure and Post-Closure Plans, Kettleman Hills Facility – Kings County, CA, EPA ID No.: CAT 000 646 117, Appendix E, Table 3: Summary of Closure Cost Estimates (April 2023). https://www.hwmpenvirostor.dtsc.ca.gov/getfile?filename=/public%2Fsite_documents%2F7809705436%2F2023-4-13%20KHF%20Closure%20and%20Post-Closure%20Plans.pdf [*hereinafter* April 2023 Closure Plan].
[137] April 2023 Closure Plan at Appendix E, Table 4: Summary of Post-Closure Cost Estimate Kettleman Hills Facility.
[138] April 2023 Closure Plan at 42.



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