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**BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION**

El Pueblo Para El Aire y Agua
 Limpio; Kids Protecting our Planet

Complainants,

v.

Board of Supervisors of Kings County,

Respondents.

**COMPLAINT UNDER TITLE VI OF
 THE CIVIL RIGHTS ACT OF 1964, 42
 U.S.C. § 2000d, 40 C.F.R. Part 7 and 24
 C.F.R. Part 1.**

I. INTRODUCTION

This is a civil rights complaint by El Pueblo para el Aire y Agua Limpio and Kids Protecting our Planet (collectively "El Pueblo"), under Title VI of the Civil Rights Act of 1964 and its implementing regulations against Kings County for discriminating on the basis of race and national origin in approving the expansion of the Chemical Waste Management Kettleman Hills Hazardous Waste Facility (KHF), and in limiting the participation of the Latino residents of Kettleman City in the decision-making process.

Kettleman City residents have for many years been forced to bear a disproportionate share of the County's environmental dangers by hosting Chem Waste's Kettleman Hills Facility, the largest hazardous waste landfill in the western United States. Kings County's

discrimination forces residents to bear an even greater proportion of this burden if the County's improperly issued permits for continued operation and expansion are allowed to stand.

The County's decision to approve a hazardous waste dump expansion adjacent to the highest concentration of Latinos in Kings County has a *discriminatory impact*. Kettleman City—which already suffers from disproportionate exposure to chemicals, air pollution, and contaminated water—has recently experienced an alarming spike in unexplained birth defects and infant mortality. The County moved forward with its decision without adequately assessing the source of these acute health effects in the community, or otherwise addressing the project's adverse and discriminatory impacts.

In addition to the project approval's discriminatory impact, the County *intentionally discriminated* against Latino residents by systematically limiting their participation in the decision-making process. Most Kettleman City residents' first language is Spanish, and a high percentage are monolingual Spanish. In spite of Kettleman City residents' continued request and demand for documents in Spanish, the County provided documents in an English-only format. Further, the County excluded Latino residents from the Local Assessment Committee in clear violation of the Tanner Act. Finally, the County provided Spanish speakers only half as much time to testify at public hearings as their non-Spanish speaker counterparts. The County's permitting process was the result of intentional discrimination and had a discriminatory impact—two separate grounds for Title VI action.

This complaint will show all four elements required to make a prima facie case of a violation of Title VI under U.S. Department of Transportation implementing regulations: (1) the County's action has an impact; (2) that is discriminatory on the basis of race, color, or national origin; (3) caused by a recipient of federal financial assistance; (4) within the statute of limitations period.

II. THE COMPLAINANTS

Complainant El Pueblo Para El Aire y Agua Limpio/People for Clean Air and Water is

1 an unincorporated association of Kettleman City residents. El Pueblo's primary interest is in
2 protecting the health of Kettleman City residents and in preserving and enhancing the
3 environment and promoting justice in Kettleman City and other similar communities. El
4 Pueblo was founded in 1987 by residents concerned about the impact of a proposed hazardous
5 waste incinerator on the community. El Pueblo and its members submitted written and oral
6 comments during Kings County's permit process.

7 Complainant El Pueblo Para El Aire y Agua Limpio brings this Civil Rights
8 Complaint on behalf of the residents of Kettleman City in Kings County, California.
9 Membership in the organization mirrors the demographics of Kettleman City, which are
10 predominantly Latino.

11 Kids Protecting Our Planet ("KPOP") is a Kettleman City youth organization.
12 Founded in 2007, KPOP has been active in educating and mobilizing youth and adults to
13 protect the health and environment of Kettleman City. KPOP and its members submitted
14 written and oral comments during Kings County's permit process.

15 III. RIPENESS

16 This complaint is timely filed because Kings County's pattern and practice of
17 discrimination against Kettleman City residents is ongoing. Moreover, the most recent action
18 on the permit application is the adoption of a statement of overriding considerations
19 (Resolution No. 09-073) and issuance of a conditional use permit during the December 22,
20 2009 Kings County Board of Supervisors meeting. *Action Summary*, at 4. This is within the
21 180-day filing period for a Title VI complaint as required under 40 C.F.R. § 7.120(b)(2) and
22 24 C.F.R. § 1.7(b).

23 IV. FINANCIAL ASSISTANCE

24 The Board of Supervisors for Kings County must comply with Department of
25 Transportation's (DOT) Title VI implementing regulations because the County receives
26 substantial federal financial assistance from DOT. Kings County regularly receives federal
27 funding from the Federal Highway Administration and Federal Transit Administration, both
28

1 of which are divisions of the Department of Transportation. *See Draft 2011 Federal*
 2 *Transportation Improvement Program*, at 2.

3 Kings County has also allocated federal funds to several projects related to SR 41 and
 4 I-5, both of which face "significant and unavoidable" negative impacts from the proposed
 5 expansion and continued operation of KHF, despite mitigation efforts. FSEIR at 1-42. *See*
 6 *Notice of Annual Listing of Federal Obligations, FY 2008-09, FY 2007-08, FY 2006-07, FY*
 7 *2005-06*. The following project Federal ID numbers all relate specifically to Kettleman City:
 8 P041113 (2009, at 7), P041091 (*Id.*), 0054(177) (2008, at 7; 2007, at 7), X031002-00 (2008,
 9 at 7; 2006, at 2), and P041094 (2006, at 2).

10 V. STATEMENT OF FACTS

11 A. The Community.

12 Kettleman City is a rural, unincorporated community of 1500 residents. Ninety three
 13 percent of the residents of Kettleman City are Hispanic or Latino, and 62 percent are foreign
 14 born.¹ In contrast, only 48 percent of the residents of Kings County are Hispanic or Latino,
 15 and 21 percent are foreign born.² A significant percentage of Kettleman City residents are
 16 employed as farm workers. Kettleman City residents are predominantly language minority.
 17 Eighty-eight percent of Kettleman City residents are primarily Spanish-speaking, and 61
 18 percent are monolingual Spanish-speaking.

19 Kettleman City is economically depressed. Residents have few resources available to
 20 cope with the cumulative exposures to environmental stressors such as pesticides applied on
 21 nearby fields, diesel trucks on Interstate 5 and Highway 41, the dumping of hazardous waste,
 22 solid waste and PCBs, and contaminated drinking water. Residents of Kettleman City also
 23 have less occupational and residential mobility, less access to health care, lower income and
 24 less political power than other sectors of the Kings County population. In 2000, the per capita
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26 ¹ U.S. Census Bureau, *Kettleman City CDP, California*,
 27 http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=Kettleman+city&_cityTown=Kettleman+city&_state=04000US06&_zip=&_lang=en&_ssc=on&pxtxt=fph&pgsl=010&show_2003_tab=&redirect=Y (last visited May 25, 2010).

28 ² *Id.*

1 income for Kettleman City was \$7,389—one third of California's average of \$22,711.

2 Thirty-eight percent of families and 43.7 percent of Kettleman City residents were below the
3 poverty line in 2000.³

4 Since September 2007, Kettleman City has seen a sudden and unexpected increase in
5 birth defects. A total of at least 11 babies were born with defects, many of them with cleft
6 palette and various heart and brain defects. Three of the infants died from complications
7 stemming from those birth defects and another was delivered stillborn. Residents estimated
8 that the affected children represented nearly a quarter of Kettleman City births.

9 **B. A History of Discrimination.**

10 Kings County has historically discriminated against language minorities and, as a
11 result, is one of just three counties in California that must obtain pre-clearance from the U.S.
12 Department of Justice before changing any of its voting laws. Kings County has failed to
13 invest tax dollars in Kettleman City and the city is plagued by inferior municipal services.
14 Kettleman City receives fewer and poorer public services than other neighborhoods in Kings
15 County. There are generally no sidewalks, inadequate or non-existent drainage services,
16 poorly maintained roads, few streetlights, inadequate traffic control signs, inadequate law
17 enforcement and 911 emergency services. The County did nothing to remediate the
18 community's contaminated drinking water supply until recent events raised national publicity
19 surrounding Kettleman City's plight. These poor conditions adversely affect the health, safety
20 and dignity of Kettleman City residents.

21 The County's discriminatory approval of Chem Waste's expansion permit is part of a
22 long history of racist land use decisions affecting Latinos in Kettleman City. In 1979, Kings
23 County permitted Chem Waste to open the largest toxic dump west of Louisiana just 3.5 miles
24 from residents' homes in Kettleman City. Kings County did not inform Kettleman City
25 residents that it was siting the Chem Waste Hazardous Waste landfill adjacent to the
26 community. Kings County took no steps to solicit comment or consent from Kettleman City
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28 ³ *Id.*

1 residents. Chem Waste's initial siting is part of a disturbing pattern of discriminatory
2 permitting decisions by Kings County that continues today.

3 The phenomenon of siting polluting facilities in low-income Latino communities was
4 described in the 1984 Cerrell Report, which was commissioned by the California Waste
5 Management Board and funded with taxpayer dollars.⁴ That report implicitly advised
6 companies and governmental entities to site waste facilities in small, poor, rural, Catholic
7 communities with low education levels whose residents were engaged in extractive
8 industries—a description that fits Kettleman City and the two other communities that host
9 hazardous waste facilities in the United States. Overall, Latinos comprise 32 percent of the
10 state's population, but Latino communities bear 100 percent of the risk and impact of hosting
11 toxic waste dumps.

12 In 1988, Kings County accepted Chem Waste's application to establish a toxic waste
13 incinerator in Kettleman City with capacity to burn over 216,000,000 pounds of waste each
14 year. Again, the County did not inform residents about the proposed incinerator. When
15 residents ultimately found out about the proposal, they made extensive efforts to participate in
16 the environmental review process, but were hampered when the County failed to provide the
17 Spanish-speaking residents with translated documents. The County conducted its public
18 hearings in inconvenient locations at inconvenient times, and in fact never held a single
19 hearing in Kettleman City. The County approved the incinerator over residents' vocal
20 opposition. However, a judge later rejected the approval on the grounds that the County's
21 failure to translate materials had unlawfully precluded residents from meaningful
22 involvement, and because the Environmental Impact Report had not sufficiently analyzed
23 impacts to air quality or agriculture.⁵

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26 ⁴ Cerrell Associates, Inc. *Political Difficulties Facing Waste-to-Energy Conversion Plant Siting*. 1984.

27 ⁵ See *El Pueblo para el Aire y Agua Limpio v. County of Kings*, Civ. No. 366045, Ruling on Submitted
28 Matter, 22 Env'tl. L. Rep. 20357 (Sacramento Sup. Ct. Dec. 30, 1991).

1 The County has since authorized a series of new projects at the hazardous waste site
2 including a municipal solid waste disposal unit, a landfill bioreactor, and a Class II/III landfill
3 over the objections of residents, and despite legitimate and significant environmental
4 concerns.

5 **C. The Hazardous Waste Expansion Project.**

6 In 2005, Chem Waste requested approval from Kings County to increase the
7 hazardous waste disposal capacity at KHF to allow continued operations for an additional 32
8 years by constructing and operating a new Class I/II hazardous waste landfill (B-20) and
9 expanding an existing Class I/II hazardous waste landfill (B-18). The proposed project would
10 add 221.5 acres of new hazardous waste operations to the area. The new and expanded
11 landfills would accept approximately 2,900 tons of hazardous waste daily, including, but not
12 limited to, materials containing PCBs, cyanides, asbestos, solvents, corrosives, lead, metals,
13 and halogenated organics. The two Class I/II landfills may be operated concurrently for a
14 period of time as the B-18 Landfill nears capacity and disposal operations are shifted to the B-
15 20 Landfill. A combined maximum average of 400 trucks per day may transport waste to the
16 B-18 Landfill or B-20 Landfill.

17 After all feasible mitigation measures have been imposed, the project will significantly
18 increase ozone, coarse particulate matter ("PM10") and fine particulate matter ("PM2.5")
19 emissions, result in a significant and unavoidable cancer risk at the KHF property boundary,
20 significantly increase traffic impacts, and contribute to cumulatively considerable and
21 significant greenhouse gas emissions.

22 The KHF expansion project takes place against a backdrop of repeated environmental
23 violations and fines for failure to meet basic operating standards. Chem Waste has been fined
24 millions of dollars for violations at KHF since it was built, and continues to be the subject of
25 EPA action as recently as this year.

26 KHF is already the largest commercial hazardous waste landfill in the western United
27 States and is one of only eight facilities in the United States that is permitted to accept PCBs.
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1 PCBs are a known carcinogen and have been linked to numerous other health impacts.⁶
 2 Perhaps most significant in light of current developments is that PCBs have been linked to
 3 birth defects, including the occurrence of cleft palate.⁷

4 D. The Discriminatory Process.

5 Upon receiving the request for a permit for expansion of KHF, the County was
 6 required to appoint a seven member local assessment committee (LAC) to act in an advisory
 7 capacity in considering Chem Waste's application. Kings County carefully selected only one
 8 member who actually resides in Kettleman City.⁸ The lone Kettleman City resident on the
 9 LAC is one of the few known local supporters of Chemical Waste Management. In response
 10 to extensive criticism, Kings County finally selected one Latino to serve on the LAC in
 11 January, 2009, just a few years before the end of this multi-year process. This member was
 12 unable to effectively participate in the LAC process, however, because his first language is
 13 Spanish and all LAC and permit documents were provided only in English.

14 In spite of residents' repeated requests and the court's 1991 decision, the County
 15 consistently refused to translate permit documents or public hearings into Spanish. As a
 16 result, the people most affected by the proposed project were not able to fully participate in the
 17 public process. When translators were present, they were provided by Chem Waste (*FSEIR* at
 18 3-200), which concerned residents due to the potential for bias in the translation process
 19 (Kings County Planning Commission, *Meeting Transcript*, October 5, 2009).
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 22 ⁶ Watanabe and Sugahara, "Experimental formation of cleft palate in mice with polychlorinated
 23 biphenyls (PCB)." *Toxicology*. 19:1, 1981; Abstracts and citations for 30 additional studies linking PCBs to
 cleft palate are available at: http://www.foxriverwatch.com/cleft_palate_pcb.html.

24 ⁷ PCBs, banned by Congress in 1970 because of their high toxicity, persist in the environment for
 25 extremely long periods of time, and travel long distances in the air. They are known to lead to increased risk of
 many different diseases, including cancer, endocrine disruption, neurobehavioral abnormalities, and immuno-
 26 suppression. Kudryakov et al., "Respiratory disease in relation to patient residence near to hazardous waste
 27 sites." *Environmental Technology and Pharmacology*. 2004. PCBs' effect on reproduction and development are
 particularly severe: shorter menstrual cycle, maternally reduced fecundability, hormonal changes, paternally
 28 delayed conception, decreased sperm motility, and irregular menstrual cycle. Decreased birth weight and
 gestational ages have also been shown to result from exposure. Faroon et al. "Effect of polychlorinated
 biphenyls on development and reproduction." *Toxicology and Industrial Health*. 2001.

⁸ *FSEIR*, at 3-191 to -96.

1 During the permit hearing, Spanish-speaking Latinos were allowed only half the time
2 to testify as English speakers. While English speakers were allotted a full five uninterrupted
3 minutes to testify, the County effectively allowed the Spanish-speaking Latinos only 2 ½
4 minutes to testify—using the other 2 ½ minutes to have the translators provided by the toxic
5 waste company translate the testimony into English. *Meeting Transcript* at 152:16-19.

6 When Spanish-speaking residents objected at the hearing to being given only half the
7 time to testify, County officials and police threatened them with removal from the hearing.
8 During the hearing, one resident was physically removed by the police for continuing to object
9 to the discriminatory rules. The County officials' warnings to the resident were in English,
10 and his requests for translation of the warning were ignored. In the process of removing the
11 resident, police knocked an elderly resident to the ground.

12 The County also knowingly ignored the growing evidence of a health crisis within
13 Kettleman City, and approved the expansion without conducting any investigation into a
14 possible link between the hazardous waste dump and the birth defects, in violation of the
15 California Environmental Quality Act. On December 15, 2009, the County requested that
16 California formally investigate potential causes of the birth defect cluster, including the
17 proximity of the Kettleman Hills hazardous waste facility. In spite of their apparent concern,
18 the Kings County Board of Supervisors approved the hazardous waste dump expansion
19 without an investigation on December 22, 2009.

20 Similar to past permitting votes, after a multi-year process the County held its final
21 vote on a project of utmost public concern during the holiday season when many residents
22 were unable to attend. The timing of the final vote conflicted with family obligations of many
23 concerned residents and had the effect of minimizing attendance and criticism of the permit.

24 VI. ARGUMENT

25 Environmental Justice communities enjoy two-fold protection against unlawful
26 discrimination in federally-funded activities and programs. Intentional discrimination against
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1 minority populations is prohibited under Title VI of the Civil Rights Act of 1964, which
2 provides:

3 No person in the United States shall, on the ground of race, color, or national origin, be
4 excluded from participation in, be denied the benefits of, or be subjected to
discrimination under any program or activity receiving federal financial assistance.⁹

5 42 U.S.C. 2000d.

6 The Department of Transportation's Title VI regulations (49 CFR part 21) further
7 prohibit actions by recipients of DOT financial assistance that have an impermissible
8 discriminatory impact on minority populations. Specifically, DOT regulations provide:

9 A recipient, in determining the types of services . . . or other benefits . . . which will be
10 provided under any such program, or the class of persons to whom, or the situation in
11 which, such services, financial aid, other benefits, or facilities will be provided under
12 any such program . . . may not, directly or through contractual or other arrangements,
13 utilize criteria or methods of administration which *have the effect*, of subjecting persons
to discrimination because their race, color, or national origin, or *have the effect of*
defeating or substantially impairing accomplishment of the objectives of the program
with respect to individuals of a particular race, color, or national origin.

14 49 C.F.R. § 21.5(b)(2)(I), (iv) (emphasis added). In addition, Executive Order 12898, "Federal
15 Actions to Address Environmental Justice in Minority Populations and Low-Income
16 Populations," provides:

17 To the greatest extent practicable and permitted by law, . . . each Federal agency shall
18 make achieving environmental justice part of its mission by identifying and addressing,
19 as appropriate, disproportionately high and adverse human health or environmental
20 effects of its programs, policies, and activities on minority populations and low-income
populations in the United States . . .

21 59 F.R. 7626.

22 FTA Circular 4702.1A provides recipients of FTA financial assistance with "guidance
23 and instructions necessary to carry out the U.S. Department of Transportation's . . . Title IV
24 regulations . . . and to integrate into their programs and activities considerations expressed in
25 the Department's Order on Environmental Justice (Order 5610.2)" FTA C 4702.1A at 1.
26 The purposes of these requirements and guidance include helping FTA recipients and
27 subrecipients to:

28 ⁹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

1 a. Identify and address, as appropriate, disproportionately high and adverse human
2 health and environmental effects, including the social and economic effect of programs
and activities on minority populations and low-income populations;

3 b. Prevent the denial, reduction, or delay in benefits related to programs and activities
4 that benefit minority populations or low-income populations;

5 c. Ensure meaningful access to programs and activities by persons with limited English
6 proficiency.

7 FTA C 4702.1A at II-1.

8 Kings County, a recipient of federal financial assistance from DOT, has violated Title
9 VI as implemented by DOT's regulations. Kings County's December 22, 2009 decision to
10 allow the expansion of the Chem Waste hazardous waste facility adjacent to Kettleman City
and the process that led up to that decision were discriminatory.

11 While there is a nexus between the KHF expansion project and DOT highway funding,
12 DOT's duty to enforce Title VI is not limited to funding by DOT. "Program or activity" is
13 defined as "all the operations of" a department, agency, special purpose district or other
14 instrumentality of a State or of a local government.¹⁰ The Kings County Board of Supervisors
15 is a program or activity under the Act and thus, all County decisions must comply with the
16 requirements of Title VI. As such, DOT can—and must—take action against the County for its
17 violations of Title VI, even where the violations are not related to DOT highway funding.

18 The County's December 22, 2009 decision to allow the expansion of the Chem Waste
19 Hazardous Waste Facility adjacent to Kettleman City violates the County's statutory and
20 regulatory duty to administer all programs and activities in a nondiscriminatory manner. The
21 County's action exacerbates existing adverse environmental and social impacts in Kettleman
22 City and creates a substantial adverse impact on the community. DOT must take all
23 appropriate action to end Kings County's Title VI violations.
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28 ¹⁰ 42 U.S.C. § 2000d-4a (1997).

1 **A. Kings County Unlawfully Approved an Expansion of the Kettleman Hills Facility**
2 **That Will Have Discriminatory and Significant Adverse Impacts on the Latino**
3 **Population of Kettleman City.**

4 The County's approval of the KHF expansion adds to the already disproportionate
5 burden of toxic pollution that Latinos in Kettleman City shoulder. The County chose to site
6 and continually expand the largest toxic waste dump west of Louisiana within 3.5 miles of the
7 town with the County's highest Latino concentration. The County failed to take the severe and
8 repeated violations of environmental and other permit conditions into account. In spite of
9 recent information indicating that the dump may be causing a drastic increase in birth defects
10 and infant mortality, the County rushed its approval ahead before an investigation it called for
11 itself could be completed.

12 *1. Latino residents in Kettleman City are exposed to a disproportionate burden of toxic*
13 *contamination.*

14 Beyond the explanations provided by the Cerrell Report, there is little logical
15 connection between the Kettleman area and the toxic waste being dumped there. Kings County
16 produces less than three percent of the waste stream dumped at the Kettleman facility and
17 Kettleman City produces none of that waste. KHF is one of only three hazardous waste
18 facilities in California, and the only dump in the state which accepts PCBs, one of the most
19 dangerous pollutants known to man. Residents, 93 percent of whom are Latino, have been at
20 risk of exposure to toxic contaminants at KHF since 1979. The County failed to prevent the
21 disproportionately high and adverse environmental and human impacts of the KHF expansion.

22 The County itself found that the air quality (periodic construction and operations
23 impacts, long-term operations impacts) and land use (compatibility with Kings County
24 Regional Transportation Plan) impacts of the Project will be "significant and unavoidable,"
25 despite mitigation efforts. *Id.* at 1-26, 1-42 (table 1-1). Moreover, the proposed Project would
26 exceed the cancer risk standard at the KHF property boundary and contribute to the ongoing
27 significant cumulative regional . . . air quality impacts . . ." *Id.* at 1-4, 5. No residents of
28

1 California or Kings County towns where the majority of residents are white are exposed to
2 these kinds of risks.

3 Despite the fact that Kettleman City bears almost the entire risk and impact of hosting
4 the Chem Waste toxic waste dump, it receives virtually none of the substantial tax revenue
5 which the dump yields to the County. In Kings County, the dump has produced millions of
6 dollars of tax money per year, reaching almost 10 percent of the County's annual budget. Yet,
7 while Kettleman City residents pay with their quality of life, they receive almost nothing back.
8 Instead, the money is spent in areas populated by the County's white residents.

9 *2. The County chose to rush a final vote through without properly evaluating the health*
10 *impacts of the project.*

11 Residents and their environmental justice allies have documented at least eleven birth
12 defects—many of them life threatening—since late 2007. Six children were born with cleft
13 palate. Since late 2007, three children have died as a result of complications related to their
14 birth defects. Given that dozens of studies have linked PCB exposure to cleft palate and other
15 health effects, and KHF is the only facility in California which accepts PCB, there is a logical
16 suspicion that the KHF dump is linked to the extraordinary rise in birth defects. The County
17 itself called for an investigation. Yet, instead of waiting for the investigation to conclude, the
18 County chose to approve the Project. *Action Summary* at 4, (Dec. 22, 2009).

19 The County's permit process also failed to evaluate the impact on residents of the
20 emissions of carcinogens and particulates from the hundreds of diesel trucks every day that
21 travel next to and near Kettleman City on their way to and from the Chemical Waste
22 Management facility. No testing of diesel emissions in Kettleman City has ever been
23 performed, and these emissions have never been considered in evaluations of the impacts of the
24 landfill operations.

25 The County's permit process and EIR also failed to properly evaluate cumulative
26 impacts from the proposed permits. Residents are exposed to multiple pollution sources,
27 including waste dumping and massive diesel emissions from thousands of diesel trucks
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1 engaged in waste and freight transport on Highway 41 and Interstate 5. Residents are also
2 exposed to toxic contaminated drinking water, pesticides, and the terrible air quality prevalent
3 throughout the Valley (the U.S. EPA has designated the Valley as an extreme nonattainment
4 area for the 1997 8-hour ozone National Ambient Air Quality Standard and a nonattainment
5 area for the 1997 PM2.5 National Ambient Air Quality Standard).

6 *3. The County's approval of the expansion failed to recognize KHF's atrocious history*
7 *of environmental violation.*

8 The County's permit was based on the incorrect assumption that KHF is a well-run and
9 tightly regulated facility. Chem Waste has been fined repeatedly for violations at KHF. In
10 1984, EPA fined Chem Waste \$2.5 million for a total of 130 violations. Among other
11 incidents, Chem Waste was charged with allowing leaks from the dump to contaminate local
12 water supplies. In 1985, EPA and Chem Waste's parent company, Waste Management, Inc.,
13 agreed to a consent decree involving \$4 million in fines for failing to adequately monitor
14 ground water and for mishandling hazardous waste, including PCBs, at the Kettleman Hills
15 dump. In 2005, EPA and Chem Waste entered into a consent decree for extensive monitoring
16 violations. The California Department of Health Services fined Chem Waste \$363,000 for
17 eleven administrative and operational violations at the Kettleman dump.

18 Violations and fines have been levied against Chem Waste consistently and continue
19 into the present year. On April 8, 2010, EPA issued Chem Waste a letter outlining that the
20 company was engaged in improper disposal and improper handling of highly toxic materials.
21 And, on May 27, 2010, EPA Region 9 issued a Notice of Compliance to Waste Management
22 stating that, "the data quality control system at the KHF Laboratory is not adequate to ensure
23 reliable analytical results," and "should not be used for decision making." The County's
24 approval relied on an EIR that cited KHF laboratory results that EPA now calls into question.
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1 Further, extensive testimony has been presented to the County evidencing that improper
2 disposal of radioactive waste has taken place at the landfill. The County ignored this evidence
3 and approved KHF's permit.

4 **B. Kings County Unlawfully and Intentionally Discriminated Against the Latino**
5 **Residents of Kettleman City During the Administrative Process to Consider the**
6 **Hazardous Waste Expansion.**

7 Kings County *intentionally discriminated* against Latino residents by systematically
8 limiting their participation in the decision-making process despite their protected status under
9 the Civil Rights Act of 1964. Kings County excluded Latinos from meaningful participation in
10 the Local Assessment Committee process, deprived Latinos access to permit information and
11 documents due to the County's refusal to translate, denied Latinos access to the public hearings
12 by setting hearings on inconvenient dates and times and in inaccessible locations, and routinely
13 denied Spanish speakers equal time to testify as non-Spanish speakers. Finally, the County
14 attempted to stifle participation from the Latino residents of Kettleman City through systematic
15 county-initiated police harassment, intimidation and violence.

16 *1. Kings County excluded Latinos and residents of Kettleman City from participating*
17 *on the Local Assessment Committee.*

18 The Tanner Act provides that:

19 The membership of the committee shall be broadly constituted to reflect the makeup of
20 the community, and shall include three representatives of the community at large, two
21 representatives of environmental or public interest groups, and two representatives of
22 affected businesses and industries.

23 Cal. Health & Safety Code § 25199.7 (Tanner Act) (West 2010).

24 Despite the Tanner Act's requirement that the committee "reflect the makeup of the
25 community," Kings County selected only one member who actually resides in Kettleman City.
26 *FSEIR*, at 3-191 to -196. The lone Kettleman City resident on the LAC is a long-time and
27 vocal supporter of Chemical Waste Management. In attempting to justify its selection by
28 stating that the Tanner Act's requirement of "three representatives of the community at large"
allows them to include residents of Hanford (31.8 miles away) and Avenal (13.5 miles away) as
two of these representatives, the County seems to confuse the location of the government

1 representatives authorized to decide the fate of the project application with the location of the
 2 people who will actually be affected by the project. *Id.* In excluding residents of Kettleman
 3 City, the County ignores the purpose of the Tanner Act which is to ensure that those most
 4 impacted by the hazardous waste facility have a voice in deciding how those impacts will be
 5 mitigated. Here, those most impacted were entirely excluded from the process.

6 Additionally, throughout most of the process there was not a single Latino on the
 7 committee. Only when the process was about to conclude did Kings County select one Latino
 8 to be a member of the LAC. However, this member was unable to fully and effectively
 9 participate in the LAC process as his first language is Spanish yet all the LAC and permit
 10 documents were in English only. The lone Kettleman City resident on the LAC is African-
 11 American and a long-time and vocal supporter of Chemical Waste Management. The County
 12 notes that "[a]lthough non-Latino, [REDACTED] is a member of a minority group." *Id.* The
 13 County seems to believe that minority groups can be considered uniform, and that the
 14 appointment of an African-American representative in a 92.7 percent Latino community is
 15 adequate to represent the generalized "minority" viewpoint. By artificially grouping all
 16 "minorities" into one category, the County discriminated against the Latino members of this
 17 community and was unable to consider their unique viewpoint.¹¹

18
 19 *2. The County limited the ability of Spanish speakers to participate equally in the
 decision-making process.*

20 Title VI prohibits not only discrimination based on race, but also national origin. This
 21 protects language minorities, such as Spanish speakers, from unfair exclusion of the benefits
 22 afforded to non-minorities. In recognition of this requirement, the DOT provides guidance to
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 25 ¹¹ 25 Ecology L.Q. 752. See also Sheila Foster, *Environmental Justice in an Era of Devolved*
 26 *Collaboration*, 26 Harv. Envtl. L. Rev. 459, 490-91 (2002) ("In both communities where the advisory
 27 committees were deemed "unsuccessful," the committee was widely considered to be both geographically and
 28 demographically unrepresentative of the community where the proposed facility was to be located" (citations
 omitted)).

1 help aid recipients to "ensure meaningful access to programs and activities by persons with
2 limited English proficiency." FTA Circular 4702.1A.

3 However, despite losing on this very issue during a legal proceeding 19 years ago,
4 Kings County again consistently refused to translate permit documents or public hearings into
5 Spanish, denying the people most affected by the proposed project the ability to fully
6 participate. When translators were present, they were provided by Chem Waste (*FSEIR* at 3-
7 200), an interested and biased party in the proceeding. Kings County Planning Commission,
8 *Meeting Transcript* at 152: 16-19, October 5, 2009.

9 Kings County boldly and blatantly discriminated against language minorities during the
10 permit hearing when Spanish-speakers were allowed only half the time to testify as English-
11 speakers. While English speakers were allotted a full five uninterrupted minutes to testify, the
12 County allowed the Spanish-speaking Latinos only 2 ½ minutes to testify – using the other 2 ½
13 minutes to have the translators paid for by the toxic waste company translate the testimony into
14 English. *Id.*

15 The County's justification of this procedure—that the same process was used for
16 Spanish-speakers supporting Chem Waste as that used for Spanish-speakers opposed to
17 it—highlight the County's misconception of its responsibilities under Title VI. *Id.* at 152:20-
18 22. The County essentially believes that it is acceptable to discriminate against Spanish-
19 speaking community members as long as they discriminate against all Spanish-speakers
20 regardless of viewpoint. However, the County is required to avoid all discrimination in its
21 permitting process.

22 This language discrimination is not a one-time occurrence in Kings County. The
23 County is one of only three counties in California that is required to obtain pre-clearance before
24 changing county voting laws.¹² This means that Kings County has to demonstrate to the U.S.

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28 ¹² United States Department of Justice, Civil Rights Division, *Section 5 Covered Jurisdictions*,
http://www.justice.gov/crl/voting/sec_5/covered.php#counties (last accessed May 27, 2010).

1 Department of Justice that any proposed voting change does not deny or abridge the right to
2 vote on account of race, color, or membership in a language minority group.

3 By instituting a pattern of practices to limit opportunities available to Spanish speakers
4 to effectively participate in the decision-making process, Kings County has intentionally
5 discriminated Kettleman City residents on the basis of their national origin. This far exceeds
6 the showing of disparate impact necessary to find a violation of Title VI..

7 *3. Kings County instituted policies and practices that had the effect of limiting the*
8 *participation of Latinos in Kettleman City.*

9 Kings County held meetings and hearings to consider the expansion at times and
10 locations inconvenient and inaccessible to Kettleman City residents. This is in line with the
11 County's history of creating as inconvenient and inaccessible a process as possible to minimize
12 public criticism of the project. In 1991, the County's final push to permit the incinerator took
13 place through the holiday season with the final vote on January 3. Kings County used a similar
14 approach this time, and voted to approve the expansion on December 22, 2009.

15 The County also used unnecessarily heavy police and canine presence during the public
16 hearings which had the effect and, likely, purpose of intimidating Kettleman City residents,
17 many of whom have uncertain immigration status. Kings County contracted for over 40 police
18 officers and sheriffs to patrol the hearings, in addition to its normal security staff. The Kings
19 County Planning Commission asked police to forcibly remove an elderly resident who objected
20 to the lack of translation. When eight to nine officers responded and surrounded the resident to
21 escort him from the premise they also knocked over an elderly woman. The clear excess in
22 police presence and force had the effect of limiting the public participation of Latinos and
23 Mexican immigrants, both protected classes under Title VI.

24 **VII. REMEDIES**

25 Under DOT regulations, DOT may use any means authorized by law to obtain
26 compliance with Title VI.¹³ DOT regulations require a recipient who has previously
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28 ¹³ 40 C.F.R. § 7.130(a); 24 C.F.R. § 1.8(a).

1 discriminated on the basis of race to take affirmative action to provide remedies to those who
2 have been injured by the discrimination.¹⁴

3 In order to provide effective remedies for the discrimination set forth in this Complaint,
4 the DOT should require as a condition of continuing to provide federal financial assistance to
5 Kings County that the County:

6 (1) Reverse its December 2009 decision to approve the expansion of the hazardous
7 waste facility due to substantial violations of Title VI.

8 (2) Cease permitting landfills in communities of color, particularly in Kettleman City.

9 (3) Require that future LAC's in communities of color be legitimate and truly
10 representative of the population as a condition of continuing federal financial assistance.

11 (4) Translate County documents to Spanish for projects affecting Kings County's
12 Latino population.

13 (5) Provide translation at all County hearings and meetings.

14 (6) Sue to compel compliance with the law, to the extent that imposition of the
15 foregoing remedies prove in any way to be ineffectual.

16 (7) Provide complainants with copies of all correspondence to or from Kings County
17 throughout the course of the investigation, deliberation and disposition of this Complaint.

18 VIII. CONCLUSION

19 Kings County's decision of December 22, 2009 to approve the expansion the Chem
20 Waste Hazardous Waste Facility has a disparate impact on the Latino residents of Kettleman
21 City. Moreover, Kings County intentionally enacted policies and practices during the
22 administrative process to approve the expansion that discriminated against Latinos and Spanish
23 speakers. These are violations of DOT's Title VI regulations. As this Complaint makes clear,
24 residents of Kettleman City are being forced to continue to live next door to a hazardous waste
25 facility that serves the entire State, but were effectively excluded from the only processes by
26 which they could have protected their community from the expansion.

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28 ¹⁴ 40 C.F.R. § 7.35(a)(7).