

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

June 21, 2010

VIA FIRST CLASS MAIL

Mr. Robert J. Uram
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center
17th Floor
San Francisco, CA 94111-4106

**RE: Chemical Waste Management, Inc.
Kettleman Hills Facility B-18 Landfill Expansion Project
PCB Permit Application Renewal and Expansion
Kettleman City, CA**

Dear Mr. Uram:

This is in response to your letter dated May 6, 2010, on behalf of your client Chemical Waste Management, Inc. (CWM) requesting that the U.S. Environmental Protection Agency (EPA) proceed with initiation of formal consultation under Section 7 of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service (USFWS) for the above referenced projects or, in the alternative, provide a written explanation of the status of this request and a timeline for when formal consultation will be initiated.

As you are aware, in February 2007, EPA proposed to grant the Toxic Substance Control Act (TSCA) polychlorinated biphenyls (PCB) permit renewal for operation of the existing B-18 landfill at CWM's Kettleman Hills Facility (KHF) and related PCB storage operations, and we received over 350 public comments on the proposal. Given the numerous and serious issues raised in those comments, including public health concerns, EPA determined that we did not have sufficient data or information at that time upon which to base a final permit decision. CWM has also recently submitted to EPA an application for a PCB TSCA permit modification to allow for the expansion of the B-18 landfill.

Given the concerns raised in the comments on the proposed renewal, we have required CWM to perform human health and ecological risk assessments for both the renewal and expansion permit applications. These risk assessments, when finalized, will provide crucial information related to our final permit decisions. Also, reports of birth defects and infant mortality in Kettleman City in the past year have surfaced, and EPA, the California

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Environmental Protection Agency, and the California Department of Health are all focusing significant resources on researching potential links to these public health concerns. EPA is additionally directing resources on pending compliance issues at KHF, which are still not resolved. Given these outstanding issues pertaining to our permitting actions and the time it will take to collect and analyze the data and information for the various ongoing studies, EPA's ultimate permit decision on CWM's applications, as alluded to in your letter, will be extended by necessity until at least after the public health and environmental exposures studies are completed.

USFWS consultation under the ESA should be targeted to both a specific agency action and must be based upon the "best scientific and commercial data available" at the time of that action. Because of the ongoing studies and uncertainties regarding the timing and nature of EPA's permitting decision, we believe that it is presently too early for us to initiate a properly scoped and meaningful ESA consultation. We are also not prepared to ask USFWS to devote its limited resources to reviewing our consultation package until our action is better defined for them. As a result, we have decided to wait to commence consultation until closer to the time of our proposed permit decision.

If you have legal questions regarding this letter please contact Mr. Ivan Lieben at 415-972-3914 or at lieben.ivan@epa.gov. For other questions, please direct your inquiries to Ms. Arlene Kabei at 415-972-3312 or at kabei.arlene@epa.gov.

Sincerely,



Jeff Scott
Director
Waste Management Division

cc:

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CWM Kettleman Hills Project File RCRA Records Center