

DLC



# OFFICE OF COUNTY ADMINISTRATOR

COUNTY OF KINGS  
GOVERNMENT CENTER

LARRY SPIKES  
COUNTY ADMINISTRATIVE  
OFFICER

RECEIVED

SEP 27 2013

FACSS-CVR  
FRESNO, CALIF.

September 18, 2013

Central Valley Regional Water Quality Control Board  
Daniel L. Carlson, Senior Engineering Geologist  
1685 E. Street  
Fresno, CA 93706

Re: Letter of Continued Support for the Chemical Waste Management Landfill B18 Phase III Project

Dear Mr. Carlson,

Waste Management in operating this facility located 3 miles west of the Kettleman City community has and continues to operate their business operations in a manner that demonstrates a high standard business responsibility and accountability. In addition, CWMI has proven an effective partner in public/private partnership with the County to enhance and invest in the Kettleman City Community.

CWMI's commitment to an open and transparent business operation and thoroughness in complying with all necessary permits is evident in the County's most recent permit action and their commitment of private investment in Kettleman City. Beginning in April of 2005 and continuing through September 2012, the County of Kings processed and approved Conditional Use Permit No. 05-10 (CUP 05-10) and oversaw the California Environmental Quality Act (CEQA) process of the proposed project. A detailed timeline and thoroughness of those events is outlined in Attachment I to this letter.

As a part of the CUP process, CWMI participated in a Local Assessment Committee (LAC) process and agreed to a list of conditions which would be met upon approval of their permit. Specifically, CWMI agreed to pay, in full, the existing debt owed as of March 19, 2009, by the Kettleman City Community Services District (KCCSD), estimated at \$552,300. A full listing of CWMI agreed provisions are included as Attachment II to this letter.

### Kettleman City CSD Surface Water Treatment Facility

The Chemical Waste Management Landfill B18 Phase III Project and associated permit approvals are a critical component to the successful public/private partnership in completing the KCCSD surface water treatment facility. This permit ties to a larger collaboration between CWMI, the County of Kings, KCCSD, and the California Department of Public Health (CDPH). It must be emphasized that the success of the KCCSD surface water treatment facility project to

provide critically important safe drinking water to the community is dependent upon CWMI getting their operating permit approved at all levels. This will allow the pay down of existing KCCSD debt. The construction funding for the new water treatment facility is based on that existing debt being paid off. If the debt is not paid off, then the operating expenses of the project no longer meet the requirements set forth by CDPH and the funding will be jeopardized. In fact, the absence of CWMI permit will effectively maintain KCCSD operation and maintenance rates at a high enough level that will make the surface water treatment facility no longer eligible for funding by CDPH.

A brief history of Kettleman City drinking water challenges are outlined below:

- In 1993 KCCSD's existing wells were discovered to have benzene above acceptable levels and in 1997 treatment for benzene was initiated.
- In 2001 problems with water quantity in the District's two wells required a moratorium be issued on "new" development.

A brief history of the County of Kings' assistance to KCCSD in solving these water issues is outlined below:

- In the mid 2000's the District along with the County of Kings started pursuing the use of surface water from the California Aqueduct for their water supply.
- In 2004 the Kings County Redevelopment Agency was formed (with the same boundaries as the Community Services District) to help with development in Kettleman City – with one of the stated purposes of the RDA, to fund infrastructure projects in the area.
- In July 2008 land was purchased by the County to site a new surface water treatment facility.
- In December 2008 the County of Kings allocated 900 acre-feet of their State Water Project water allocation for use by Kettleman City with the assistance and cooperation of the Tulare Lake agricultural interests which have been paying for and using the water.
- In 2009 the California Department of Public Health (CDPH) issued a compliance order for arsenic, which was above permissible standards.
- In 2011 the State legislature dissolved redevelopment agencies.
- The District has been working with the County of Kings to develop a reserve fund to offset costs associated with increased operating costs of the project. The County has proposed to set aside the first \$150,000 of Hazardous Waste taxes remitted to the County annually, for the next twenty years, to go toward creating three reserves to address projected Operation and Maintenance increased costs, projected Water increased costs (for the cost of the State Water) and a reserve for Catastrophic outage – all totaling \$3,000,000.

- Based on the agreement of CWMI to pay the existing debt of the KCCSD, an application was made for funding of a new Water Treatment Facility to the State Department of Public Health. This application was the culmination of years of work by the KCCSD, their engineers, and the County of Kings in addressing water supply problems in the community of Kettleman City.

A brief summary of the California Department of Public Health efforts to assist KCCSD with funding are outlined below:

- In June 2010 CDPH issued a Planning Grant with matching funds from the Redevelopment Agency to study options, including drilling new wells and/or using the state water.
- In August 2012 CDPH agreed that using surface water would be an acceptable alternative but requested (and funded thru a \$775,000 grant) a pilot study to determine the most economical treatment method. This grant also included the design cost. Pilot testing started in April 2013 on four alternatives, three membrane and one conventional. Design is to be completed by February 2014.
- CDPH committed to \$7,500,000 construction funding pending acceptable results from the pilot study and completion of certain other commitments (like an approved Prop 218 election for increased rates).
- If construction grants are issued in February of 2014, the new Surface Water Treatment Plant construction should be completed by mid to late 2015.

The successful completion of this critical surface water treatment facility for Kettleman City is contingent upon and the CWMI permit expansion approvals of the Department of Toxic Substances Control, the Central Valley Regional Water Quality Control Board and the San Joaquin Valley Unified Air Pollution Control District.

#### **Kettleman Hills Facility Site History**

Chemical Waste Management has maintained a long standing accountable operation and community investment history in Kings County. Operations at this facility have been ongoing since 1979. For further details of past permitting please see Attachment III.

#### **Kettleman City Investments**

The County continues to direct substantial commercial and community investments into Kettleman City as it is strategically located along Interstate 5 and State Route 41. These investments would not be possible or preferable without the good neighbor responsible operations of CWMI. Noteworthy investments in Kettleman City include:

- Surface Water Treatment Facility
- New commercial restaurant, truck transfer and other retail businesses locating in Kettleman City

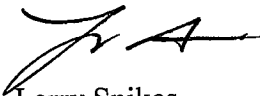
- Safe Routes to School Grant for school children safety and accessibility.
- County investment in new Fire Truck in the community.

**Strategically Located Statewide Critical Facility**

County continues to support the permitting needs of this facility as it continues to serve as a responsible and accountable business operation within the County that also serves a critically significant Statewide service need for waste disposal.

- The positive environmental siting of this Statewide critical facility for waste disposal situated in the Kettleman Hills which geologically separates and isolates the facility's hydrological surface water flow and prevents groundwater intrusion into the Valley floor aquifers.
- The facility is centrally located in the State and along the State's major north/south Interstate corridor to allow easy truck accessibility from throughout the State, while also minimizing vehicle miles traveled from northern and southern ends of the State. Absent this facility necessitates additional vehicle miles traveled and increased vehicle emissions.

Sincerely,



Larry Spikes

County Administrative Officer

Attachments

## ATTACHMENT I

### **Summary of Planning Commission, Board of Supervisors, and Court Decisions demonstrating the County's permitting commitment and due diligence in this process.**

- April 11, 2005, a Notice of Intent (NOI) was received by both the Kings County Community Development Agency and the Governor's Office of Planning and Research (OPR) concerning the intent of Chemical Waste Management, Inc. (CWMI) to file a Conditional Use Permit (CUP) application for a hazardous waste facility project
- July 12, 2005, CWMI submitted an application for Conditional Use Permit ("CUP") No. 05-10, a proposal to continue disposal of designated and hazardous waste through vertical and lateral expansion of the existing B-18 Landfill, and subsequent development of a new hazardous waste disposal landfill designated as the B-20 Landfill, at the Kettleman Hills Facility ("KHF")
- September 30, 2005 the Notice of Preparation ("NOP") of a Draft Subsequent Environmental Impact Report ("SEIR) for the CWMI B-18/B-20 Hazardous Waste Disposal Project ("Draft SEIR) was distributed by the Kings County Community Development Agency ("Community Development Agency") and circulated for a 30-day public review period
- March 20, 2008 a Notice of Intent to Adopt a SEIR was published providing notice that the Draft SEIR had been completed and was available for public review and comment
- March 24, 2008 through May 7, 2008 the Draft SEIR was published and circulated for public comments
- The public review and comment period was extended for a second review and comment period, to June 20, 2008, when a Revised Project Description and Analysis to the Draft SEIR was circulated
- In response to comments received on the Draft SEIR and the Revised Project Description and Analysis to the Draft SEIR, the Community Development Agency prepared a Recirculated Portions of the Draft SEIR which provided new information concerning the potential impacts of the Project on traffic and water supply
- The Recirculated Portions of the Draft SEIR was published and circulated for public comments from June 1, 2009, to July 17, 2009
- September 18, 2009, a public notice of Final SEIR availability and of the Kings County Planning Commission's ("Planning Commission") scheduled October 5, 2009 public hearing on the Final SEIR, was mailed to all Responsible Agencies, interested groups, organizations and persons, including all persons and agencies that had commented on the SEIR
- September 18, 2009, the Community Development Agency made a recommendation to the Planning Commission that the Final SEIR was adequate
- October 5, 2009, the Planning Commission held a duly noticed public hearing on CUP 05-10 at the Kings County Fairgrounds, 801 S. 10<sup>th</sup> Avenue, Hanford, California
- October 5, 2009, at the public hearing the Planning Commission received a report presented by County staff that included recommendations; a report from the EIR Consultant; a report from legal counsel; and testimony, from the applicant, members of the general public, and various private groups

- The Planning Commission closed the public hearing after the conclusion of public testimony; and directed staff to review the testimony that was submitted during the public hearing and provide responses to the Commission; directed staff to prepare a resolution certifying the SEIR; directed staff to prepare a resolution containing Findings of Fact, Conclusions of Law, Statement of Overriding Considerations and Decision for approval of the project; and adjourned their deliberations to a Special Meeting to be held on Monday, October 19, 2009, at 7:00 p.m. in the Board of Supervisors Chambers of the Kings County Government Center, 1400 W. Lacey Blvd., Hanford, California
- October 19, 2009, the Planning Commission reconvened their deliberations on the Project; and adopted Resolution No. 09-12, as required by Public Resources Code section 21082.1, subdivision (c), certifying the Final Subsequent Environmental Impact Report (FSEIR) prepared for the proposed Project
- October 19, 2009, the Planning Commission adopted Resolution No. 09-13 approving CUP 05-10 for the B-18/B-20 Hazardous Waste Disposal Project; adopting the CEQA Findings of Fact and Statement of Overriding Considerations, adopting the Mitigation Monitoring Program, Local Assessment Committee Final Report and Recommendations, and Conditions of Approval
- October 20, 2009, the County posted a Notice of Determination (NOD) with the County Clerk, paying the required fee to the Department of Fish and Game
- On October 19, 2009, the Kings County Planning Commission adopted Resolution No. 09-12 certifying the Final SEIR (SCH # 2005041064) for the B-18/B-20 Hazardous Waste Disposal Project.
- On October 19, 2009, the Planning Commission adopted Resolution No. 09-13 approving CUP 05-10 for the B 18/B 20 Hazardous Waste Disposal Project, adopting the CEQA Findings of Fact and Statement of Overriding Considerations, adopting the Mitigation Monitoring Program, Local Assessment Committee Final Report and Recommendations, and Conditions of Approval
- An appeal of the Planning Commission's decision to certify the SEIR and approve the project was timely filed with the Kings County Clerk of the Board on October 27, 2009, by letter dated October 26, 2009, and submitted by Center on Race, Poverty and the Environment (CRPE), GreenAction for Environmental Health and Justice, El Pueblo Para El Aire y Agua Limpio/ People for Clean Air and Water, and Kids Protecting Our Planet.
- On December 7, 2009, the Kings County Board of Supervisors adopted Resolution No. 09-072 certifying the Final SEIR (SCH # 2005041064) for the B 18/B-20 Hazardous Waste Disposal Project.
- On December 7, 2009, the Kings County Board of Supervisors adopted Resolution No. 09-073 denying the appeal and upholding the Planning Commission's approval of CUP 05-10, adopting CEQA Findings of Fact and a Statement of Overriding Considerations, adopting the Mitigation Monitoring Plan, and adopting Conditions of Approval for the Kettleman Hills Facility B-18/B-20 Hazardous Waste Disposal Project.
- Subsequent to the action by the Kings County Board of Supervisors denying the appeal of CUP 05-10, a lawsuit was filed by El Pueblo Para El Aire Y Agua Limpio Petitioning for a Writ of Mandate against the Kings County Board of Supervisors and Chemical Waste Management, Inc.
- On January 23, 2011, the Superior Court of Kings County denied the Petition for Writ of Mandate. The court made the following findings:

1. The County of Kings properly analyzed the project's health impacts; it was not required to re-circulate the SEIR after discovery of a birth defect cluster.
  2. The Petitioner's baseline objection was not made at the administrative level and this objection has been waived.
  3. County's reliance on the baseline of 400 hazardous waste trucks a day was not an abuse of discretion and was supported by substantial evidence.
  4. Petitioners waived their objections to the cumulative impact analysis.
  5. The cumulative impact analysis in the SEIR satisfied the requirements of CEQA.
  6. The alternative analysis did not violate CEQA.
  7. The no feasible off-site alternative finding did not violate CEQA.
  8. County did not fail to adopt feasible mitigation measures to reduce project impacts.
- Subsequent to the Superior Court of Kings County denying the Petition for Writ of Mandate, El Pueblo Para El Aire Y Agua Limpio filed an appeal from a judgment of the Superior Court of Kings County with the Court of Appeal of the State of California, Fifth Appellate District. On July 3, 2012, the Court of Appeal, Fifth Appellate District, affirmed the judgment denying the Petition for Writ of Mandate issued by the Superior Court of Kings County.
  - A Petition for Review was filed in The Supreme Court of the State of California concerning the July 3, 2012 Opinion by the Court of Appeal, Fifth Appellate District, to affirm judgment denying the Petition for Writ of Mandate issued by the Superior Court of Kings County.
  - On September 26, 2012, the California Superior Court denied the petition for review.

## ATTACHMENT II

### **Local Assessment Committee (LAC) for Conditional Use Permit No. 05-10 (CUP 05-10) Agreements reached.**

- Chemical Waste Management, Inc. (CWMI) shall fund up to \$100,000 for a community health survey of Kettleman City residents to address community concerns regarding a high incidence of birth defects and cancer. The survey will be conducted by a person or entity selected by the Kings County Department of Health through a request for proposals. The Department of Health will consult with the Central Valley Health Policy Institute (CSU Fresno) for assistance in preparing the request for proposals. The contract for the health survey shall be administered by the Department of Health or other appropriate department of the County.
- CWMI shall pay in full the existing debt owed as of March 19, 2009, by the Kettleman City Community Services District, estimated to be \$552,300.
- CWMI (1) shall pay ten percent (10%), up to a maximum of \$150,000, toward construction of the Caltrans Safe Crossing Project for SR-41 in Kettleman City, and (2) shall provide funding to acquire and install two electronic speed indication devices to be placed at opposite ends of the residential district on SR 41, which are estimated to cost \$70,000.
- CWMI shall provide (in English and Spanish) the Kettleman City Library with U S. Department of Transportation (DOT) Hazardous Material (HAZMAT) Transportation placards along with written definitions as provided under Title 49 of the United States Code of Federal Motor Carriers Safety Regulations (FMCSR). Additionally, CWMI shall conduct an informational presentation regarding the placards during its annual contingency plan meeting (see Item No. 6 below)
- CWMI shall provide funding in the amount of \$450,000 to the Reef Sunset School District for installation and/or construction of a walking track, soccer field lighting, pavilion, and parking lot on the grounds of the Kettleman City Elementary School. The School District shall place the funds in a separate, interest-bearing account to be used solely for installation and/or construction of the improvements identified above.
- CWMI shall provide annual community education about its facility contingency plan, and shall assist the community in preparing a disaster plan for the residents, at an annual meeting in Kettleman City to which the public agencies responsible for emergency planning and response shall be invited to provide information to local residents.
- CWMI shall ensure that (1) the independent consultants hired by CWMI to prepare air quality and water quality monitoring and compliance reports shall prepare an annual summary of the reports in layperson's terms, in Spanish and English, and shall deliver copies of the summary to all post office box-holders in Kettleman City, with a copy to the Kings County Community Development Agency, on or before the 1<sup>st</sup> day of May of each year of operation of the Proposed Project, and (2) CWMI shall conduct an annual meeting in Kettleman City to which the San Joaquin Valley Air Pollution Control District, the Kettleman City Community Services District and the public agencies responsible for emergency planning and response shall be invited, to provide information to local residents



### ATTACHMENT III

In 1979, CWMI purchased and began operating the KHF site. At that time, it was a 1,280 acre facility that was authorized as a treatment, storage, and disposal facility for designated wastes. Also in 1979, CWMI obtained authorization to operate the site as a hazardous waste management facility, and hazardous wastes were permitted for treatment, storage, and disposal at KHF.

In April 1985, CWMI purchased an additional 320 acres, bringing the property to its current configuration and size of approximately 1,600 acres. Also in 1985, CWMI obtained authorization to operate additional hazardous waste treatment and disposal facilities at the site, based on the following environmental documents:

- Draft Environmental Impact Report: Chemical Waste Management, Inc., Kettleman Hills Hazardous Waste Facility. Prepared by CH2M HILL. July 1985.
- Final Environmental Impact Report: Chemical Waste Management, Inc., Kettleman Hills Hazardous Waste Treatment, Storage, and Disposal Facility. Prepared by CH2M HILL. October 1985.

The 1985 EIR considered the expansion of the site from 1,280 acres to 1,600 acres; additional waste treatment facilities; and construction of three new waste disposal facilities (Landfills B-17, B-18, and B-19). The EIR provided the basis for approval of Conditional Use Permit (CUP) No. 1412. The B-18 Landfill and the B-19 Landfill were constructed as addressed in the 1985 EIR. However, the remaining airspace in the B-19 Landfill is now permitted as a Class II/III landfill, with a portion being a bioreactor, and the previously approved Class I B-17 Landfill is now a new Class II/III Landfill that was permitted for disposal of designated waste and municipal solid waste in 2007. Because each of these projects serves an independent utility, both the Class II/III B-19 Landfill Bioreactor and the Class II/III B-17 Landfill were considered in separate SEIRs, which were certified by the County in 2005 and 2006, respectively.

In 1988, after approximately one million cubic yards of Class I hazardous waste had been disposed in B-19, a portion of the side slope liner slipped, resulting in a horizontal and vertical movement of the waste. The liner performed as designed and Class I waste was not released from the landfill. Further discussion of the slippage and mitigation is discussed on page 2.1-50 of the Final SEIR for CUP 97-05 (*Final Subsequent Environmental Impact Report: Municipal Solid Waste Disposal Project, Kettleman Hills Facility, Chemical Waste Management, Inc.* (State Clearinghouse No. 97042028) prepared by TRC for Kings County Community Development Agency, Hanford, California, November 1997.