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Environmental Justice in Kettleman City, CA**

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Institute for the  
Study of  
Societal Issues

# **Making Public Participation Meaningful: Assessing Twenty-Five Years of Community Strategies for Environmental Justice in Kettleman City, CA**

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For the past 45 years, state and federal laws have required government agencies to include the public in the permitting process of facilities that could have a potentially negative impact on human health. Although public participation is a legal requirement, not all participation processes are created equally. Meaningful public participation is more than a legal requirement; it is a way for community residents to engage with government agencies to ensure a fair and inclusive process. While the requirement of public participation is in itself a change for communities once marginalized from permitting decisions, many residents are unable to participate meaningfully.

Here the rural and unincorporated community of Kettleman City, California, is used as a case study for examining community strategies for meaningful participation in permitting decisions. This study relies on planning and legal documents, participant observations of recent public meetings, and in-depth interviews with 22 community residents and government officials involved with public meetings. These meetings include the approval of Environmental Impact Reviews (EIR) for a hazardous landfill incinerator project in 1990 and an expansion permit for the same landfill in 2009. Community strategies opposing the public participation process began in 1988 and continued until the final permit was issued in 2014.

Participant observation at meetings and interviews with Kettleman City residents show opponents of the landfill projects have utilized a variety of strategies to support their meaningful inclusion in the two public meetings. While they used similar strategies with both meetings, some have proven to be more effective than others. While some strategies facilitated the project opponents' efforts to be meaningfully included, others remain limited due to the legal requirements of public participation procedures, the lack of representation on appointed committees, and a lack of government accountability at the county level.

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## **Introduction**

Public participation is a potential tool for including residents' opinions in permitting decisions, but rural, unincorporated communities face unique challenges with geography and representation. While public participation was added to permitting decisions through federal and state legislation requiring meaningful participation, these requirements are interpreted by government agencies differently with the end result being a legally compliant process, but not always a meaningful one. Community objections to these less inclusive processes have engendered procedural changes with the explicit intention of making the process meaningful by including a broader public voice, but these changes have often been temporary. The resilience of Kettleman City residents opposing the landfill projects is visible through their determination over the past 25 years to improve and create new strategies for participating in these permitting decisions. Here, meaningful public participation is defined as accessible participation with informed representatives of the community, collaboration drawing on different forms of participation, and government responsiveness throughout the process. Kettleman residents opposing the landfill decisions have faced barriers to each of these forms of participation.

Kettleman City in Kings County, California, is an unincorporated, rural community lacking political representation at a local city level in environmental and land-use decisions. Since Kettleman City is unincorporated there is no elected city council representing them in larger regional decisions, and instead the county planning commission and elected Board of Supervisors decide land use and other planning projects with general plans and zoning. The Kings County Planning Commission permitted a Class I landfill near Kettleman City that opponents of the landfill believe has a negative impact on their health. Kettleman City has

suffered the disproportionate burden of housing a hazardous landfill, along with other sources of pollution from contaminated air and water. Since the 1980s, the residents of Kettleman City have challenged the permitting decisions of the Kings County Planning Commission, California Environmental Protection Agency (Cal EPA)<sup>1</sup>, and the Department of Toxic Substance Control (DTSC) for allowing Waste Management Inc. (WM) to build an incinerator in 1990 and expand the landfill in 2009. During the proposal process for the incinerator residents organized and successfully defeated the proposal, but this victory was temporary. In 2009, the planning commission approved a permit to expand the 1,600-acre landfill to 2,400 acres, but opponents challenged this decision because they believe the landfill is linked to larger health problems in the area, including a surge of birth defects documented in 2007. The public participation opportunities provided by Kings County Planning Commission and Board of Supervisors in the permitting process were necessary but insufficient for providing Kettleman City residents representation they are not afforded elsewhere in the permitting process.

This paper focuses on community members' experiences with public participation for Environmental Impact Review (EIR) with the incinerator proposal in 1990 and the landfill expansion proposal in 2009. The Kings County Planning Commission and the Kings County Board of Supervisors hosted these meetings at the King County Fairgrounds in Hanford, CA, and members, local and State government agencies, and third party meeting facilitators participated in these meetings and approval decisions. While opponents reacted to the participation process and permit approvals by developing and implementing their own strategies, the government too responded to opponents' concerns and community strategies by moving meeting locations or offering translation services to make meetings more accessible for participation. At other times, however, the government responded by making meetings less accessible, such as having a police

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<sup>1</sup> See Appendix for a list of acronyms.

presence at public meetings. These varying reactions by government agencies are evidence that community strategies have been effective at making the public participation process more meaningful, but also that some community strategies have been more effective than others. This study examines the varying community strategies and assesses which strategies led to more meaningful public participation.

## **Literature**

### **Public Participation as an Environmental Justice Issue**

While environmental justice can have different meanings, it is defined here as the right of all people to live, work, play, and pray in a safe, healthy place that is free from life threatening conditions (Corburn 2004). Other definitions of environmental justice include elements of decision-making, such as The First National People of Color Environmental Leadership Summit held in 1991 that developed a more expansive definition of environmental justice including the right of people to participate in decision-making (Alston 1991, Bullard and Lewis 1996). While one tenet of environmental justice is the right to meaningful and equal opportunities to participate in the decisions that impact them (Fung 2004, Pateman 1970, Pitkin and Shumer 1982), the implementation of meaningful participation depends largely on structural advantages and disadvantages afforded to different groups (Hunold and Young 1998). In a case study of public participation, Sicotte (2010) used the urban neighborhood of Eastwick in southwest Philadelphia to show how residents used public participation methods to gain power and halt the siting of a polluting business. While the low income, predominantly African American community was limited in their ability to challenge the decision, they were ultimately successful

because of their history of organizing around previous land use decisions. In 1972 the community formed a coalition with other groups, and this coupled with the city's ability to make the coalition part of the process increased the community's political power. Despite the challenges to participating in the process, the community was able to be meaningfully included in the decisions through building power, but in this urban area, with local representation, the government was more accountable to the community than in more rural places lacking local city governments (Sicotte 2010).

Although research has focused on successful cases of community engagement with public participation in planning projects, not all researchers view public participation as able to support different community perspectives in a meaningful way (Innes and Booher 2004). This lack of meaningful inclusion in the public participation process has been critiqued on the basis of power imbalances showing that even though some public participation processes have opportunities for public involvement, they do not always include the public in a meaningful way (Arnstein 1969, Davidoff 1965). As Arnstein (1969) demonstrated with her eight rung ladder of participation, there are varying degrees of public involvement that can range from nonparticipation through the use of manipulation, to citizen control. These ladder rungs showed the spectrum of involvement and were based on power dynamics between those conducting the public participation and those participating. In Arnstein's model, the highest degree of community involvement occurs when the community controls the process (Arnstein 1969). This paper contributes to the existing literature on public participation by providing a framework for assessing meaningful public participation and an analysis of barriers to meaningful involvement, as well as an analysis of the community-based strategies for expanding community voice and representation over 25 years.

## **Key Components of Meaningful Public Participation**

In assessing the government agencies' opportunities for meaningful public participation, this study draws from public participation research that includes assessments of inclusion and empowerment (Arnstein 1969, Laurian 2008, Fung 2004, Innes and Booher 2004, Amerasinghe et al 2008, Sicotte 2010, Kumabe 2010, Quick and Feldman 2011, Forester 2013), shaping planning decisions (Laurian 2008), representation (Blahna and Yonts-Shepard 1989, Fung 2006), encouraging participation (NEJAC 2013), participation tools and strategies (Chess and Purcell 1999, Amerasinghe et al 2008), legitimacy (Barnes et al 2003), and the ability to address conflict and power difference (Flyvberg 1998, Young 1990, Bryson et al 2006, Forester 2006 2013, Quick and Feldman 2011). This research draws on this literature of public participation to propose a new framework for assessing meaningful public participation based on six key components. These six components include: representation, information, forms of public participation, access, collaboration, and government responsiveness. Each of these components is assessed based on the government's provision of them in the public participation process. Here, representation is defined by the diversity of perspectives on committees and whether residents of Kettleman City are present on these committees, while information is if and how community members are informed of the meetings and agendas. Forms of public participation include how the meeting is conducted, for example if there are votes used and who gets a vote. Collaboration is similar to forms of participation because it is defined by how meeting attendees are included in the participation process, if they are consulted early on the process, and how much their comments are incorporated into the final decision. Accountability is how the government responds to public comments and concerns as the government has a legal obligation to reply to



written comments, but not verbal ones. Meaningful public participation as a whole is then defined as accessible participation with informed representatives of the community, is collaborative drawing on different forms of participation, and includes responsive government feedback throughout the process.

## **Methods & Framework**

Working from an environmental justice framework that approaches environmental decisions and inequalities derived from these decisions as influenced by social, economic, and political inequalities and historical processes (Pulido 2000, Pellow 2004), this research examines the barriers to meaningful public participation for rural, unincorporated residents and analyzes the community based strategies necessary for meaningful involvement with planning decisions. This paper is based on a case study of Kettleman City, California, with participant observations at meetings and 22 in-depth interviews with community residents, organizers, advocates, and government officials.

### **Why Kettleman City?**

Kettleman City is a rural farmworker community of 1,648 residents located in California's Central Valley adjacent to Interstate 5 and Highway 41 (Image 1). It is an unincorporated area and thus governed by the local government of Kings County Board of Supervisors instead of an elected local city government. The infrastructure in Kettleman City is limited as it lacks sidewalks, streetlights, and grocery stores. As shown in Table 1, the majority of Kettleman City residents are Hispanic (99%), and compared to Kings County and California, a

higher percentage are foreign-born (42%), and they have lower education attainment and lower median household incomes. In 2014, the California Environmental Protection Agency (CalEPA) designated Kettleman City as one of California's vulnerable places as measured with their CalEnviroScreen score. This score placed Kettleman in the 95th percentile of most vulnerable communities for environmental and health burdens because of the numerous health and environment justice challenges with their air and water quality, birth defects cluster, and other health concerns (OEHHA 2014). Despite the social, political, economic, and health challenges facing the community, opponents to the landfill incinerator and expansion proposal have shown resilience by continuing to be involved with the participation process and continually developing community strategies to be more meaningfully involved.

Image 1: Kettleman City Location in California (Google Earth Image)

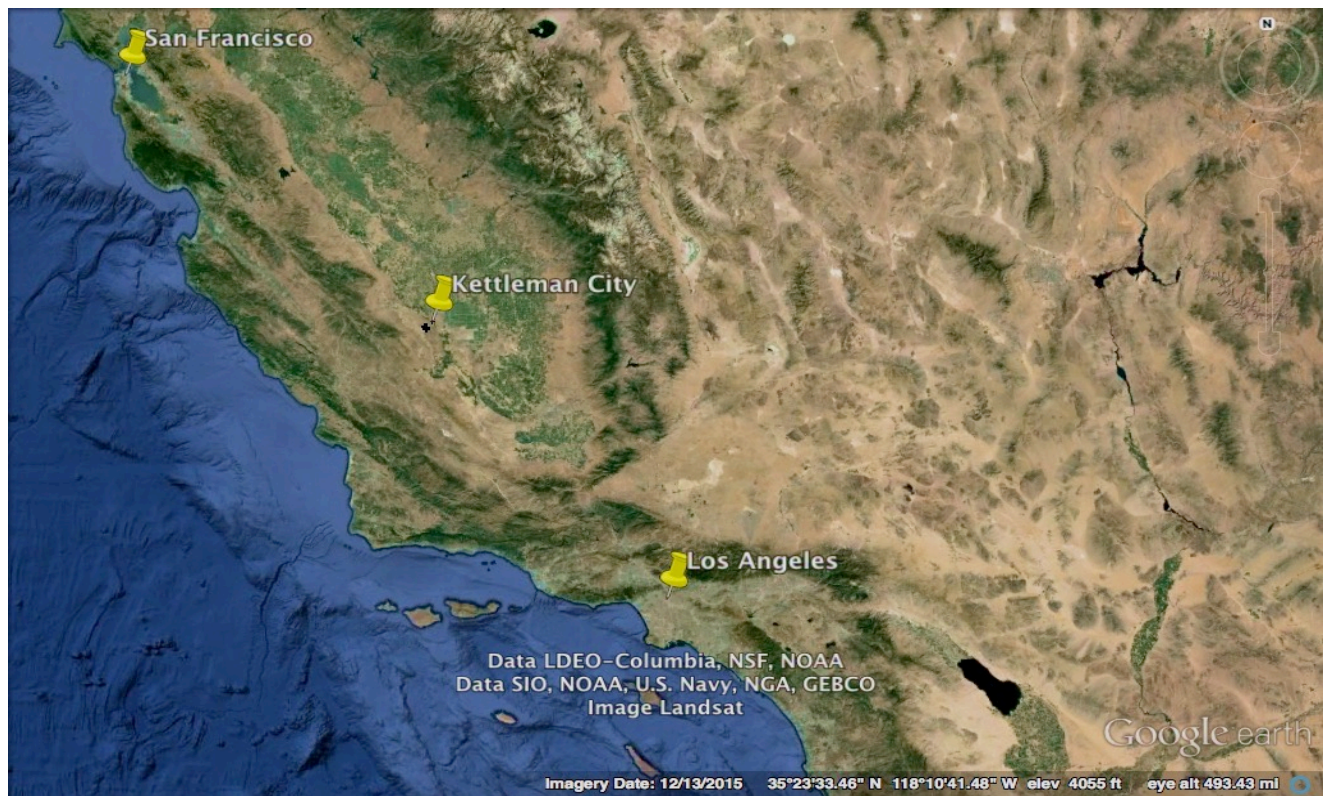


Table 1: Demographic data for Kettleman City, Kings County, and California (2014)

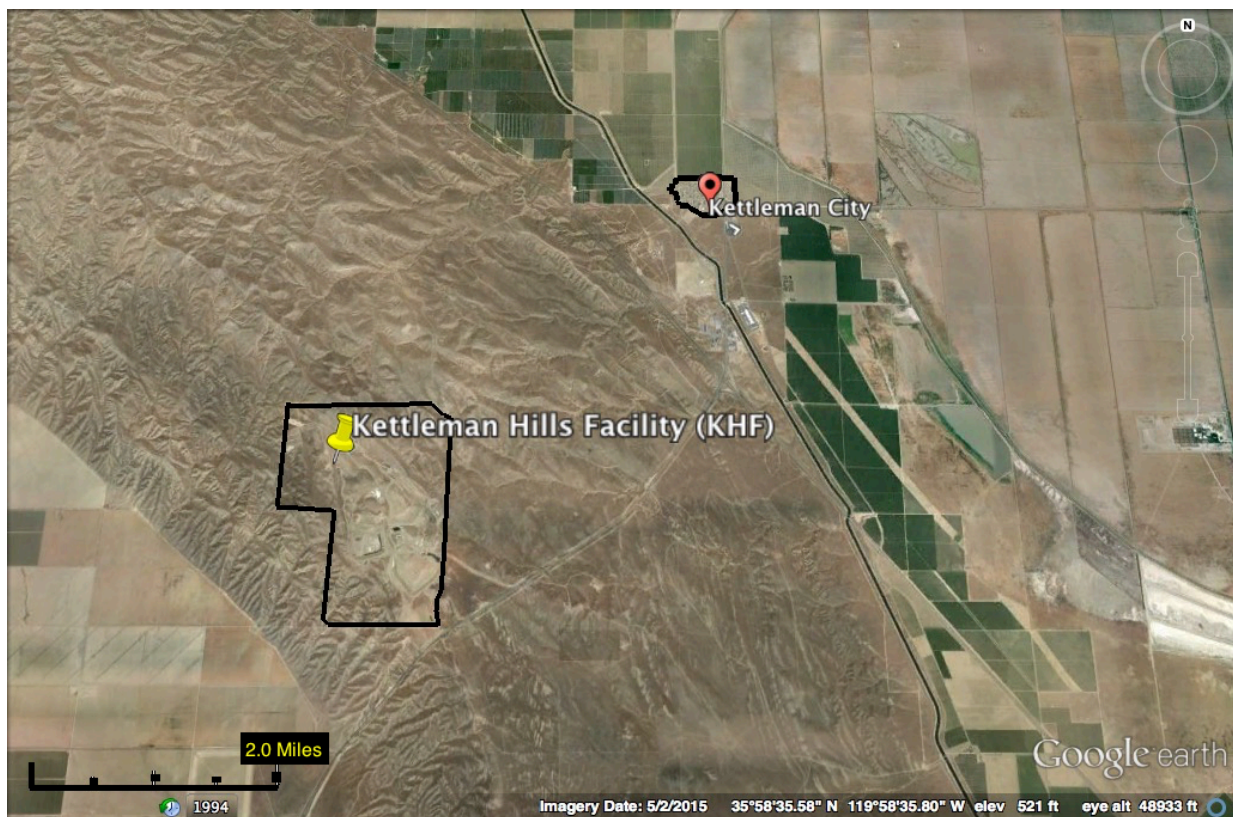
<b>Demographics:</b>	<b>Kettleman City</b>	<b>Kings County</b>	<b>California</b>
Population Count	1,648	151,390	38,066,920
<b>Race/Ethnicity</b>			
White	0.5%	34.5%	39.2%
African American	0.0%	6.2%	5.7%
Asian	0.0%	3.5%	13.3%
Hispanic	99.5%	52.1%	38.2%
American Indian	0.0%	0.7%	0.4%
Native Hawaiian	0.0%	0.2%	0.4%
Some other Race	0.0%	0.3%	0.2%
Two + races	0.0%	2.5%	2.7%
Total %	100%	100%	100%
Foreign Born	42.1%	19.6%	27.0%
High School degree or higher	42.3%	70.9%	81.5%
Median Household Income	\$41,131	\$47,341	\$61,489

(Data Source: 2014 American Community Survey [ACS] 5-year estimate)

While Kettleman City faces numerous environmental health threats from increasing air and water pollution, and the burden of hosting the largest hazardous waste landfill on the West Coast less than four miles away (Image 2), it is not unique in facing these burdens. Situated in the agricultural region of the Central Valley, Kettleman City is one place of many that are vulnerable to pollution, health concerns, and issues of environmental justice. While Kettleman City has a larger immigrant population than California, immigration has always defined the Central Valley. According to a 2004 Public Policy Institute of California (PPIC) report that examined population data from 1970 to 2000, over half (58%) of population growth in the

Central Valley is attributed to migration. The report offers economic pull factors to the Central Valley as a dominant reason for this growth, as immigrants new to the US are able to find affordable housing and employment opportunities here. These employment opportunities have been dominated by low-wage agricultural labor leading the Central Valley to be characterized by low educational attainment, high poverty, and limited English skills (PPIC 2004). Although many places in the Central Valley face similar environmental and health burdens and demographics, what makes Kettleman City unique is their 25 years of community organizing against the landfill projects and their resilience to oppose these projects with few resources.

Image 2: Kettleman City and the Waste Management Landfill (Google Earth Image)



## **Case Selection**

While the focus is on Kettleman City, the “cases” are the meetings that occurred between Kettleman City residents and the Kings County Planning Commission, the Board of Supervisors, and Waste Management. These meetings were selected because they represent key moments where public participation processes were, or should have been utilized for public inclusion in the decision process. Each of these meetings involves a complex series of interactions between Kettleman City residents, community groups, the private corporation Waste Management, and government agencies at county and state levels. The meetings began in 1988 when Waste Management proposed building an incinerator at the existing landfill site, but the lack of public inclusion goes back further than these first meetings to the omission of notifying residents of the existence of the landfill in 1979.

## **Data Collection**

This study relies on planning and legal documents, participant observations at public meetings in 2013 and 2014, and in-depth interviews with 22 residents, organizers, advocates, and government officials involved with the public meetings in 1990 and 2009. Interviewees were selected based on their knowledge or involvement with the public meetings, and most interviewees were identified through public documents. Government officials were selected if they were likely to have been involved with any of the meetings or the decision to approve the EIR, and additional interviewees were identified through their connections to non-profit organizations or academic institutions conducting research in the area. All interviewees were contacted via email or phone, and most interviews were conducted in-person, with only three

held over the phone. Interviews were conducted in 2013-14, recorded with verbal consent from participants, then transcribed, coded, and analyzed.

## **Findings**

In this section I will first present the history of Waste Management in Kettleman City and the stages of the permitting process, then I will introduce the health concerns and government responses to those. Next, I will present the arguments in favor of the facility and finally, I will describe the community opposition, their definition of meaningful public participation, the strategies they used, and the outcomes of their opposition.

### **Early History of Waste Management in Kettleman City, 1979-1987**

Chemical Waste Management Incorporated (CWMI), a subsidiary of Waste Management (WM)<sup>2</sup>, began accepting hazardous waste on the current site in Kettleman Hills in 1979<sup>3</sup>. In 1979, WM bought the existing landfill and applied for expansion permits (EDF 1985). Under WM the site was permitted with a Class I license allowing the most toxic of materials to be accepted. In 1985, the Kings County Board of Supervisors (BOS) approved a permit to 1) expand the site from 1280 acres to 1600 acres, 2) construct three new landfills, and 3) operate the facilities (known as the 1985 project). An EIR was required and prepared for the 1985 project, and only subsequent or supplemental environmental impact review (SEIR) was required for additional projects to modify the existing site.

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<sup>2</sup> Chemical Waste Management Incorporated (CWMI) is referred to as Waste Management (WM) in this paper.

<sup>3</sup> Before 1979 the land was owned by McKay Trucking Company (MTC) to dispose of oily waste and drilling fluids since 1975. MTC operated their company on 60 acres of land, but in 1978 MTC was renamed Environmental Disposal Service (EDS) and was granted permits to expand the site to 210 acres and reclassify it as a Class I disposal facility.

Late that same year in 1985, the Environmental Defense Fund (EDF) commissioned a report titled, “Nowhere to Go: The Universal Failure of Class I Hazardous Waste Dump Sites in California.” The researchers analyzed different waste sites in California highlighting the WM site in Kettleman Hills as a failure for Class I facilities. WM has represented the site to Kettleman City residents and property owners as the ideal site for a Class I facility because of its underlying geology, but according to the EDF study, hazardous wastes have seeped into groundwater in a well to a depth of 315 ft. The EDF researchers also found volatile organic compounds emitted in the air that were known carcinogens, and found that WM had been cited for numerous previous violations (EDF 1985). In 1984, one year before the EDF study, EMCON Associates, WM’s engineer consultant, reported to the Central Valley Regional Water Quality Control Board that organic material and chemical contaminants of “probable waste origin” were detected in a monitoring well on the Kettleman site, which seeped into the groundwater (EDF 1985). Other evidence of contamination includes reports to the EPA showing the sites geology was not ideal for waste disposal and water tests showing raised total dissolved solids (TDS) levels (EDF 1985). While this report sparked conversations among researchers and community groups, no government action was taken. This report assisted in publicizing violations at the Kettleman Hills because despite the landfill’s existence under WM for the past six years, the community only learned about it in 1989 due to the publication of EPA fines (Cole 1994).

### **The Incinerator Proposal, 1988-1993**

In 1984 the California Waste Management Board hired Los Angeles consulting firm Cerrell Associates to identify potential sites for incinerator facilities. The Cerrell Associates report stated the ideal locations for incinerators were communities offering the least political

resistance, which would be communities that are rural, poor, of low educational attainment, having populations under 25,000 residents, and communities largely employed in agriculture or other resource extraction (Cerrell Associates 1984). While the Waste Management Board claims they did not use this report when deciding to site the incinerator at the Kettleman Hills facility (Ward 1987), in December 1987 WM filed an application for a permit to build a hazardous waste incinerator at the Kettleman facility. This application required numerous permits from local, state, and federal agencies, and while California law charges local governments with the responsibility of land use decisions, the county planning commissions manage local land use planning permits for unincorporated areas. As pursuant to the 1986 “Tanner Act,” in 1988 the Kings County Board of Supervisors (BOS) approved a Local Assessment Committee (LAC) to recommend benefits for the community should the BOS approve the permit. The Tanner Act passed the California legislature in 1986 and although its legal title is the California Health and Safety Code §25199(c), it is abbreviated the Tanner Act named after the Senate member who introduced the bill, Sally Tanner (Cole 1998). The main point of this bill was to make siting hazardous facilities more amenable to communities by providing them opportunities for involvement in the process and making requests of the company to benefit the community. The Act also allows the local government to tax the company up to 10% of their revenue (Cal Health & Saf §25173.5(a)), and in the case of the Kettleman Hills facility, this money goes into the Kings County general fund. This tax amounts to about 0.05% of the Kings County Budget as noted in their 2015-2016 county budget (County of Kings Final Budget 2015-2016).



## **Expansion Proposal, 2005-2009**

Landfill operations continued after the defeat of the incinerator, and relatively little changed with the site from 1987 to 2005. In 2005, WM filed for a Conditional Use Permit (CUP) to expand the site due to the facility approaching capacity (Kings County Local Assessment Committee 19 October 2005). Since the EIR for the site was completed in 1985, only a Supplemental Environmental Impact Review (SEIR) was required as an update to the existing document. Chem2Hill, the same company that prepared the 1985 EIR, prepared and released the draft SEIR (DSEIR) for the expansion proposal on March 21, 2008 (CH2MHILL 2008). This release was accompanied by a 45-day public comment period with the official close of the public comment period on May 7, 2008, marked by a public meeting in Hanford. During this 45-day period, copies of the DSEIR were made available to view at the county clerk's office in Hanford, the Kings County Planning Agency in Hanford. Electronic versions of the document were available for free on CD-ROM, but printed-paper copies cost \$380 (DTSC Fact Sheet October 2013).

As part of the Tanner Act of 1986, in 1988 and 2005 the BOS appointed a seven-member Local Assessment Committee (LAC) to recommend terms and conditions that would make the expansion project acceptable to the community (LAC Final Recommendations 2009). While there is some information available on the 1988 LAC, less is known available about the members and the final decisions. Here the 2005 LAC is used to show the LAC's final recommendations. During the 23 LAC meetings held from 2005-2008, issues of water quality and price, health concerns, community needs, air quality, and disaster preparedness were discussed at public venues (LAC Meeting Minutes 2005-2009). While the LAC ultimately reached an agreement on their recommendations, this process was not without dispute from landfill expansion opponents

as those who opposed the landfill expansion also opposed the LAC formation and process (Mares-Alatorre 2008). In their efforts to be involved with the process, LAC opponents attended the public meetings, wrote letters, and circulated a petition requesting a new committee. The opponents' main objection to the LAC was the lack of Kettleman City representation and the lack of diversity in perspectives regarding the landfill expansion as LAC members were outspoken supporters of the landfill expansion (Hanford Sentinel Forum 2008, Yamashita 2008a). The final list of issues to be considered was pared down to eleven actions, and from this eleven the board selected seven. These seven recommendations were:

1. WM will fund a community health survey up to \$100,000, for Kettleman City residents to address health concerns including incidences of birth defects and cancer.
2. WM will pay the full debt as of March 19, 2009, estimated at \$552,300, owed by the Kettleman City Community Services District (KCCSD).
3. WM will pay ten percent, up to \$150,000, toward the construction of a Safe Crossing Project in Kettleman City, and pay \$140,000 for two electronic speed indication devices.
4. WM will provide, in English and Spanish, the Kettleman City Library with US Department of Transportation (DOT) Hazardous Material (HAZMAT) Transportation place cards and written definitions. They will also conduct an informal presentation regarding placement of the place cards for the emergencies.
5. WM will provide \$450,000 to the Reef Sunset School District for the construction of a new walking track, soccer field, lighting, pavilion, and parking lot at the Kettleman City Elementary School.
6. WM will provide annual community education about the Kettleman Hills Facility (KHF) contingency and disaster plans at an annual meeting.

7. WM will ensure that the independent consultants they hire to prepare air and water quality monitoring reports will prepare an annual summary in layperson's terms in English and Spanish and deliver copies to all PO Box holders in Kettleman City and to the Kings County Community Agency by May 1<sup>st</sup> every year they are in operation. They will also conduct an annual meeting in Kettleman City where the San Joaquin Valley Air Pollution Control District, the KCCSD, and other public agencies will provide information on emergency planning to local residents.

These seven recommendations became legal requirements for WM when they were successful in obtaining their permits for expansion. In addition to these seven required recommendations, the LAC suggested 18 more to be considered by the BOS and local Kings County governments.

These additional suggestions included requests such as assisting with a health survey, implementing a colored-flag system in the community to warn people of poor air quality days, establishing a crime prevention program, increasing animal control services, increasing public access for library computers, and identifying additional sources of funding for a new water treatment facility (LAC Final Recommendations 2009).

Once the LAC recommendations were finalized, the DSEIR comments and concerns were addressed in a final SEIR (FSEIR). On May 6, 2009 the DSEIR was revised based on public comments received, and on September 18, 2009 the FSEIR was published. With the FSEIR completed, the Kings County Planning Commission announced public hearings for the approval of the final document and the Conditional Use Permit (CUP). On October 5, 2009 at 2pm and on October 19, 2009, the Kings County Planning Commission held public hearings for approving the Final Supplemental Environmental Impact Review (FSEIR) at the Kings County Fairgrounds in Hanford, about 35 miles east of Kettleman City. Kettleman residents were

notified by mail that the FSEIR was available for inspection at the Kings County Community Development Agency in Hanford, the landfill site, the Kings County library in Hanford, the Kettleman City library in Kettleman, and the Avenal library in Avenal. On October 19, the commission voted to unanimously adopt the FSEIR and approve the CUP. In reaction to this decision community groups and a law firm filed an appeal to this decision that went to the Kings County BOS. The BOS were then required to hold a meeting to vote on the planning commission's decision. They held two public hearings on December 7<sup>th</sup> and 22<sup>nd</sup> in Hanford where they voted unanimously to uphold the approval of the FSEIR and CUP (DTSC Addendum and Initial Study 2013).

To sum up this long history of WM in Kettleman City, there were two main decision points that I will focus on in the rest of the paper: the approval of the landfill incinerator in 1990, which was stopped through a lawsuit, and the approval of the landfill expansion in 2009. The second decision came after much community opposition that delayed the permitting and construction for years.

### **Health Concerns and Investigation, 2007-2012**

In 2007 the community groups El Pueblo and Greenaction documented a series of birth defects in the Kettleman City community. They went public with their findings in 2007 and pushed for a larger county investigation by the county or state officials (Leslie 2010). An initial review of community concerns was addressed in 2009 when the Kings County Health Office, California Department of Public Health, and the California Birth Defects Monitoring Program (CBDMP) reviewed health records for babies born to women living in Kettleman City from the years 1987-2008, finding a spike in birth defects among babies born in 2008 (CBDMP 2009).

This finding became the basis for community groups' objections to the expansion proposal, as they knew people were sick, babies were born with birth defects, and three had subsequently died, but they did not know why. Using this information, the community groups demanded the state delay the permit expansion until they were able to investigate the birth defect cluster and whether there was a possible connection to the hazardous waste landfill in their community (Sahagun 2009).

In January 2010, Governor Schwarzenegger directed the California Department of Public Health (CDPH) to investigate the birth defects in Kettleman City. The researchers focused their attention on babies born to Kettleman moms from 1987 to 2008 and used birth data from surrounding areas for comparison. They reviewed birth certificates and medical histories of the moms and interviewed six moms of the 11 they identified. The interviewers used measures of lifestyle and behavior variables (smoking/drinking), occupational exposures, and potential effects from air and water. Researchers looked at each of these as potential individual causes and ruled out each individually as the cause, but they did not consider multiple exposures, cumulative impacts, or bio monitoring. Using methods that only considered one exposure at a time, and specifically looking at the landfill, the researchers concluded that causes of birth defects were difficult to isolate and they could not conclusively say what caused the increase in birth defects (CDPH and CBDMP 2010).

While soil, air, and water tests were conducted, they were performed in the summer of 2010, five years after Waste Management filed for an expansion permit because the site was reaching capacity meaning there were far fewer trucks bringing waste to the facility. The additional tests did, however, confirm other hazards, including low levels of lead in wells and unsafe levels of arsenic in the drinking-water supply, though neither is considered to be a cause

for the birth defects. Throughout the research process the government agencies held public meetings at a local school in Kettleman City to request community suggestions for what to look for that was then included in the report. Community input was solicited throughout the process by posting flyers, and a researcher from UC Davis facilitated these meetings at the Kettleman City community center. In 2010 the CDPH released their report showing while there was a documented birth defects cluster in Kettleman City, they could not point to a single cause (CDPH and CBDMP 2010). The CDPH and CBDMP later released an update to the initial report using data from 2010-2011 demonstrating the decline in birth defects after 2008 (CBDMP 2011).

### **The Permitting Decision, 2013-2015**

With the birth defects investigation completed and no known cause determined, permitting the expansion project moved forward. On July 2, 2013, the California Department of Toxic Substances Control (DTSC) released a draft decision to approve the permit and allow Waste Management to increase the capacity of the hazardous waste landfill (DTSC Expansion Decision 2013). The law requires the draft decision be subject to a 60-day public comment period, but due to a recognition of discriminatory practices on the part of Kings County planning commission, DTSC expanded the public comment period twice from September to October 11, and then again to October 25, 2013. The original date of Sept 4, 2013 was moved after two community groups challenged the EPA and DTSC stating the public had not been informed about the plans and had not been treated in a fair way allowing for public participation (California Environmental Justice Network October 2013). DTSC issued their permit for the facility on May 21, 2014, and opportunity to appeal their decision expired June 23, 2014 (DTSC Community Flyer 2014).

By 2014 the KHF received all of the necessary county, state, and regional permits to expand the site and with a construction start date of June 2016 (Kings County Department of Public Health 2016). Despite multiple lawsuits and Title VI complaints brought against Kings County at the state and federal levels, the courts have either dismissed the concerns or found in favor of Kings County (Grossi 2014). While community groups and residents have opposed the process and outcome, not everyone in Kettleman and Kings County views the landfill as a negative for the community. As reported in newspapers, public comments at meetings, and interviews, some Kettleman City residents, residents in the nearby town of Avenal, business owners, and elected officials see hosting the landfill as a positive for the county. In an interview with a local business owner and WM supporter, his opinion was that Kettleman City needed WM because of the jobs and money they contribute to the economy, but also because, “If not here, where would it [the landfill waste] go?” These sentiments of the landfill and hazardous waste needing somewhere to go and the role of the landfill in the larger economy have been echoed across WM supporters, including politicians and government employees. In an October 6, 2009 *Hanford Sentinel* newspaper article titled “Anger Erupts at Landfill Meeting”, then spokesperson for the KHF, Kit Cole, stated, “It is because of the Kettleman Hills landfill that sites like PacBell (now AT&T) Park in San Francisco can be built, all of the lead paint from the Golden Gate Bridge could be cleaned up and the Archie Crippen Tire Fire site in Fresno could be cleaned up. It is a critical resource for the state of California as well as locally for businesses” (Yamashita 2009a, 1). The landfill does play an important role in the local and state economy, especially since there are only three of these landfills in California, and Kettleman is one of two that accepts this type of hazardous waste (DTSC Envirostor 2016). WM and its supporters are quick to point to the economic benefits of the landfill that include 80 jobs, tax revenue, settlement

money for the Kettleman City Foundation, and numerous donations in the form of services and resources (Waste Management Kettleman Hills Facility Website 2016). California law requires Waste Management pays the county 10% of its revenue, which has amounted to over a million dollars annually for the Kings County general fund (Nidever 2010). In addition to revenue for Kings County, WM is required to donate to the Kettleman City Foundation, an organization established during an earlier legal settlement between Kettleman residents and WM (Nidever 2006), and the company routinely supplies Kettleman City residents with bottled water (Nidever 2014). While residents opposing the landfill expansion will grant WM the point that they donate a lot of money to the schools and community center, they also say they would rather not have the hazardous waste landfill in their community at the cost of losing those donations (Yamashita 2009b).

While supporters of the project state upfront the economic incentives for keeping the landfill, they also state they would not support the expansion if they believed it was unsafe. In a 2014 LA Times article, then DTSC director Debbie Raphael went as far as stating her message to Kettleman residents is “You are safe” (Sahagun 2014, 1). This safety assurance from the lead agency permitting the site’s expansion did little to alleviate fears with landfill opponents. These opponents hear DTSC state they are safe, but the Kettleman Hills Facility has faced numerous financial penalties for violations going back to 1983 (Table 2), as well as the 1985 EDF report showing the lining failed (EDF 1985) and a slope failure in 1988 (Yamashita 2007). Although the 1985 EDF report termed the site a failure, the government did not produce this report, and at every stage multiple state and federal agencies reviewed the permit and health reports and determined the landfill does not pose a risk to the community.



Table 2: Waste Management Violations and Fines (1983-2013)

Year	Violation (Source)	Amount
1983	EPA found 46 potential violations of the company's Intermit Status Document (EDF 1985).	Unknown
1984	EPA cited 4 violations (EDF 1985).	\$108,000
1985	Resource Conservation and Recovery Act (RCRA) and Toxic Substance Control Act (TSCA) violations, 130 violations for leaks contaminating the local water and other violations (Miller 1992).	\$1.9 million
1985	Penalties and remedial costs to resolve environmental problems, for mishandling of hazardous waste, including PCB (Miller 1992).	\$4 million
1988	Fined for a fire at the landfill (Miller 1992).	\$80,000
1989	11 violations in operations and environmental regulation (Miller 1992).	\$363,000
2010	Allowed carcinogens to leach into soil (Wozniacka 2010).	\$300,000
2013	Failure to report 72 spills (Nidever 2013).	\$311,000

### **Increased Support for WM from 1990-2009**

While opponents used various strategies to increase participation and improve the process, as will be discussed below, WM has strengthened their own support, despite the ongoing violations listed above. This increased support for WM is evident by the pro-WM comments at meetings and in written comments, as well as through public comments from residents and county officials, and this public support helps explain why some community opposition strategies were more effective in 1990 than in 2009. Although representation on government appointed committees has remained the same, other social and political changes have occurred over the past 25 years generating a more positive image of the company and increased public support for the economic benefits of the landfill.

Support for the landfill expansion increased at the EIR meetings and in public comments from 1991 to 2009. As evidenced by community interviews, newspaper articles and final Kings County Planning Commission meeting minutes, in 1990 the opposition to the incinerator was visible with about two hundred people in attendance opposing the project (Cole 1994b). In 2009, WM workers and supporters filled the meeting by the thousands. News reports show the use of monitors and outdoor audio equipment was necessary to accommodate the number of people in attendance at the meeting, and one reporter referred to the meeting as a “sea of green” in reference to the green “I support Waste Management” shirts that were handed out to landfill supporters (Figure 3) (Yamashita 2009b). In meeting minutes from the October 5, 2009 Planning Commission meeting, 66 people were recorded speaking in favor or support of the landfill expansion, while 31 were recorded speaking in opposition (Kings County Planning Commission Meeting Minutes). Nonetheless, the community organizing efforts supplying transportation to meetings increased the number of people who would not have been able to attend the meetings in Hanford. In 1990 the community’s ability to rally support had much to do with the formation of group El Pueblo. Being a group of community residents that were farm workers and farm owners, plus added support from external groups CRLA and Greenaction, the group was effective at being able to fill meetings in opposition of the incinerator. Although El Pueblo was able to win their court case and oppose the incinerator in 1991, they have not been so successful in this recent round of meetings, hearings, and court cases. Representation at the expansion meetings has shifted from community led to corporate led as there is more outspoken support for the expansion than there was for the incinerator, as organizations that opposed the incinerator spoke in favor of the expansion. Some of these organizations included the same members in 1990 as 2009, with the reasons for the opposition of the incinerator being cited as potential

health risks with an unknown technology, and the support stated as the company being trustworthy and bringing economic benefits to the area.

In addition to increased support for WM at public meetings, community organizations that opposed the incinerator in the 1980s supported the expansion project. A letter written by the Kettleman City Community Services District to the Kings County Planning Commission dated August 21, 1985 showed their objection to the incinerator by stating, “that the [Kettleman City Community Services District] Board is against any expansion of Chemical Waste Management and for more controls by the County EPA, Health Department, or any agency governing toxic waste sites” (Osuna 1985). Another letter written by the same Kettleman City Community Services District dated September 25, 2013 showed the organization’s support for the expansion project stating, “The Board of Kings County Community Services District (KCCSD) at its meetings on Tuesday, September 17, 2013, voted to strongly support the Waste Management permit request to expand the B-18 hazardous waste landfill at the Kettleman Hills Facility” (Ware 2013). This letter of support written in 2013 cites Waste Management as being a “critical part of the infrastructure in Kings County” and that “Waste Management has assisted KCCSD for decades” (Ware 2013). The cited opposition to the incinerator in 1985 was due to the potential health risks from the project, but those health risks should have only increased by 2013 with the knowledge then of the birth defects cluster and contaminated water wells. Instead of strong opposition to the project, the KCCSD district, which is comprised of elected community members, switched to strong support. At first glance this switch seems unfounded and confusing, but knowing more about the organization and new information learned about the water wells in Kettleman City between 1985 and 2013 makes their decision clearer from an economic perspective.

The KCCSD is an elected board of local community residents charged with the responsibility of overseeing and maintaining the operation of the two water wells in Kettleman City (Kings County Community Development Agency 2009). Today it is public knowledge that the wells are contaminated with naturally occurring benzene and arsenic, but this knowledge of the contaminated wells was not public until 1993 (California Regional Water Quality Control Board 1993), the year the incinerator lawsuit was settled. Once the contamination was known, the district began going into debt for a new water system that is now at about \$552,0000, a sum the district has not been able to afford even with increasing water prices. The 2005 LAC, which constituted members from the KCCSD and the water board, included in their recommendations that WM would pay the entire debt owed by KCCSD if they were successful in obtaining their expansion permit from the county (LAC Final Recommendations 2009). While no member of either board has stated this is the reason for KCCSD's support of the project, the district now stands to gain financially from the expansion permit approval.

While support from local organizations for community health concerns has waned from the incinerator proposal to the expansion proposal, government and appointed committee representation has remained supportive of the landfill's projects. The BOS and LAC have supported both the incinerator and expansion projects. Although the BOS is elected, the LAC is an appointed committee comprised of local community members and interests. While organizers were able to inform the community of the LAC and their meetings, the LAC has remained unrepresentative of the community most impacted by the expansion proposal. More than one community resident interviewed stated they were unsuccessful with their LAC application, but they still attended the meetings.

As described above, there was increased support of WM in 2009 compared to 1990. This increased support shows the ability of WM to promote the facility as safe and needed in the community. Many of the public comments received on the EIR and at the EIR meetings supporting the facility focused on highlighting the safety of the facility and how it contributes to the Kings County economy. Despite the knowledge of the contaminated water wells and birth defects cluster, the state agencies could not determine the cause or a single cause. Kings County and DTSC interpretation of these findings as the facility being safe helped support the facility's expansion. Instead of relying on a precautionary principle of not acting to approve the facility until the health causes are known, they have relied on a study that shows an unknown cause and then declared the toxic facility as safe. The approval of the permit demonstrates the burden of proof to establish health impacts is on the community, and not on the toxic facility to show it is safe.

Image 3: The "Sea of Green" shirts (Photo taken from video footage of the October 5, 2009 meeting [Plevin 2009])



## Community Definitions of Meaningful Public Participation

The challenges to being meaningfully included in the process extend from the LAC and representation to the limited access of information, accessible meetings, and government accountability. While the California Environmental Quality Act (CEQA) requires public input opportunities through public comments and encouraging public scoping meetings, there is no legal definition for meaningful public participation. This lack of definition leaves the process open to interpretation by the lead agency conducting the CEQA process as they are only required to meet the minimum standards for informing and disclosing through hosting meetings, noticing, and responding to comments, but they are not required to take action on comments or concerns. Although designed as a tool for community involvement in the EIR process, many Kettleman and Kings County residents involved with the past EIR public participation meetings do not believe the CEQA procedures included them in a meaningful way. Two longtime community organizers involved with Kings County EIR meetings in 1990 and 2009 described the experience of participating in the CEQA procedures as:

The decisions are always swayed toward industry, the polluter; they are not swayed toward the people. I think that makes people question the validity of public participation as a whole. A lot of times it seems like it's just a checklist they check off. We had this meeting. Check. We translated this. Check. It's the minimal what they do because they aren't actually listening to the people. (Ana, 34, community advocate<sup>4</sup>)

They're giving you these looks like, "Yeah, yeah, whatever. Yeah, whatever." Because, to be honest with you, mostly all the time it's like they already have made a decision, and they're going through the motions. They'll let you get up there and rant and rave and do whatever, but the bottom line is they've already decided how they're going to vote. They don't really keep an open mind about what you're saying. Body language is amazing. You can tell when somebody is listening to you or somebody is doodling. (Alejandro, 52, organizer)

Here the focus on the lack of listening shows the participants felt the process was not meaningful for them, as they were not heard in the meetings. Kings County Board of Supervisors is not

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<sup>4</sup> Names of interviewees have been changed to protect their privacy, and ages have been changed slightly.

legally required to respond to public input at these meetings, and simple or no acknowledgement of the commenter is sufficient for the process. Without this response from the government though, opponents challenging the project believe they are not being heard and their participation is not meaningful. When asked how they define “meaningful public participation,” residents responded with definitions that focused on inclusive procedures, such as translations, locations, and times, but every one of the respondents also included listening or a form of accountability.

Opponents of the landfill defined meaningful public participation as:

To me, public participation would be that everybody that's at that meeting has equal time to say what they want to say, and to do that in a language that they best speak or understand. That the people at the other side of the table actually ask a question of everybody that comes up there to speak. Meaningful means we are having a give and take. You share your ideas and suggestions and I give you mine. We are communicating on a regular basis with one another from the very offset of the plan, to the end. (Mona, 67, Kettleman City organizer and San Francisco Bayview resident)

I think meaningful public participation would come from actually taking into account people's wants and needs about what goes on in the place where they live. Not what some computer model in Sacramento is saying is OK. It's actually talking to the people and taking into account their right to say what they want to live near or what their community can put up with. (Raimi, 52, organizer)

From these residents comes a definition of meaningful public participation that includes responsiveness or accountability, discussions and collaborations on projects. The desire to be at the table together with decision-makers, and the ability for them to hear what people want to live near and live with shows this need for listening and accountability. Also visible here is the sense of frustration with government officials not collaborating on projects, allowing time to speak, or taking into account concerns. This lack of accountability, lack of access and information, and lack of collaboration in the public participation process have led community members to experience public participation with Kings County government as not meaningful.

## Community Experience: An Improved Process?

Kettleman City residents who opposed the landfill expansion proposal in 2009 and were also involved with the incinerator proposal in 1990 are able to compare the two processes and assess how, if at all, public participation has changed. Individuals who participated in meetings for both the incinerator and expansion believe the process has improved because state and local government agencies in 1990 were not responsive, accommodating, or open to acknowledging community concerns. As two individuals involved with both the incinerator and expansion projects replied:

Public participation as far as notification and translating documents has gotten better, it's not the same as having someone knock on your door and tell you what is going on in your neighborhood, "Do you want to be involved?" (Raimi, 52, organizer)

It's funny when my parents were involved I think they could have never dreamed having the access that we have now [to government officials] where we can actually talk to, and get public agency leaders in the room and have a dialogue with them. The problem is that even though we have that access the decisions remain the same. (Marina, 42, Kettleman City resident and organizer)

Most residents interviewed felt that some aspects of the procedural process have improved, such as translations and access to government officials, but these feelings are based on the lack of responsiveness or acknowledging community concerns they experienced in 1990. From their perspective the process has improved because now the government will translate documents or is accessible. Despite these changes, Charles, age 56, a long time community organizer stated, "Overall, working with communities since 1986, a lot has changed and a lot hasn't. It's an ongoing fight. Everywhere from the local to the national, what hasn't changed is the pro-polluter decisions. We see more grant programs going to communities, or we see better monitoring, but on the big decisions..." Although the public participation process has improved with small wins, such as some translations, access, or the recognition of environmental justice concerns, the big decisions that knowingly increase pollution in low-income, communities of color have remained



the same. In this way the procedures for public participation are now more legally compliant, but this makes challenging the “big decisions” harder for community groups since they relied on procedural issues for halting polluting projects in their communities.

While community members involved with both the incinerator and expansion projects see some, however small, improvements to the public participation process, those involved only in the expansion proposal or other environmental issues going back only about five years do not see the same improvements. These respondents believe little to nothing has changed in either the state or local county agencies because for this group, the process has always legally included them. Alex, a community organizer in the Central Valley who has been involved with public participation meetings within the last five years described changes in the public participation process: “It's pretty much staying the same to be honest with you. I don't think that it's really improving, because it's the same old story. The process has remained the same. If nobody says nothing, they'll dump whatever they're going to dump on you.” While recent participants see less of an improvement in the process than long time participants, both groups have been involved with community strategies to work toward a more meaningful process.

### **Community Strategies for Meaningful Participation**

In an effort to make the process more meaningful for them, community members have utilized a variety of strategies that draw on community organizing and social movement tactics. While some are more effective than others at creating long-term changes needed to change outcomes, all have strengthened the community by increasing the resources available to them to challenge decisions they believe negatively impact their community. These strategies for engaging with less inclusive public participation processes include: community-organizing, non-

profit formation, the increased use of technology and media, coalition building, and both legislation and litigation.

### *Community Organizing*

Community organizing tactics such as direct actions, canvassing and disseminating information, and transporting people to public participation meetings have been crucial for Kettleman residents to being included in public participation events. During the incinerator proposal, many Kettleman residents were still unaware the landfill existed, let alone so close to their home. In 1988, a then Greenpeace organizer went door to door with a local Kettleman resident to inform people of the landfill, the proposed incinerator, and what they needed to do to stop the incinerator from being built. The original two organizers were successful in their efforts to inform, and they were also successful in garnering support and uniting the community against the project. As two Kettleman residents who became active in opposing the incinerator recalled:

It went to a toxic dump in '79 and we didn't know what we were living next to until [an organizer], who was with Greenpeace at the time, knocked on our door and said, "Did you know you are living next to the largest toxic waste dump in California and that they want to put in an incinerator that will burn toxic waste?" They had no idea. It was a real shock. That is what got them involved because even though my mom she graduated a few years later from high school, but she, they hadn't had schooling and they weren't scientists, but they know if you burn something there is ramifications. That is how they found out and they got involved. It wasn't because of agencies telling us, or companies, it was grass roots organizing. (Marina, 42, Kettleman City resident and organizer)

We saw a sign on the door that said come to the meeting on the incinerator. We thought it was important so we went and there I met my best friend now... She made me talk, and I wanted to talk because it was outrageous what they wanted to do and I was never someone who participated in anything. My dad always said you can't fight city hall, but my husband, he worked with the UFW. (Pamela, 78, Kettleman City resident and organizer)

Some Kettleman residents who were agriculture workers were simultaneously working with the United Farm Workers (UFW) union, which enabled quick mobilizing of the community. The UFW had been active in the area since 1962 when they successfully organized the agriculture labor unions in nearby Delano, and they had been expanding their outreach in ways that would come to impact workers beyond labor rights. Researcher Tracy Perkins has documented this link

between Kettleman City residents and the UFW on her blog, Voices From the Valley. Here Perkins (2015) interviewed three individuals who were connected to both the UFW and organizing in Kettleman around the incinerator, expansion proposal, or both. The interviewees were farmworkers or organizers who were empowered through the UFW and continued to organize in Kettleman City. As one organizer stated, “Once you learn how to organize it’s a tool nobody can ever take away from you. No matter where you are, or who you are working for, it’s something that you are always going to be.” Once the UFW began organizing farmworkers in the valley, they not only unionized workers, but also empowered them to speak out in areas of their lives beyond labor rights (Perkins 2015).

Public speaking is crucial for public participation, but this becomes difficult for people who are undocumented, have limited English skills or do not speak English at all, or have health issues. As Dana, 39, stated, “I want to say something, but I have to have health and be willing and able to give it my all.” Another long time resident, Pamela, noted, “A lot of people had the guts to speak. A lot of people that were undocumented. It was a good experience and bad, but I always look at the good side.” When asked about the good and bad experience of opposing the incinerator, she replied, “A lot of good things came out of it. Kids were inspired to get an education and go further because they saw that with an education they could help and fight.”

### *Nonprofit Formation*

In 1988 the Kettleman based community group, El Pueblo Para el Aire y Agua Limpia (People for Clean Air and Water) (El Pueblo), was formed by two long time Kettleman City residents at the encouragement of Luke Cole, civil rights lawyer and founder of the Center for Race, Poverty and the Environment (CRPE) (Cole and Foster 2001). At the time, Luke Cole was a Harvard educated civil rights lawyer for the Delano based California Rural Legal Assistance

(CRLA), a nonprofit law and advocacy group. According to CRPE's website, Cole started the group because "no one was advocating for the legal rights of low-income communities and communities of color facing environmental hazards" (CRPE 2010-2011) At its core, CRPE has always had an environmental justice focus, and CRLA's home of Delano meant the focus was also on the Central Valley.

While community organizing is the first step in fighting environmental injustices, the official formation of a non-profit group becomes the focal point for community members and strengthens the capacity of the community. This increased capacity is seen in the form of applying for state and federal grants available only to registered organizations, and positions within a group delegate responsibility and accountability for actions and organizing.

#### *Media and Technology*

Community groups have been utilizing the media in the form of news reports as a strategy for meaningful participation by increasing public awareness and applying pressure to the government agencies, and they have recently used technology to create a virtual process for public participation. Government agencies have also recently started using technology in the form of virtual public participation, electronically disseminating information and public notices, and providing services, such as translations, on government websites. As Mark, a government official, said, "Technology has really revolutionized the EJ movement in the last 10 years. Groups all over the world are able to contribute to local issues in real time. It has also changed the time element because it now takes less time for people to find out what is going on. People are better informed, and can be better organized, and that leads to community empowerment." For many government agencies, informing the public of projects is key for meaningful participation, and they recognize people receive their news in different ways now than before.

Today, many people receive their news electronically, but the old methods of public noticing remain. Government agencies can reach more people and faster by using websites, email, and list serves over posting notices in newspapers or on sites, but not all agencies use these newer methods.

Community groups have also shifted to using list serves and websites over other methods, but they also retain door-to-door canvassing. Many of the environmental justice groups active in Kettleman City maintain websites with news updates, which also serve to recruit new members. This enables people to find organizations working in their area and allows the groups to address environmental concerns and issue press releases in real time, without having to rely on local newspapers. Local newspapers have also played an important role informing the public. El Pueblo has been frequently cited in the *Hanford Sentinel*, the local newspaper based in Hanford (Nidever 2006, 2007; Yamashita 2008a, 2008b, 2009b). The newspaper followed the landfill expansion closely and would report on the local hearings and outcomes, as well as both the opposition and support for the decisions.

In addition to outlets such as websites and newspapers, community groups in the Central Valley created their own reporting system that brings together community residents and state government officials. Identifying Violations Affecting Neighborhoods (IVAN) is an environmental monitoring system and tool to allow for community involvement with enforcement and violations. The first IVAN network was developed in the Imperial Valley in California between 2008 and 2009, and as of July 2015 there are six IVAN networks in six counties throughout California, but they are not linked. The system has two main components, a reporting website and a taskforce that meets monthly and reviews the reported violations. An IVAN founder also involved with opposing the landfill expansion project believes IVAN works

because “it allows the government to be partners with communities to strengthen enforcement,” and “it replaces one way flows of information between government to community members.”

As described by community and government participants, IVAN has been effective at bringing both community members and government officials to the table to discuss issues impacting communities. IVAN meetings are now held in communities throughout California and attended by both community residents and state government employees from the EPA or DTSC. Both government and community participants have been optimistic about what IVAN can accomplish, and one member of the Fresno IVAN stated, “It provides a platform for community voice and allows communities to create their own agendas,” and “IVAN is an innovative approach to EJ violation enforcement and has the ability to elevate the community voice. It shifts local scale problems to the state or regional.” Despite both community members and government agencies seeing IVAN as a success, challenges with the model remain. These challenges include the government agencies have their own reporting websites that are not linked to IVAN, not everything reported through IVAN is illegal or a violation, and the government responses vary, with enforcement only applying to illegal violations.

### *Coalition Building*

El Pueblo has been active with two coalitions, the Central California Environmental Justice Network (CCEJN) and the California Environmental Justice Coalition (CEJC). While both groups have an environmental justice focus, CCEJN has been around since 2000 and includes 23 groups all from the Central Valley region of California. In contrast, CEJC was formed in 2014 and consists of 55 environmental justice groups from around the state of California. Both have been valuable to El Pueblo for sharing resources, information, and

participating in public meetings, but CCEJN actively participated with El Pueblo in public participation meetings on the landfill expansion.

Based in Fresno, CA, CCEJN brings together environmental justice focused groups within the Central Valley with the mission of minimizing environmental degradation in rural, low-income, communities of color. Founded in 2000 as an offshoot of the Center on Race, Poverty, and the Environment (CRPE), CCEJN held conferences once a year at a different valley town to partner with new organizations and discuss issues impacting their communities. CCEJN members were present at the 2009 EIR hearing for the landfill expansion in Hanford and were active after that meeting with the additional permit approval meetings with DTSC and the Regional Water Board. At one Regional Water Board meeting held at the Kettleman City Elementary School in January 2014, CCEJN members spoke in opposition to permit approval, but also against the process in which the EIR approval was obtained, calling the process unjust.

The then CCEJN coordinator stated:

Central California Environmental Justice Network is opposed to this permit expansion because we feel that there is extensive evidence that this facility contributes greatly to adverse health hazards for residents. I've heard many of you mention tonight that police presence is typical of any 'controversial permit decision.' Now, I ask, why is this a controversial permit decision? Is it because we don't know how to behave? Because the residents of Kettleman City don't know how to behave? Or is it because the data is questionable? Or perhaps because of the extensive history of violations of this facility? (CCEJN coordinator)

CCEJN raised issues at the Regional Water Board going beyond the issues of water and the landfill calling into question the EIR approval process itself. Since the Kings County Board of Supervisors then considered the EIR process complete, the few outlets available for expressing concern included government agencies still requiring approval of the expansion permit. CCEJN members utilized every opportunity available to them to demonstrate their opposition to the expansion approval, as well as their concerns with the EIR approval process in Kings County.

In addition to working with CCEJN, El Pueblo joined the California Environment Justice Coalition (CEJC) as one of the inaugural members. While many of the groups participating in the coalition had been working together for years, the first coalition meeting, held in Kettleman City in 2014, was the first time they all came together to discuss the individual issues affecting their communities and decide what they would do about it moving forward. There were over 100 people in attendance representing almost 50 groups who spent eight hours discussing environmental health issues, the structure of the coalition, and campaigns for the group. The meeting was planned as an all-day event, and after lunch there was a large group discussion on finding common issues among all of the groups. Immediately the issue was raised of working on campaigns that would impact the state of California, and not just local issues.

CEJC chose a campaign to reform DTSC as their inaugural campaign because all 100 representatives in attendance at that first meeting agreed DTSC impacts all of their communities, and there was a great need for the government agency to change how they make decisions. Despite the range in issues from hazardous waste, to superfund site cleanup, to toxic facility violations, all of the representatives saw the important role DTSC plays in protecting human health. Being a state agency with the ability to oversee permits, cleanups, and closures, the operations and management of DTSC are crucial for communities, but especially small, rural, and unincorporated communities lacking representation in a local city government.

The community groups coming together to share information began long before this first meeting, this meeting just established the official coalition group. Many of the community leaders have been in contact for years because despite large geographical separation among community groups in the state, low-income, communities of color have faced a similar burden for hosting the disproportionate burden of pollution. In 2007 two community group leaders, one



from Kettleman City and one from Bayview Hunters Point in San Francisco, realized they were connected on these issues when they discovered the 2006 Pacific Gas & Electric (PG&E) cleanup in Bayview sent the PCB contaminated soil to Kettleman City, one year before the birth defects cluster in Kettleman. The cleanup and closure of the PG&E plant in Bayview was contentious in itself, and was a long battle for Bayview residents. In 2010 the community of Bayview-Hunters Point was predominantly African American (48%) with more than 40% living in poverty (Bayview Hunters Point Mothers Environmental Health & Justice Committee 2004). Over half of the community is zoned for industrial use (Bayview Hunters Point Mothers Environmental Health & Justice Committee 2004), and the community has hosted many unwanted land uses, including junkyards, steel manufacturing, power generation facilities, and the Hunters Point Naval Shipyard (Ramakrishnan 2008).<sup>5</sup> The community organized to protest the facilities, and in 2006, PG&E officially closed the facility and began moving toward a cleanup of the site (Fulbright 2006).

Although closing the facility was a win for the community, the cleanup of site would take years. Polychlorinated biphenyls (PCBs) were common in electrical transformers built from 1929 to 1977, when they were banned due to evidence they can become concentrated in the environment and have negative health impacts. Despite their ban, PCBs remain in transformers made before 1977 and they contaminate soil, two things treated as hazardous waste and must be disposed in hazardous waste disposal facilities (EPA PCB Facts). The disposal of the PCB waste became a point of contention as community residents from Kettleman City and Bayview learned

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<sup>5</sup> The Bayview-Hunters Point shipyard was active during WWII with the 420-acre site providing space for cleanup and radiation tests. This cleanup and tests left the area contaminated by radiation, along with petroleum, heavy metals, PCBs, and other pollution sources (Fimrite 2015). PG&E began operations with the Hunters Point Power Plant in 1929, and in 1994 they proposed building another facility. Once hearing of the proposal, the community began pressuring the government not to allow another facility and to look into the high respiratory disease rates. The San Francisco Health Department studied these claims finding the residents had twice the average incidence rates of asthma and cancers, but they could not find a single cause or establish a direct link between the health outcomes and emissions from the power plant (Locke 2006).

the PCBs were sent to the Kettleman Hills Facility. Kettleman City and Bayview residents explained how they learned about the PCB shipments to the Kettleman Hills Facility:

Part of that settlement was that every year, based on the tonnage of waste, if it was municipal waste, we would get a dollar, if it was toxic waste, we would get 35 cents on the ton for as long as that particular landfill was open. I'm on the board for the Kettleman City Foundation. I knew that every year when they brought us the check, they called it their contribution, I called it the settlement fund, every year when they brought us a check, it would range from \$8,000 to \$16,000. In 2007, the general manager himself came out and brought us the check because that year, it was \$80,000. That tells me that in that preceding year, they had a lot more waste than what was normal. Which also happens to coincide with when all those babies were conceived, which also happens to coincide with the closing of the PG&E plant in Hunters View in the Bay Area, when they brought all of these PCBs to this landfill. (Marina, 42, Kettleman City resident and organizer)

Those PCBs came from the cleanup from the Bayview Hunters Point PGE cleanup. Good news was the cleanup was happening, but bad news it was going to Kettleman. This was when Bayview got involved and got PG&E to stop sending waste to Kettleman. The way we knew about the shipment escalating was the manager of Chem Waste [WM] came into a Kettleman City foundation meeting because part of the settlement from the lawsuit was Chem Waste would pay into a community fund an amount of money for every pound of PCBs, and all of a sudden there was a fat check and people were like, "What's this about?" (Mona, 67, Bayview resident and Kettleman City organizer)

After learning about the increased shipment of PCBs to Kettleman, members of the Bayview community active with CCEJN pressured PG&E to stop sending the soil to that facility. A PG&E spokeswoman, Melissa Mooney, acknowledged the PCBs from Bayview were sent to Kettleman in a *San Mateo County Times* article dated November 2007. This same article cites a WM memo where Robert Henry, the general manager for the Kettleman Hills facility, acknowledged the check to the Kettleman City Foundation for \$165,903.89, half of which came from PCBs at \$1 a ton. The memo also shows that in 2006, 83,406.18 tons of PCB waste were disposed at the facility, and although Henry would not disclose how much of the PCBs shipped to Kettleman came from the Bayview cleanup site, Mooney told the *San Mateo County Times* that 5,000 pounds of dirt containing 0.7 pounds of PCBs were sent from the PG&E Bayview site to Kettleman City (Kumeh 2007).

Later in 2010, the EPA fined the Kettleman Hills Facility \$300,000 for improper management of PCBs (Table 2). In an EPA news release dated November 2010, the EPA stated they discovered improper management of PCBs and samples around the building detected PCBs

above the regulatory limits during a routine inspection. They also fined the company an additional \$1,000,000 for other violations. This violation of improper handling of PCBs coincided with the increase of PCB material to the site and the time period of the birth defects in Kettleman City. While the EPA found the violations, the coalition knew about the increase and was pushing via media outlets for the government to investigate the connection.

### *Litigation & Legislation*

A final strategy for making public participation more meaningful has been the successful use of litigation and legislation. As the main law firm opposing the incinerator and the expansion proposals, CRLA filed a lawsuit in 1991 on behalf of El Pueblo alleging the EIR did not comply with CEQA because of the lack of translation of documents: only the executive summary was translated of the 1,000 page EIR. On December 30, 1991, the California Superior Court ruled in favor of El Pueblo finding the EIR that resulted in the CUP for the construction of the incinerator was inadequate. The court determined the EIR inaccurately reasoned the air quality impacts would be mitigated to an insignificant level, and the public was not meaningfully included in the process due to the lack of Spanish translation of EIR and other documents (Cole 1994).

This legal win for Kettleman City was a larger national win for environmental justice advocates and encouraged support for the movement. The increased awareness of environmental justice issues through the Kettleman lawsuit (Cole 1994) coupled with the proliferation of environmental justice studies demonstrating disparate environmental impacts for low-income communities of color led to the creation of new environmental justice legislation, including the federal executive order 12898. In 1994, President Clinton signed executive order 12898, officially titled the Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Order. This important federal action was the first time the US

government formally recognized their role and responsibility for environmental justice. The stated goal of the order is to enable minority populations to feel part of the government, and the order encourages federal agencies to evaluate the implications of programs to avoid unfair burdens.

Following the signing of the executive order, CRLA filed a federal civil rights complaint against the EPA on behalf of three community groups from the Central Valley and Southern California. The complaint states all of the toxic landfills in CA are located in or near low-income, Latino communities, and that these communities were intentionally targeted for siting. The communities hosting the toxic sites are located in Buttonwillow (Kern County), Kettleman City (Kings County) and Westmorland (Imperial County). The complaint alleged DTSC violated federal laws because of the disproportionate impact from permitting the landfills in low-income Latino communities (Cole 1994b). The EPA launched an investigation into DTSC based on the claims of environmental racism. This was in itself a win for the three communities as it was one of 10 accepted by the EPA and the first one ever in the western US. In 2011, 17 years after filing the title VI complaint against the EPA, the three community groups asked a judge to order the EPA to respond (Rodriguez 2011). Filed in 1994, the complaint is now one of 32 open pending since the 1990s where one complaint has been resolved and about one hundred others have been dismissed (Lombardi et al 2015).

In January 2010, CRLA filed a lawsuit on behalf of El Pueblo following the December 2009 Kings County Board of Supervisors EIR approval for the landfill expansion. The lawsuit alleged the permit based on the EIR approval is not valid because the EIR failed to properly evaluate the environmental impact to the surrounding community, and that the Kings County Board of Supervisors engaged in discrimination in the permitting procedures by not translating

all documents into Spanish and not holding accessible meetings based on their location and time for residents to attend. The failure to consider the impact to the community charge was brought based on the recent community health study that discovered the birth defects cluster in the community. Although the court did not sustain the charges in the lawsuit, it did grab the attention of the California legislature leading to the California Department of Public Health's investigation into the birth defects cluster (Yamashita 2010).

## **Discussion**

### **Community Strategies for Engagement: What worked & what is limited?**

While Kettleman residents, lawyers, and community groups have employed various and numerous strategies for their meaningful inclusion in public meetings, some strategies have been more effective than others. Considering the six components of meaningful public participation, the public meetings have improved in some ways by providing more opportunities for public participation, but not always expanded their ability to meaningfully include different viewpoints or needs. Examining the strategies and how they affected the six components reveals where the improvements have been made, where they have remained the same, and in some cases where the strategies failed.

#### *Public Participation Improvements & Limitations*

Kettleman City residents were able to receive more information on the expansion proposal than the incinerator due to community organizing, but also due to changes in the way information is disseminated. In 1988, many Kettleman residents were unaware of the landfill's existence, and the rural location made the legal requirements for public noticing and community engagement efforts difficult. Knowing about projects and their potential impacts, meeting times

and locations, and organizing transportation to these meetings is important for meaningful participation. It is also important for later challenging an unwanted decision or permit approval. To challenge an EIR procedure, someone must have voiced the specific concern being challenged either at a meeting or in writing, then within 30 days of the EIR approval. It then becomes crucial that the public is informed on the project logistics, procedures, and is able to attend the meetings. In this way, being informed on meeting times, locations, and project details is imperative for meaningful involvement.

Community organizing played a large role informing Kettleman residents of the incinerator and expansion projects, and the formation of El Pueblo enabled the community residents to learn how to stay informed on projects after the incinerator. The legal win against the incinerator changed how the Kings County notifies residents of projects: before they did not adequately notify people, but now there are mailing lists and email lists residents can sign up to be notified for projects. Kettleman City resident and co-founder of El Pueblo, Pamela, stated, “If I don’t do anything else in this life, I’m glad I was involved with this fight of the incinerator and people are being notified of every step the government takes and have the right to protest. It’s our right.” Community organizers know that it is easier to stop a development from occurring than to shut it down after it has been built. Being informed from the start and being notified of projects is then key to challenging unwanted projects. Community organizing has helped make the public participation more meaningful because by informing people, the community organizers empowered them to participate. The second part of the community success here was with the incinerator since the community was able to stop the project using a lawsuit. Although the expansion was ultimately approved and permitted, community organizing was still successful

there because more community residents participated in the process with the planning commission, the BOS, and the LAC meetings than would have without organizers.

The impact from community organizing on increasing opportunities for public participation is seen clearly at the LAC meetings held in 2008 and 2009. Without community organizers, the low attendance at many of the LAC meetings could be interpreted by the LAC and planning agency as a lack of interest in the process. While the LAC was formed in 2005, only three meetings occurred that year, with the next meeting held in 2008. From April 17, 2008 until April 19, 2009 there were a total of 23 meetings, with 11 held in Hanford, including the final approval meetings, and nine held in Kettleman City. The LAC meeting minutes show that at 11 of the meetings Kettleman residents voiced public concerns about the composition of the LAC and the lack of Kettleman City representation. They also stated at the early meetings held in Hanford that the meetings should be in Kettleman City. This led to the discussion of moving the meetings and the remaining meetings, except the meetings finalizing the LAC recommendations, were moved to Kettleman City. Once the meetings were moved the average number of people in attendance increased from 7 to 19, showing that holding the meetings in Kettleman instead of Hanford increased the opportunity for public participation. In addition to the increase of people in attendance, more people gave public comments at the meetings in Kettleman City, with the majority of people speaking out against the lack of Kettleman representation in the LAC membership. At three different meetings held in Kettleman, organizers brought forward petitions signed by Kettleman City residents with a total of 374 signatories stating their opposition to the LAC composition and the lack of Kettleman City representation on the committee. The LAC dismissed these concerns throughout the process claiming there was an open seat available and no one had applied; actually, residents, including opponents to the

project, did apply but were not selected (LAC Meeting Minutes 2009). While organizing was unable to sway the LAC composition, organizers were successful in moving the meetings to Kettleman City where more people participated, and more were able to voice public comments.

Although community organizing improved meeting accessibility by providing transportation, changing meeting locations (in some cases), and informing people, the heavy police presence and lack of translations made attending meetings difficult for many opponents. The police presence made these meetings difficult for some opponents of the projects, as they felt intimidated from the beginning of the meeting. In one meeting, police removed a man requesting Spanish translation services, which shows the police were not there to support opponents of the project, but attended at the BOS request. The lack of translation services became a heated issue where police became involved because it has been a challenge for opponents to receive translations going back to the incinerator permit. In 1988 the Kings County agency and BOS did not translate one page from the EIR, and translation services offered at public meetings was provided to people while they remained in the back of the room. Ironically, the 1991 incinerator lawsuit was won on the lack of translated documents, which ensured government agencies going forward would provide translated documents and most provided services at meetings. In 2009, however, documents were translated and translation services were provided, but Spanish speakers were given less time to speak. While CRPE, El Pueblo, and Greenaction all filed complaints with the State alleging the discriminatory practice of not allowing Spanish speakers the equal time allotted to English speakers, DTSC's counsel believed the time to be equal because both Spanish speakers and English were given five minutes each (although the time slots for the Spanish speakers had to include translation). Although



community organizers and litigation were successful in having documents translated, they were limited in winning translations of comments at meetings.

In addition to translation limiting the access to the meeting, the use of police and police dogs intimidated people from speaking and attending the meeting, both challenges for giving public comments and testimony. Despite the best efforts of community organizing and use of media to show the limited access created by using police and police dogs at meeting, no strategies adequately addressed this issue. The main reason the strategies were unsuccessful was although the use of police at the public meetings was unwarranted, it was not illegal, and therefore attendees could not challenge this action in court. Despite holding public meetings 35 miles away from Kettleman City, with a police presence, and with limited translation services, these meetings were considered legally compliant to approve the landfill permits.

Along with community organizing and litigation, technology changed the way people receive project updates and information. In 1998, mail and posting public notices were the main methods government agencies had available to them for informing people of projects, and these are legally required under CEQA law. While CEQA requirements still call for public notices most people do not get their news from printed papers. Government agencies are limited in their ability to catch up to using technology. Kings County has not moved to using list serves for noticing projects and still relies on mailing out notices. Although CEQA and Tanner Act laws specify noticing requirements, issues arose with the noticing of meetings for the LAC meetings held in Kettleman City and Hanford. Meeting times and locations for special meetings were set at the previous meetings, but the mailed notices were sent less than a week before the meetings, which did not leave residents enough time to be adequately informed of a meeting. While the decision was then made to send out notices at least a week before a meeting and advertise in the

Hanford and Avenal newspapers, the use of electronic list serves would have enabled faster communication to inform people of the meeting details.

### *Public Participation Barriers Remain*

While some components of public participation have improved, even in limited ways, some have stayed the same. The elements that have remained the same include the forms or types of public participation used and the lack of collaboration at meetings. Over the past 30 years, the type of public participation used by Kings County for determining hazardous waste permitting has not changed. At the local level, Kings County planning agency and the Board of Supervisors used meetings as their primary form of public participation. Anyone was allowed to enter these meeting spaces and could sign up to give public comment during the allotted time. This form of public participation was used for both the incinerator and expansion proposals. Despite community request for the government agencies to be more interactive with their meetings and methods, the county has not held meetings for debate or voting, only to allow for public comments required by law. While the government has not increased the types of forms of public participation, they are not required to hold any type of meeting other than hearings or meetings for public comments.

The process where the locations, times, and agendas of meetings are set by the Kings County planning agency and Board of Supervisors without community input did not improve to be more collaborative in 2009, but remained the same as it was in 1990. The lack of collaboration on meeting times, agendas, and locations intensified existing distrust between community members opposing the expansion project and the Kings County government. Those opposing the expansion believed the meetings should be held in Kettleman City (because it is the closest community to the landfill site) and in the evening (at least occasionally) so people could

attend after work. That being said, there are no legal requirements for a collaborative process, and Kings County satisfied all legal requirements for setting the locations, times, and agendas of meetings.

Although opponents of the expansion project utilized more strategies to challenge the project in 2009 than 1991, they were unsuccessful. Table 3 shows the five strategies community opponents used to challenge the lack of meaningful public participation in both 1991 and 2009, and where they were effective targeting the six elements of meaningful public participation. While they were successful addressing some challenges, they were not able to reach them all, notably the forms of public participation and collaboration. Previous research has noted collaborative methods may be the key to procedural and distributive justice (Lawrence et al 1997) so support from planners in the process here could better support different community perspectives on projects. For those opposed to WM, their strategies were able to address the barriers to public participation, and it is most likely the combination of strategies that has the most impact on their success. Interestingly though, the number of strategies used did not seem to matter as more were used in 2009 than 1991, but the outcome was worse in 2009.

Table 3: Strategy Effectiveness in 1991 and 2009

	<b>Components of Meaningful Public Participation (PP)</b>					
<b>Strategies</b>	Representation	Access	Information	Forms of PP	Collaboration	Government Responsive
Organizing	1991, 2009	1991				
Nonprofits	1991, 2009					
Technology		2009	2009			
Coalitions						2009
Litigation						1991

## Conclusion

Limited change has occurred making public participation more meaningful for opponents of the landfill projects. Here the five community based strategies the opponents used between 1991 and 2009 were analyzed for their ability to challenge the barriers to meaningful public participation. Although opponents of the expansion project utilized more strategies to challenge the project in 2009 than 1991, they were unsuccessful. Despite the limited change that has occurred with the public participation process, the residents of Kettleman City and other advocates and organizers involved with the two landfill projects have demonstrated their ability to continue opposing these projects, even with few resources available to them. Opponents of the projects have worked toward creating a more meaningful process, although limitations exist with the government's legal requirements for public participation. Their successes and failures utilizing community based strategies are not their success and failures alone, but should be viewed as the successes and failures of the local government to interpret the state laws in a way that meaningfully includes all residents and provides opportunities for this meaningful inclusion in permitting decisions. Although opponents have not been successful in stopping the landfill expansion, they have strengthened their community capacity through organizing, and through these projects they have shown the shortcomings of a process that is meant to include the most vulnerable and impacted residents of a potential project. If opponents of a project who have worked to being included by developing their own strategies and have continued to expand these strategies over 25 years cannot be successful in making the process meaningful for them, other less organized and informed communities will have no chance. This case then highlights the tenacity of opponents in their attempt to shape their community and environment, and the limitations they face when challenging a large corporation and government institutions.

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## Appendix

### List of Acronyms

BOS	Board of Supervisors
CalEPA	California Environmental Protection Agency
CCEJN	Central California Environmental Justice Network
CDPH	California Department of Public Health
CEJC	California Environmental Justice Coalition
CEQA	California Environmental Quality Act
CRLA	California Rural Legal Assistance
CRPE	Center for Race, Poverty & the Environment
CUP	Conditional Use Permit
DSEIR	Draft Supplemental Environmental Impact Review
DTSC	Department of Toxic Substance Control
EDF	Environmental Defense Fund
EIR	Environmental Impact Review
EPA	Environmental Protection Agency
FSEIR	Final Supplemental Environmental Impact Review
IVAN	Identifying Violations Affecting Neighborhoods
KCCSD	Kettleman City Community Services District
KHF	Kettleman Hills Facility
LAC	Local Assessment Committee
PCB	Polychlorinated Biphenyl
RCRA	Resource Conservation and Recovery Act
SEIR	Supplemental Environmental Impact Review
TSCA	Toxic Substance Control Act
UFW	United Farm Workers
WM	Waste Management, also Chemical Waste Management Incorporated (CWMI)



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