Title
When Public Participation Isn’t Enough: Community Resilience and the Failure of Colorblind Environmental Justice Policies

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by
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Committee in charge:
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Abstract

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Issues of health inequities and environmental hazards affect low-income communities of color throughout the US (Pastor et al, 2001; Morello-Frosch and Lopez, 2006). These communities are both rural and urban and located in every corner of the U.S., but one area of California hosts a disproportionate share of environmental hazards in the form of toxic facilities, pollution, and health disparities. One San Joaquin Valley community, Kettleman City in Kings County, California is an unincorporated and rural community lacking political representation in environmental and land-use decision-making processes. This lack of influence in decision-making has led to the Kings County Planning Commission permitting a large, Class I landfill near Kettleman City that residents believe has a negative impact on their health.

Using a single case study of Kettleman City and an environmental justice framework, this dissertation examined how rural communities with few resources can utilize community-based strategies to be meaningfully involved in the permitting process of a hazardous, Class I facility. Relying on planning and legal documents, participant observations at public meetings in 2013 and 2014, archival research, and in-depth interviews with 22 residents, organizers, and government officials involved with the public meetings in 1990 and 2009, this study reveals the challenges and opportunities for meaningful involvement with the facility's permitting process. By examining the community resident's experiences with two permitting processes, their challenges, strategies, and resilience for inclusion in the process is demonstrated. These cases show the challenges and limitations for using public participation to achieve environmental justice, the barriers to challenging state permitting decisions, and what is needed from government officials to work toward achieving environmental justice.

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Last, but certainly not least I want to thank Jeremy Eastwood. Whether in London or San Francisco, he has been there at all hours of the day to talk through ideas and bring it all back to a reality. Thank you.

Foreword

The Central Valley is not simply a dissertation topic, but it's where I am from and it's a story worth writing about. So many interesting events and people have passed there touching other people's lives, for the better or worse. The Valley is a place of extremes that catches people's interest through the poverty, health issues, politics, landscapes, but for some it's just a place you are passing through to get somewhere more interesting. When you can slow down and look around, taking time to know a person or place, you'll find something interesting. You'll find a story, and you'll find a life.

For me the Central Valley is a place of these extremes, but it is also more. Growing up in Stockton, CA I thought of myself as living the city, an urban area of 300,000 people seemed huge, but this was because it was surrounded by rural edges and unincorporated areas. I spent fifteen years of my life on this edge, living on the city border where we played in the canals and irrigation sloughs for the nearby agriculture. There were some things that were a way of life, like the poverty, crime, and political dysfunction, but these are not unique to Stockton. Watching the sunset over the delta, hunting for ducks on railroad tracks, picking fruit off trees in orchards, are also all things that make up life in Stockton.

We were poor, but so was everyone else in the area. While poverty as a number is easily quantifiable, the experience of it is less so. My parents owned a car repair business, and for a while we were well off because we had a house and two cars, but then my dad got sick and couldn't work and slowly all the material things had to go. What this meant for me was we were now like everyone else, living monthly on paycheck-to-paycheck, unsure of what to cut to pay the necessary bills like rent and utilities. This wasn't an unusual place to be, and almost everyone was sick in some way with asthma, injuries, or cancers. The agency in my life also felt like it left with those material things as I had fewer choices and options for my life. I couldn't always see a doctor when I was sick, I couldn't always choose the healthier meal because I was on free lunch, I couldn't choose to be involved with afterschool sports because they were expensive, and I couldn't choose where to live because there were few places in the high school district that would accept section 8 housing. What I could control was where I worked afterschool, and being a white female who did well in school I could easily find a job to help out. I could also easily walk home from school or in any neighborhood without fearing the police. This privilege allowed me to seamlessly move from one economic class to another as I furthered my education, first at community college and UC Irvine, but then by attending University of Cambridge and UC Berkeley. By the time I was working on a PhD, there was little semblance left of my economic class growing up. This is when I started to see that the poverty in the Valley is a way of life that never leaves you.

My view of the world developed there in the Central Valley. People are poor, but we don't deserve to be treated differently. We are humans with the same desires, hopes, and dreams as anyone else. Being treated as you don't matter disempowers you to believe you don't, but everyone has the right to have a say in decisions that affect their lives, and we have a right to live, work, and play in places free from crime, intimidation, and environmental toxins.

We have the right to be healthy.

Chapter 1. The history of Kettleman City, Waste Management, and the permitting of a Class I hazardous facility

Issues of health inequities and environmental hazards affect low-income communities of color throughout the US (Pastor et al, 2001; Morello-Frosch and Lopez, 2006). These communities are both rural and urban, and located in every corner of the US, but one area of California hosts a disproportionate share of environmental hazards in the form of toxic facilities, pollution, and health disparities. The San Joaquin Valley, (SJV) or Central Valley, is comprised of eight counties stretching 450-miles that engenders an annual billion-dollar agriculture industry (EPA, Region 9 Strategic Plan, 2011-2014). This area is home to about 4.2 million people, with 46% of them identifying as Hispanic or Latino and many of first generation immigrants (The Planning Center, 2012), and also hosts some of the greatest health disparities in California (Joint Center for Political and Economic Studies and San Joaquin Valley Place Matters Team, 2012). The Cal-EPA's CalEnviroScreen tool highlights these inequities throughout the Central Valley showing the concentrations of pollution and health outcomes, such as asthma (OEHHA, 2014), and these pollution and health concerns are overrepresented in the rural and unincorporated areas of the Central Valley (Joint Center for Political and Economic Studies and San Joaquin Valley Place Matters Team, 2012).

One San Joaquin Valley community, Kettleman City in Kings County, California is an unincorporated, rural community lacking political representation in environmental and land-use decisions. This lack of influence in decision-making has led to the Kings County Planning Commission permitting a large, Class I landfill near Kettleman City that residents believe has a negative impact on their health. Kettleman City has suffered the disproportionate burden of housing the landfill, along with other impacts such as contaminated air and water. Since the early 1980s, the opponents of the landfill have been in conflict with the Kings County Planning Commission, California Environmental Protection Agency (Cal EPA), Department Toxic Substance Control (DTSC), and Waste Management Inc. (WM) to allow a proposed landfill expansion. In 1991 the planning commission approved an incinerator on the landfill site, but this permit was overturned through a community led lawsuit. Then in 2009 the same commission approved expanding the landfill by 50% or about 1,600 acres. Here Kettleman City residents organized and fought the proposal and approval by utilizing the political process available to them, the public participation opportunities for approving the expansion. These public participation opportunities provided by local and state government agencies proved necessary, but insufficient for involving the community in the process. This dissertation examined the experiences of Kettleman City residents with public participation in opposing both the incinerator and the landfill's expansion, their strategies for engaging with less inclusive processes, and the institutional barriers to achieving environmental justice.

Why study public participation in rural areas?

While much of the profession of city planning focuses on creating sustainable, smart growth places, there are some places that are approved as toxic sites. Grigsby (1994) argued

planning decisions result in unequal benefits and costs to groups of people, and what is planned for the public is not always inclusive and does not always provide the same benefits as costs to communities of color. Places and situations like Kettleman City do not just occur, but are made through planning practices where the community voice is structurally omitted from the process. By not meaningfully including the community in their decisions, the Kings County Planning Commission has created a place that is not environmentally or socially sustainable. Kettleman City is neither environmentally or socially sustainable because of the multiple negative exposures in the area, with agriculture pesticides, the landfill, and unhealthy drinking water supply full of arsenic and nitrates. Thus, the community of Kettleman City is surrounded by cumulative exposures and multiple risks to human health. As architect and Civil Rights activist Carl Anthony has suggested in building a place that is ecologically sustainable, we have to start with "Who are the people? Where do they live? And what interest, what perspective, what hopes, what dreams, what contradictions, and what barriers do they bring to shaping a green city, to urban issues?" (Yuen et al, 1997, pg. 44). While it is important to know the people living in the area, we must also know what challenges exist to being meaningfully included in environmental and planning decisions.

While public participation alone cannot solve the environmental and political issues in Kettleman City, it is one piece that must be addressed in working toward achieving environmental justice. It is crucial to the area because of the disadvantages such as the low-wage economy, the lack of political representation, and the numerous cumulative exposures in the area. There are cumulative impacts on health, but also cumulative impacts on structural inequalities negatively impacting public participation. Federal and state requirements to include the public in the federal National Environmental Policy Act (NEPA) and state California Environmental Quality Act (CEQA) was to directly address community need for community voice, opinions, and concerns about the way land was being used in their communities was not being met. While legislation was able to provide these requirements with the intention communities would be included in future decisions, the way in which the process has been carried out has varied by government jurisdiction and with mixed outcomes. The question then isn't if public participation can achieve a fair, balanced, and just decision, because alone it is not enough to create just outcomes, but rather it is a way of seeing the power imbalances that exist among community residents, project supporters and opponents, and private companies.

Purpose Statement & Research Questions

The purpose of this dissertation was to understand the challenges facing community residents, specifically opponents, with public participation in hazardous permitting decisions, and their strategies for being meaningfully included in the process. This dissertation was guided by the central question of how can rural communities with few resources already burdened by negative environmental and health impacts, utilize community-organizing strategies to engage with formal, less inclusive public participation processes on hazardous permitting decisions?

Based on this question, this research explored three sub-questions:

1) How have the state and local public participation processes improved or changed overtime to include diverse opinions?

2) Have environmental justice laws and policies been able to support communities in opposing planning decisions that will increase pollution in their communities?

Case Background& Selection

Description & Demographics of 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 (Figure 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%), 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 putting the community 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 to these challenges by continuing to being involved with the participation process and creating strategies to being more meaningfully involved.

Figure 1: Kettleman City Location in California

(Source: Google Earth Image)

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

Demographics:	Kettleman City	Kings County	California
Population Count	1,648	151,390	38,066,920
Race/Ethnicity			
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%
Other race (one)	0.0%	0.3%	0.2%
Two or more races	0.0%	2.5%	2.7%
Total %	100%	100%	100%
Foreign Born	42%	20%	27%
High School Degree or Higher	42%	71%	82%
Median Household Income	$41,131	$47,341	$61,489

(Data Source: U.S Census, American Fact Finder, American Community Survey [ACS] 2010-2014)

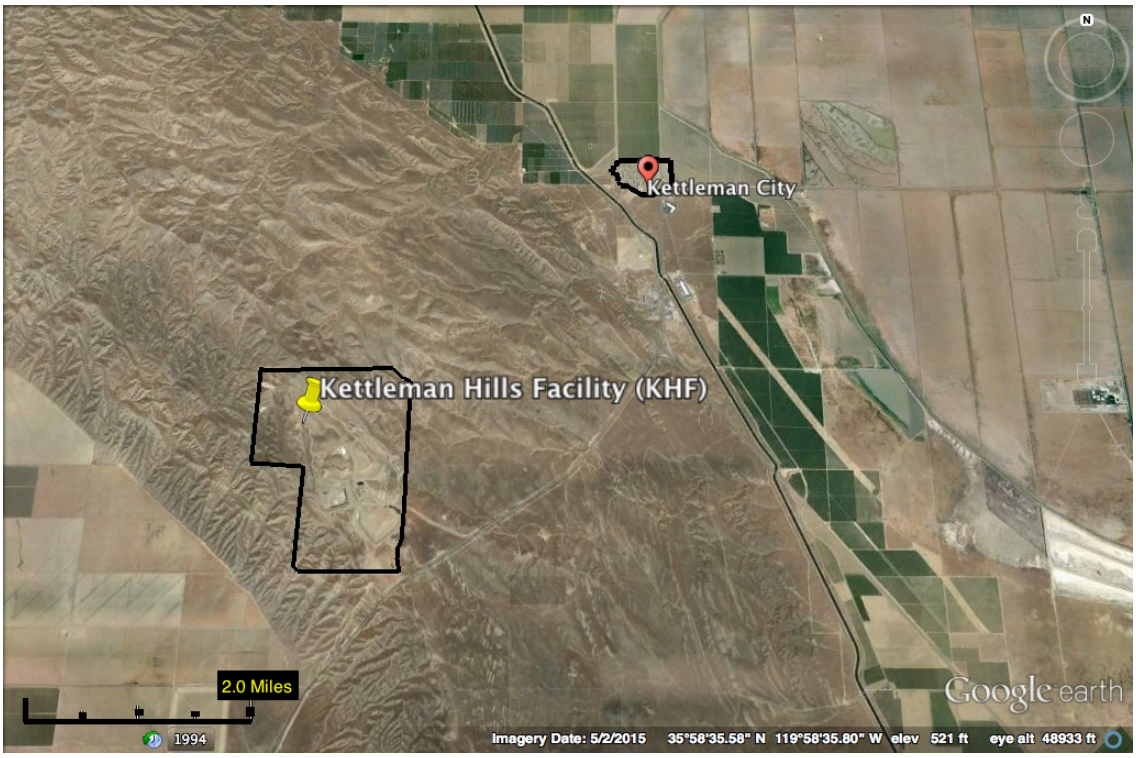
While Kettleman City residents face numerous environmental health threats from increasing air and water pollution, and the burden of hosting the largest hazardous waste landfill on the West Coast less than four miles away (Figure 2), it is not unique with these burdens. Situated in the agricultural region 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 (Table 1), 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 the population growth in the Central Valley is attributed to migration (Johnson and Hayes, 2004). The report offers economic pull factors to the Central Valley as a dominant reason for this growth, as immigrants new to the U.S. are able to find affordable housing and employment opportunities here. These employment opportunities have been dominated by low paid agricultural labor leading the Central Valley to be characterized by low education attainment, high poverty, and limited English skills. 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.

History of Waste Management & Community Organizing in Kettleman City

Waste Management (WM) has a long history in Kettleman City dating back in the late 1970s when they purchased the site of the landfill. Before Waste Management's acquisition of the site, however, Kettleman City had already been established and sustained with the growing oil and later with the agriculture industry. In 1929 Manford Brown, a real estate developer, settled Kettleman City (County of Kings General Plan Update 2035, 2010), as the year before oil

was discovered in the Kettleman Hills drawing people to the area. The history of Kettleman City then was based on the discovery of the Kettleman Hills Oil fields and their rapid development. The Milham Exploration Company made these early oil discoveries, but within a year Standard Oil (Chevron) had surveyed the area and began drilling oil, in addition to building up the surrounding area for employees (Roberts, 2008). After oil dried up in the area, agriculture became the main industry, operated and managed through both large and small farms. Although the majority of oil has dried up in the area, Chevron still operates a permitted generator in the fields, which is part of the San Joaquin Valley Business Unit. As of 2015 this unit maintained 16,000 operational wells producing a yearly average 166,000 barrels of oil (Chevron, 2016). Despite the overall regional economy shift from oil production to agriculture, the history of oil remains in Kettleman City.

Figure 2: Kettleman City and the Kettleman Hills Facility (KHF) in 2015



(Source: Google Earth Image)

The main street intersections of "Petroleum Way" and "Standard Oil Ave" are reminders of the oil history, but so are the still standing Chevron refinery facilities, the oil contamination in the well water discovered as far back as 1984 (EDF, 1985) and the current fracking practices (Nidever, 2012; Southern Kern Sol, 2014). Although WM has been in Kettleman for over 35 years, many residents who owned homes there in 1979 were unaware of the facility (UCC, 2007). Upon learning of the landfill, community opponents to the landfill, the proposed incinerator, and expansion have been highly organized. The community has demonstrated

resilience to the toxic facility by continuing to oppose the largest waste management company in the world, despite resource limitations or political setbacks with the permit approvals.

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

Chemical Waste Management Incorporated (CWMI)[1], a subsidiary of Waste Management (WM), began accepting hazardous waste on the current site in Kettleman Hills in 1979[2]. In 1979, WM bought the existing landfill and applied for expansion permits (EDF, 1985). Under WM the site is 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.

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." Here 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

[1] Chemical Waste Management Incorporated CWMI is referred to as Waste Management (WM) and Chem Waste throughout this dissertation.

[2] 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 (EDF, 1985).

(1984) 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 claimed 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 it's 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, 1999). The main point of this bill was to make siting hazardous facilities more amenable in communities by providing them opportunities for involvement in the process and set 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).

The Kings County Board of Supervisors (BOS) appointed a seven-member LAC who met over a period of 18 months, and in 1989 presented their final recommendations (Cole, 1999). These final recommendations included 37 items spanning 57 issues, which appeared inclusive with that many recommendations, but the process itself did not have community support (McDermott, 1993). The lack of community inclusion and support for the incinerator project evolved into a community led lawsuit against Kings County when the Board of Supervisors unanimously approved the incinerator permit without a public meeting (Corwin, 1991). The lack of a public meeting for the vote was only one aspect of the limited opportunities available to residents, but then Board of Supervisor Les Brown called the vote without notice as he was on his way out from the board and a new Supervisor was coming in. The new supervisor, Abel Meirelles publically opposed the incinerator project and a vote after Meirelles took Brown's seat could have meant the incinerator proposal would have failed. In 1991 Brown left the Kings County Board of Supervisors to join a lobby firm in Sacramento and in a Los Angeles Times interview stated he "plans to specialize in toxic issues and did not rule out representing Chemical Waste" (Corwin, 1991).

After the BOS approved the permit, the community opposing the project filed a lawsuit. This lawsuit alleged Kings County violated the California Environmental Quality Act (CEQA) because they did not include the community in a meaningful way, and a civil rights claim for the site selection in a predominantly Hispanic community (El Pueblo Para el Aire y Agua Limpio v. Kings County, 1991). Although the civil rights claim was dismissed, the court did find the community was not able to be meaningfully involved in the permitting process based on the lack of translations of planning documents, namely the 1,000 plus page Environmental Impact

Review (EIR) (Environmental Law Reporter, 1992). This lawsuit, however, was the culmination of a long community led fight to oppose the incinerator that included the struggle to participate in the permitting process by opposing the LAC formation, attending public meetings and giving testimony, a letter writing campaign that sent 120 letters to the planning commission requesting translations of documents, forming a nonprofit organization, and speaking out publically with media attention (Cole, 1994). Although the court overturned the Board of Supervisor's permit approval, in 1993 WM withdrew their permit citing a change in the economy (Associated Press, 1993).

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).

In 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[3] (LAC Final Recommendations, 2009). 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 meetings (LAC Meeting Minutes 2008-2009). 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 and wrote letters along with a circulated a petition requesting a new committee. The opponent's main objections to the LAC were 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, April 17 2008; Yamashita, April 29 2008).[4]

[3] See chapter 3 for more information on the backgrounds of the LAC members.
[4] See Chapters 3 and 4 for more information on the process and information on the challenges with the LAC formation, members, and process.

The LAC's final list of issues to be considered was pared down to 11 actions, and from this 11 the board selected seven[5] (Table 2) (LAC Final Recommendations, 2009). As of the February 26, 2009 LAC meeting the potential list of recommendations was down to 10 items. From this list of 10 the three that were ultimately eliminated included WM paying $3.5 million for the construction of a new water treatment facility, WM paying to enroll every Kettleman City residents ages 0-18 in the Children Health Initiative (CHI) health insurance program in Kings County, and WM financing the construction of a new permanent bus shelter in Kettleman City at the intersection of General Petroleum Ave and Becky Pease Street (LAC Meeting Minutes, February 26 2009 Meeting Minutes). From the meeting minutes at the following meetings is the debate that occurred to pare down the list. As there is no set number of recommendations to agree on, the LAC could have recommended all 10, and they could have requested any action from WM. The March 5, 2009 meeting minutes show how LAC recommendations such as WM pay $3.5 million for construction of a new water treatment facility went to WM countering with offering to pay the water district's debt, a significant sum of $525,000, but clearly much less than $3.5 million (LAC Meeting Minutes, March 5 2009). What is not in the meeting minutes, however, is any nuanced debate or discussion that occurred around each recommendation.

Table 2: The Final Seven LAC Recommendations

1.	CWMI 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.	CWMI will pay the full debt as of March 19, 2009, estimated at $552,300, owed by the Kettleman City Community Services District (KCCSD).
3.	CWMI 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.	CWMI 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.
5.	CWMI will provide $450,000 to the Reef Sunset School District for the construction a new walking track, soccer field, lighting, pavilion, and parking lot at the Kettleman City Elementary School.
6.	CWMI will provide annual community education about the Kettleman Hills Facility (KHF) contingency and disaster plans at an annual meeting.
7.	CWMI 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, the Kings County Community Agency by May 1st 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.

[5] Kings County Community Development Agency has only made available LAC meeting minutes for meetings held from April 2008 to April 2009. (http://www.countyofkings.com/departments/community-development-agency/information/local-assessment-committee)

The seven recommendations (Table 2) became legal requirements for WM when they successfully obtained their permits for expansion from Kings County. In addition to these seven requirements, 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 (DTSC Fact Sheet, October 2013). 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 October 19, 2009, the Kings County Planning Commission held public meetings for approving the Final Supplemental Environmental Impact Review (FSEIR) at the Kings County Fairgrounds in Hanford, about 35 miles east of Kettleman City (DTSC Addendum and Initial Study, 2013). According to DTSC, Kettleman residents were notified by mail that the FSEIR was available for review at the Kings County Community Development Agency in Hanford, at the KHF site, at the Kings County library in Hanford, the Kettleman City library in Kettleman, and the Avenal library in Avenal (DTSC Fact Sheet, October 2013). On October 19, the commission voted to unanimously adopt the FSEIR and approve the CUP (Kings County Planning Commission Meeting, 19 October 2009). 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 7th and 22nd in Hanford where they voted unanimously to uphold the approval of the FSEIR and CUP (DTSC Addendum and Initial Study, 2013).

Health Concerns and Investigation, 2007-2011

In 2007 the community groups El Pueblo and Greenaction documented a series of birth defects in the Kettleman City community[6]. They went public with their findings in 2007 and pushed for a larger countywide investigation by 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 reviewed health records for babies born to women living in Kettleman City from the years 1987-2008, finding a spike in birth defects with babies born in 2008 (CBDMP, 2009)[7]. This finding became the basis for community group's 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 demanded the state delay the permit expansion until they were able to investigate the birth defect cluster, and determine if there was a possible connection to the hazardous waste landfill in their community (Sahagun, 2009).

[6] See chapter 5 for more information on the community led health study.
[7] See chapter 5 for more information on the state led health study.

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 being 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 (CalEPA and CDPH, 2010).

In addition to interviews with mothers, the Office of Environmental Health Hazard Assessment (OEHHA) analyzed soil, air, and water samples in the summer of 2010. This time period, however, was 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. While these tests confirmed other hazards, including low levels of lead in wells and unsafe levels of arsenic in the drinking-water supply, neither was considered to be a cause for the birth defects. Throughout the research process the CDPH held public meetings at the elementary school in Kettleman City to solicit community input on what to include in the report, and UC Davis researchers facilitated these meetings. In 2010 the CDPH released their initial findings showing there was a documented birth defects cluster in Kettleman City, but they could not point to a single cause (CalEPA and California Department of Public Health, 2010). The CDPH and CBDP later released an update to the initial report using data from 2010-2011 showing a decline in birth defects after 2008, which was interpreted as the birth defect cluster being a random chance (CBDMP, 2011).

The Expansion Permitting Decision, 2014-2015

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). CEQA 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 have 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, along with 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?" This sentiment 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 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, October 6 2009, pg. 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 over one million dollars annually for the Kings County general fund (Nidever, June 30 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, April 5 2006), and the company routinely supplies Kettleman City residents with bottled water (Nidever, April 9 2014). While residents opposing the landfill expansion will openly grant WM the point that they donate a lot of money to the schools and community center, they will also openly say they would rather not have the hazardous waste landfill in their community at the cost of losing those donations (Yamashita, October 6 2009).

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 Los Angeles Times article, then DTSC director Debbie Raphael went as far as stating her message to Kettleman Resident is "You are safe" (Sahagun, May 21 2014, pg. 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 3), as well as the 1985 EDF report showing the lining failed (EDF, 1985) and a slope failure in 1988

(Yamashita, December 13 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 3: Waste Management Fines (1983-2013)[8]

Year	Violation (Source)	Fine 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	RCRA and 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	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, March 28 2013).	$311,000

From 1979 to 2016 WM has become an integral aspect of Kings County economy by providing services, jobs, and revenue to the county. WM's donations to the school, community center, and bottled water Kettleman City have some Kings County residents seeing the landfill as a benefit to the county and Kettleman City, but not everyone is convinced the company is a benefit or that the company is safe. The numerous violations going back to 1983 and the birth defects cluster have left some Kettleman City residents unsure of the health effects of hosting the landfill, and they would rather forgo the donations than accept the facility's expansion. Many of these landfill opponents participated in the public meetings for the permitting approvals, in both 1990 and 2009. Their experiences at these meetings varied based on the meetings logistics, such as time, location, and the agency hosting the meeting, and their ideas of public participation, especially meaningful public participation have developed through these experiences.

To sum up this long history of WM in Kettleman City (Table 4), there were two main decision points that are the focus of this work: the approval of the landfill incinerator in 1991, 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.

[8] For a complete list of inspections, violations, and fines see CWM Facility DTSC compliance history (DTSC CWM Facility Compliance History, 2013).

Table 4. Timeline of Events in Kettleman City

Year	Event
1979	Waste Management buys existing landfill and DTSC permits it for hazardous waste
1984	Cerrell Report completed for the California Waste Management Board
1988	Waste Management proposes an incinerator at the Kettleman Hills Facility (KHF)
1988	Kings County Board of Supervisors appoints an LAC for the incinerator
1990	Kings County Board of Supervisors approves the incinerator permit
1991	The California Rural Legal Assistance (CRLA) and El Pueblo file a lawsuit against the Kings County Board of Supervisors
1993	Waste Management withdraws their incinerator proposal
2005	Waste Management files landfill expansion proposal
2005	Kings County Board of Supervisors appoints an LAC for the expansion
2007	Community led health study uncovers birth defects cluster
2009	Kings County Community Development agency approves expansion permit
2009	CRLA and El Pueblo file an appeal of the Kings County Community Development agency's expansion permit approval
2009	Kings County Board of Supervisors upholds the expansion permit approval
2010	El Pueblo, Greenaction for Health and the Environment, and CRLA demand the State of California investigate the birth defects in Kettleman City
2010	Governor Schwarzenegger requires the California Department of Public Health to investigate the birth defects in Kettleman City
2010	The California Department of Public Health and the California Birth Defects Monitoring Program investigate the birth defects finding no single cause of the cluster
2014	DTSC approved the expansion permit
2015	Waste Management receives all necessary permits to expand the landfill

Relevance and Contribution of the Study

This study is both timely and relevant to the fields of planning, environmental justice, environmental policy and history, and inclusive governance due to the proliferation of environmental justice agendas, policies, and practices at the federal, state, and local levels in planning agencies. In this way, the movement for environmental justice has impacted cities and places around the U.S, as well as the world. In California the environmental justice movement has been further strengthened from community led wins with increased environmental and health regulation of toxic facilities and polluting industries with the recognition that everyone has the right to a clean environment, regardless of race or income. Although environmental justice began as a grassroots movement and the issues have been taken up by government agencies, the continued push for change still comes from local communities affected by environmental justice issues.

The environmental justice movement has shaped the regulation of pollution in low-income and communities of color by expanding environmental and health regulations, as well as opportunities for meaningful inclusion with government and city planning decisions impacting communities (Foster, 1998; Bullard and Johnson, 2000; Brulle and Pellow, 2006). In California there are now environmental justice policies in every state government agency regulating the environment. In 1970 the California Environmental Quality Act (CEQA Handbook, 2016) passed after the federal version of National Environmental Policy Act (NEPA), and while CEQA does not regulate land use, it requires government agencies to follow a protocol for analyzing environmental impacts and makes environmental protection a mandatory part of government agencies' decision-making process. These Acts require public participation to be included in their process and procedures, even highlighting the importance of including the public in decisions (CEQA Handbook, 2016). In 1999, California passed what has become known as the first environmental justice law, SB 115, as it required the CalEPA to define environmental justice and develop an environmental justice mission (Sen. Bill 115).

The trend around environmental decisions has been to include concepts of environmental justice with public participation, along with an acknowledgement these decisions have a disproportionate and disparate impact on low-income communities of color. Although the movement for environmental justice has been successful in implementing more environmental justice policies and agendas with environmental and planning agencies, less if known on how these policies are able to support communities opposing pollution or toxic industries in their communities. From a planning perspective, not enough is known about the challenges facing communities to engage with these permitting decisions, what strategies they have developed to engage with less inclusive government public participation process, and then what challenges remain with implementing environmental justice policies to support the communities that have led the movement.

Contribution of the Study

By focusing on a rural community challenging planning decisions without political representation, and strategies for inclusive public participation, this study coalesces literature on planning processes and environmental decision-making with environmental justice with community organizing, and critical race theory (CRT). Through the use of an environmental justice framework with city planning and critical race theory, this research makes a unique contribution to understanding the institutional inequalities facing low-income rural communities around public participation in environmental decisions. These challenges, however, are not unique to Kettleman City as many other low-income communities of color must engage with public participation processes that are part of larger proceedings determining permitting, land-use, environmental decisions. Understanding the issues in Kettleman can help uncover institutional challenges faced by similar communities, although the specific context may differ. On a practical level, this study contributes to addressing the practical problem of creating structural political change around environmental justice issues while working within the political system, but facing multiple structural barriers.

Methodology & Data Collection

Conceptual Framework

This dissertation argues that Kettleman City is a case of a rural community's resilience to participate in the permitting of a hazardous facility that impacts where they live, work, and play, even with few resources and no political representation. This resilience is demonstrated through the continued efforts of opponents of first the landfill incinerator and then the expansion proposal. Although these two landfill proposals occurred more than 15 years apart, Kettleman residents in opposition to their permitting continued to fight to be involved with the permitting process despite challenges with the process, and despite political setbacks with the permitting approvals. The bigger questions of this dissertation deal with structural issues of participation in decision-making, processes, the acknowledgement of different strategies for inclusive processes, and processes that can accommodate minority voices for an equitable outcome. To answer the above stated research questions, this research used an environmental justice framework to analyze the public participation process through a social justice lens, tying together issues of institutional disadvantages of participation.

Environmental Justice Framework

Environmental justice research has shifted from a direct focus on resource allocation and the siting of toxic waste facilities in low-income communities of color to encompass a broader public health model that includes working conditions, housing, transit, resources, and community empowerment (Walker and Walker, 2012; Bowen, 2014). Despite shifts with environmental justice research, the framework remains in its attempt in "developing tools and strategies to eliminate unfair, unjust, and inequitable conditions and decisions" and "uncover the underlying assumptions that may contribute to and produce differential exposure and unequal protection" (Bullard and Johnson, 2000, pg. 559). This framework, therefore, works towards advancing environmental justice by seeking out underlying causes that produce and reproduce the pattern for low-income communities of color to host disproportionate burden of environmental and health hazards. By adopting this framework this research seeks to move beyond demonstrating the disparate impact on a community hosting a hazardous landfill, but determine the political processes that support the permitting of a hazardous facility in a community that has been actively involved with opposing the facility for 25 years.

Along with using an environmental justice framework, this research draws on theories of institutional racism and critical race theory. Dismantling racism requires seeing where it exists beyond the individual level or individual intent. Although within city planning institutional racism often manifests as spatially as racial segregation (Massey and Denton, 1993), specifically considering institutional racism allows for seeing how various forms of racism contribute to spatialized disadvantages that can lead to disparate environmental impacts on communities of color (Pulido, 2000). Here institutional racism is defined as racial discrimination within institutions, processes, practices that does not require individual intent to re-produce disadvantages, inequitable opportunities, or discrimination based on race (Aspen Institute on Community Change and Applied Research Center at UC Berkeley, 2004).

Critical race theory (CRT) assists with exposing underlying practices and processes that continue to marginalize communities of color in political processes by recognizing how political, social, and economic systems are embedded in institutions and power structures (Dickinson, 2012). CRT also identifies the myth of a meritocracy or equal access, which ignores systematic inequalities produced from racial hierarchies. The power of inequality is its ability to appear as if it does not exist allowing inequalities to remain unchecked within institutions and structures because they are embedded. Whereas CRT views the law not as neutral, but a tool for upholding inequality, city planning and policies have been used as tools for reinforcing inequality. Critical race theory can be helpful for understanding and explaining why racial inequalities exist within the public participation process by showing how inequality became built into the process (Calmore, 1991; powell, 1997; Delgado and Stefancic, 2012). This research used the environmental justice framework with ideas of institutional racism and CRT to examine the underlying structures that continue to present challenges to Kettleman residents opposing permitting decisions of hazardous facility, despite their increased efforts, as well as the proliferation of environmental justice studies, practices, and polices created to support communities of color from hosting a disproportionate burden of environmental hazards.

Research Design

To answer the research question of how can rural communities with few resources already burdened by negative environmental and health impacts, utilize community-organizing strategies to engage with formal, less inclusive public participation processes on hazardous permitting decisions, this research used a case study approach incorporating the environmental justice framework with critical race theory to analyze the process and history of permitting decisions with the Kettleman Hills Facility. The residents of Kettleman City are experts in the issues surrounding the landfill and their knowledge and experiences with the permit process is different from an outsiders or a government official's perspective. While government officials and Waste Management's opinions are captured in this dissertation, this work focused on the resident's experiences with the permitting process, the challenges and strategies for overcoming these challenges, and the institutional barriers to achieving environmental justice.

Rationale for case study approach

A case study approach is appropriate for research designs attempting to answer explanatory questions of how or why, it is focused on processes overtime, and the research is based around contemporary events that cannot be controlled (Yin, 2008). This study satisfies both of these requirements for a case study approach because it is focused on the processes surrounding the proposed landfill expansion, which involved both past and present events around issues of environmental justice that the researcher cannot influence. This dissertation used a single-case study design focused on the public participation process and events in Kettleman City because although the residents' situation is not unique, their ability to successfully challenge the largest waste disposal corporation in the United States, and win, is. Yin (2008) stated the single case study design is appropriate when a specific case is so rare it warrants documentation and analysis. Researchers of both environmental justice and public health issues have labeled

Kettleman City a critical case in the environmental justice movement because the inhabitants are exposed to the spectrum of environmental and health issues (Cole and Foster, 200; Kumeh, 2010).

Case Selection

While the focus is on Kettleman City, the "cases" are the permitting decisions of the Kettleman Hills Facility. Within these decisions or permit approvals were multiple stakeholders and actors including: Kettleman City residents in opposition and support of the permits, other community organizers and activists working with opponents, the Department of Toxic and Substance Control (DTSC), the Kings County Community Development Agency (formerly the Kings County Planning Commission), the Kings County Board of Supervisors, the Local Assessment Committees formed in 1988 and 2005, and Waste Management employees. The permitting decisions were selected as they represent key moments where public participation processes were, or should have been utilized for public inclusion in the decision process. Each of these decisions similarly involved a complex series of interactions between Kettleman City residents, community groups, the private corporation Waste Management, and government agencies at county and state levels. Within the case study of Kettleman City, the first case was considered to be the incinerator decision that occurred between 1988 and 1993, and the second case of the expansion approval occurring between 2005 and 2014. Although the second case of the expansion permit was first decided in 2009 when the Board of Supervisors upheld the Kings County Community Development Agency's permit approval, the case extended to 2014 when DTSC approved their permit for the facility.

Data Sources & Collection

This study relies on planning and legal documents, participant observations at public meetings in 2013 and 2014, archival research, and in-depth interviews with 22 residents, organizers, and advocates, as well as government officials involved with the public meetings in 1990 and 2009. Planning documents were obtained through Internet searchers or when unavailable there, through information request with the Kings County Community Development Agency (formerly the Kings County Planning Agency). Greenaction for Health and the Environment, a nonprofit environmental justice organization based in San Francisco made available their research archives, as they were a key organization involved with both the incinerator and expansion proposals. Greenaction was also instrumental with the introduction to other nonprofit justice and legal groups working with Kettleman City, as well as Kettleman City residents. After initial introductions were made with Kettleman City residents involved with the incinerator and expansion projects, snowball sampling was used to contact additional Kettleman residents. Other interviewees were identified in newspapers or public documents and were contacted by email, phone, or in-person at their home address. While the majority of those interviewed were Kettleman residents or community organizers and activists, government officials and Waste Management employees were also contacted for interviews (Table 5).

Government officials were selected if they were likely to have been involved with any of the public participation meetings or the decision to approve the Environmental Impact Review (EIR) in either 1991 or 2009. In total, six interviews were conducted with government employees of both state and local Kings County government agencies. Additionally, Waste Management employees were selected for interviews based on their current role at the Kettleman Hills Facility or their experiences with the public participation meetings as identified through meeting minutes, newspapers, or other public documents. Although multiple attempts were made by email and phone to contact Kettleman Hills Facility employees for interviews, none were responsive to the request.

All interviewees were semi-structured, lasted about an hour, and were recorded with the interviewees verbal consent. They were conducted between 2014 and 2015, and were mostly in-person, with three held over the phone. Recorded interviews were then transcribed, coded for themes using excel, and analyzed.

Table 5: Industry Categorization of Interviewees

Industry Category	Percent of Interviews Completed
Kettleman City Residents and Organizers	59%
Other Community Activists	14%
Government Officials	27%
Waste Management Employees	0%
Total	100%

In addition to interviews and archival research and review of documents, public observations were conducted at meetings with community coalitions, state agency meetings, and community protests. These observations were documented through hand-written notes on general conversations, but not recorded for quotes or in-depth analysis. These observations were made between 2014 and 2015 and concerned the state agencies' permit approval of the Kettleman Hills Facility expansion.

Organization of Chapters

This dissertation is about a rural, unincorporated community that has attempted to engage with the public participation process to permit a hazardous facility in their community. This research includes the challenges those opposing the permits have experienced as well as their strategies for overcoming these challenges, and it assesses the ability of state environmental justice polices to support these community efforts in achieving environmental justice. The case of Kettleman City shows that increasing community capacity to engage in public participation is not enough for a community's success opposing a project that will knowingly increase air

pollution. Here public participation, although viewed as (and is) an important element in the permitting process, is limited in its ability to include opponents in a meaningful way due to institutional barriers within CEQA and state environmental justice policies. These institutional barriers include limitations with physical access to meetings, language translation services and translations of planning documents, as well as additional barriers of police intimidation at public meetings.

While some of these barriers to meaningful participation represent the spatial challenges of living in a rural area, such as physical access to meetings, others represent the institutional racism and discrimination that are the crux of environmental justice. Here institutional racism is seen within the public participation process in multiple ways. First, the lack of translations of documents or limited services at meetings reflects the white privilege of English speakers to expect participants including those from a community that is 42% foreign born (Table 1), to be fluent in English to be meaningfully involved in the permitting process. Second, the lack of focus of race or the disparate impact of permitting a hazardous facility in a community that is 99% Hispanic (Table 1) already facing cumulative exposures from multiple environmental hazards demonstrates how although there may not be intentional racism present, the process is able to reproduce a structure that disproportionately impacts a largely minority community. In these two separate, but simultaneously connected ways, residents of Kettleman City are systematically discriminated against without any one individual or group acting in an intentionally discriminatory manner. Institutional racism operates in a subversive way, which is why the environmental justice framework is needed to examine the structures, systems, and processes that reproduce the discrimination that leads to the disproportionate environment burdens.

Chapter two begins with existing literature on the history of the environmental justice movement, the strengths and limitations of the movement's strategies, and the framing for achieving environmental justice. Chapter three shows the challenges with CEQA's public participation process. CEQA, as California's main environmental protection law is the cornerstone for environmental planning, but it presents limitations for utilizing public participation as a strategy or path to achieving environmental justice. This chapter used evidence of the challenges facing Kettleman City residents opposing the permit approvals to show the limitations of CEQA for meaningfully involving people within the public participation processes.

Chapter four demonstrates the community's resilience to the challenges with public participation through continued efforts to engage with the process by utilizing resources available, creating new ones, and adapting to social and political changes. Here, interviews with residents, organizers, and activists revealed the community-based strategies used and what they have been able to accomplish. While these strategies have been effective tools for opponents of the project to be more meaningfully included in the permitting process, not every barrier could be met, and new challenges evolved. Community-based strategies that were most effective targeted the procedural equity issues and built social support through coalitions. Although more strategies were used in 2009 than 1991, opponents were successful in their mission of stopping the project in 1991 and not 2009. Despite targeting procedural issues and feeling more meaningfully included in the process in 2009 than 1991, opposing the landfill expansion project was not successful.

Chapter five shows that although there is an increased awareness of environmental justice at the state and federal level, institutional barriers within the state institutions create limitations to achieving environmental justice. These barriers are limitations within public participation procedures for achieving environmental justice and concerns with challenging state approved permitting decisions, but despite these challenges, community groups have been successful in supporting legislation for addressing these issues. State public participation procedures are limited due to institutional racism within the process, and state agencies present barriers to challenging this issue, as well as others, due to their colorblind environmental justice language. Additionally, state institutions have created barriers for communities to achieve environmental justice with their reliance on health studies with low statistical power, the culture within the institution, and their lack of permitting criteria. These limitations go beyond the ability to be meaningfully involved in the permitting process showing the limitations of health and environmental reports to support community concerns, and the limitations for challenging county or state permitting decisions with Title VI, two tools commonly used by communities for environmental justice. Considering the challenges communities face using these tools reveals why environmental racism persists, and helps explain why even with increased knowledge of environmental and health concerns, engaged opponents of a project are failing to stop projects that state and county government acknowledge will increase pollution in an already overburdened community.

Finally, chapter six concludes by posing solutions to these continued challenges for government agencies to better support environmental justice communities, and summarizes what works for community strategies moving toward more meaningful involvement in permitting hazardous facilities. This chapter focuses on addressing institutional racism in the permitting process, as well as environment decisions. Here the recommendations are for creating policies that consider equity in the process, viewing the environment justice movement through the environmental racism frame, and seeing place as a civil rights issue to help planners and government agencies support communities seeking environmental justice.

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Chapter 2. History of a Movement: The strengths and limitations of an environmental justice framework and strategies

Public Health, City Planning & Place

Place matters to health through pathways that can limit or provide opportunities of access and resources, or through exposure to unsafe or unhealthy environments (Hancock, 1996; Macintyre et al, 2002; Morland et al, 2002; Frank et al, 2006; Vlahov et al, 2007; Braveman and Gruskin, 2003). Access is seen with the provision of resources such as high performing schools, affordable and healthy food options, adequate and safe housing, reliable public transportation, or open spaces. Unsafe or unhealthy environments include exposure to crime or violence, poor air, land, or water quality, work places with high accident or illness rates, or living in an area with high vulnerability to climate change. These social determinants of health are correlated with health outcomes and disparities and they can accumulate over a lifetime. For example, place is correlated with life expectancy where higher income neighborhoods have higher life expectancies (Babones, 2008; Kramer and Hogue, 2009), but income alone cannot explain these differences or disparities (Cummins et al, 2007). Individually no one variable or social determinant of health can explain health disparities, but the accumulation or aggregation of determinants in a place can help explain the variation in health outcomes. In this way place is a strong predictor of health, and since people are not randomly distributed, planning practices and policies plays a key role in shaping health outcomes (Braveman and Gruskin, 2003; Marmot et al, 2008).

The relationship between city planning and health can be traced to the start of both of these fields. While originally public health and planning shared the same goals (Krieger, 2000; Wilson and Mabhala, 2008), Corburn (2009) showed how the two disciplines were divided. Public health has been framed as a series of social and urban interventions aimed at addressing social problems thought to cause, perpetuate, or aggravate diseases. These interventions have relied on the way health has been defined and have changed as the definition of health, the causes of ill health, and the way health has been studied has changed. As the professions of public health and planning separated so did the focus of the two fields. Although recently there has been a reemergence of research connecting the two fields within the professions, researchers, heath advocates and communities dealing environmental hazards have been demanding the government consider the health impacts of planning and planning projects to human health (Corburn, 2009). Through organizing and research, communities of color have brought attention to the health hazards they face on a daily basis. These health hazards include the exposure to poor air, water, and land quality or proximity to toxic sites, but also the unequal protection afforded to through zoning, the siting or permitting of toxic sites, and the regulation or enforcement of environmental laws (Bullard, 1993; Brulle and Pellow, 2006).

Unequal Treatment

Zoning was introduced as a city-planning tool for creating healthier places by separating residential and industrial land uses. The Supreme Court case, Amber Realty Co v. Village of Euclid established zoning under the police powers because of its potential to protect human health (Wilson et al, 2008). While zoning was used to prevent industries from locating near residential areas, it also became a tool for excluding unwanted industries and unwanted people, such as lower income, immigrants, and racial minority groups. This physical exclusion was seen with redlining practices or racially restrictive covenants that prohibited access to suburban homes for people of color. Suburban development and homes located outside of city centers were filled with white families with the means and access for home ownership, which was heavily subsidized through FHA mortgages, while people of color remained within cities that were suffering from financial disinvestment of infrastructure and jobs. This unequal treatment that provided access to home ownership, and subsequently infrastructure investment, education, and higher waged jobs was based on racial discrimination and contributed to the spatial concentration of white suburbs and people of color within inner cities (Kmiec, 1986; Silver, 1997; Massey and Denton, 1993; Massey and Rothwell, 2009). This concentration of people of color within cities was associated with lower land value, and the return of residential areas being located near industrial land uses (Armstrong, 1997; Gotham, 2000).

In addition to contributing to racial segregation, zoning has contributed to the concentration of low-income communities of color near toxic or unwanted land uses (Hurley, 1995; Pastor et al, 2005). Land zoned for industrial use is cheaper than land for commercial or residential development, and poses higher environmental burdens including land, air, and water pollution to surrounding areas in the form of toxic releases, increased diesel emissions, water contamination, long term impacts to soil. One factor in selecting locations for industrial zoning and facilities is the low cost of the land, but cheaper land coupled with these industries requiring low skilled workers has meant the concentration of low-income communities around these facilities (Pendall, 2000; Morello-Frosch et al, 2001) As Maantay (2002) has pointed out, zoning and land use policies are the root causes of environmental hazards and burdens contributing to environmental injustices (Manntay, 2002). While researchers debate which is likely to come first, the low income community or the polluting industry, the end result is people with the fewest resources to oppose the pollution, enforce the environmental regulations, have access to health care and other health preventative resources are the ones living in these highly polluted areas (Pastor et al, 2001; Mohai and Saha, 2015).

Researchers have demonstrated the propensity for siting and permitting toxic facilities within low-income communities of color (UCC, 1987; GAO, 1987; Bullard, 1993b; 1993c). In 1987 the United Church of Christ (UCC) Commission for Racial Justice showed toxic facilities were located in zip codes with twice the percentage of minorities than those with none, and the percentage of minorities in these zip codes with toxic facilities has increased (UCC, 2007). Since the UCCs seminal study, researchers have established the likelihood for minorities to be living near waste facilities (Godsil, 1991; Pastor et al, 2001; Morello-Frosch, 2006). Despite this evidence for the likelihood of toxic facilities or pollution to be located in minority neighborhoods or communities of color, researchers using spatial models have attempted to show there is no correlation between location and race (Anderton, et al 1994). These researchers have argued the correlation is with income, and that it is low-income communities that are more likely to host

toxic facilities, not communities of color. Pastor et al (2001), however, refuted this work by showing that research only considers the distribution of hazards at any one time, but when income is controlled for over time, the most significant factor in where sites are located is race (Pastor et al, 2001).

Debate: Income or race as predictor of site selection?

While there is now little debate on whether if these facilities are more likely to be located within communities of color than white communities, there is debate among researchers on why these sites are selected (Been, 1992; Anderton et al, 1994; Cutter, 1995; Downey, 1998; Bullard and Johnson, 2000). The explanations presented focus on market or economic issues (Andel and Burton, 1998; Anderton et al, 2000), discrimination or racism within the siting selection (Bullard and Lewis, 1996; Heiman, 1996), or the ability to politically resist facilities (Hamilton, 1995; Foster, 1998). Within the market based reasoning are arguments that the land is cheaper or zoned for industrial near low-income community, or that these communities desire the development for employment opportunities (Been, 1992; Bonds 2013). The argument of low-income communities desiring this type of development negates the historical process that led to the concentrations of low income, low skilled workers and low-income communities of color. It cannot explain the factors leading to these spatial concentrations, only that those living near these facilities desire economic development. It is important to understand the process not only to the siting of a facility, but the creation of a place because it is within the policies and practices that concentrate people, and not randomly, that allows for the understanding of how these policies were used to discriminate against low income communities of color (Pulido, 2000). Further, Pastor (2003) used a case study of Los Angeles that disputes the idea this type of development leads to more employment opportunities. Pastor's research found that as pollution and the cancer risk associated with air pollution increased, the availability of employment opportunities decreased. Not only is it untrue that development is always good for the economy, development that leads to environmental degradation or increased health risks has a negative economic effect on the surrounding neighborhood (Pastor, 2003).

The other side to the argument that development is an economic benefit to low income communities is the idea they are selected because of their low social capital (Hamilton, 1995). Here social capital is defined as political power, social networks, and level of organization as the ability to resist unwanted developments (Pastor, 2003). While political power is closely associated with socioeconomic factors such as income and education attainment, low-income communities can increase political power through networks and organizing (Morello-Frosch et al, 2002; Saegert et al, 2002). Pastor (2003) highlighted the role of social capital, defined as the "informal networks and formal organizations that enable communities to work together for common goals" (Pastor, 2003, pp. 78), for achieving environmental justice. Pastor further defined social capital as two types, bonding as capital that brings together the community and bridging as the capital connecting different communities. While strengthening both of these forms of social capital can support the community's ability to resist or challenge unwanted developments, the lack of social capital is not the only reason for site selection of environmental hazards (Pastor, 2003).

Political Economy & Historical Processes with Site Selection

Despite which came first-the community or the environmental hazard- low-income communities of color surround toxic facilities. Now older research examined the debate on which is a better predictor for toxic facilities-income or race- (Freeman, 1974; Asch and Senaca, 1978) with the results varying based on the geographic scale or the socioeconomic variables used. The research finding income was a stronger predictor of toxic site selection often negated the intersection of income, race, and place (Pulido, 2000). Environmental justice research conducted in the 1990s took a more nuanced approach to examining the demographics of site selection. Using Detroit, Michigan, in 1992 Mohai and Bryant (1992) examined the relationship between race and income in the distribution of 14 commercial hazardous waste facilities in area. Here Mohai and Bryant collected data from facility sites and surveys administered to a socially stratified random sample at predetermined distances from the sites finding an overrepresentation of poverty closer to sites, and using multiple regression analysis they showed race accounted for location of sites over income. While this research determined race was a stronger predictor of facility siting than income, it also showed the dynamics of race, income and place (Mohai and Bryant, 2000). About 10 years before this research, however, the General Account Office's (1983) published a report showing poor, rural, African-American communities were being targeted for toxic waste disposal (GAO, 1983), a different story than the income versus race debate in siting.

Despite evidence that communities of color have been discriminated against in permitting and siting (UCC, 1987; Pulido et al, 1996; Szasz and Meuser, 1997), some researchers have attempted to dispute the intentional use of racism in toxic site selection (Been, 1992). This research, however, that is focused around intentional or individual racism is misguided as environmental racism encompasses elements of institutional or structural racism and not merely individual led actions (Pulido, 2000). The 1987 UCC study coined the term "environmental racism" as the intentional placement of pollution in communities of color (UCC, 1987), but this phrasing of intentional became a challenge within environmental justice research. Intentional discrimination is not only difficult to prove (Kiniyalocts, 2000), it also omits a more nuanced and historical explanation involving the process of site selection, and why communities of color are more likely to be located in areas with lower land values than white communities (Pulido et al, 1996).

In viewing institutional racism from the framework of white privilege, Pulido (2000) showed how this form of racism plays out with the siting of environmental hazards by flipping the question from why are toxic facilities located within communities of color, she showed how white communities have been able to resist these hazardous developments. Here Pulido used white privilege defined as "a form of racism that both underlies and is distinct from institutional and overt racism" (Pulido, 2000, pp. 536) to show how people who identify as white use this privilege to distance themselves from racial discrimination they may not be involved with in an intentional or obvious way, but that they nonetheless continue to benefit from. Using a case study of Los Angeles, Pulido traced a history of institutional racism culminating in racial segregation and environmental racism. This complex history involved factors of suburbanized housing discrimination and economic development that benefited the white community along with zoning and industry associated with low or decreased land values concentrated low income communities of color near pollution and environmental hazards. This history then explains the

process of how communities of color become concentrated near toxic facilities and more likely to be exposed to pollution than white communities, without anyone ever having to make an intentional decision to discriminate based on race (Pulido, 2000).

In a similar vein, Brulle and Pellow (2005) argued for seeing the connection between planning and environmental racism beyond land use and siting of toxic facilities. Their research showed the connections between access to healthily environments, distribution of healthy environments by race, class, and power, and the connection to the affordability of housing and exposure to pollutants. Here Brulle and Pellow showed that ultimately the attention shouldn't be placed on why are these toxic releasing facilities located in communities of color, but rather on why there are so many communities of color surrounding these facilities. The first statement of the facility location leads to research showing the disparate impact of siting, and reasons for this location selection, but the argument can always be made it was chosen for economic reasons. If the statement flips to look at why are communities of color surrounding these facilities, then the reasons, although economics also based, are complicated by social and political factors that are more easily shown through housing segregation and discrimination or employment opportunities. Clarifying why these low-income communities of color are disproportionately found near toxic sites highlights the racial discrimination and unequal power dynamics in differing opportunities where people can live, work, play and pray (Brulle and Pellow, 2005).

Framing the Debate: environmental racism vs. environmental justice

Framing the debate on environmental racism or environmental justice is important for identifying problems and solutions based on the identified causes (Čapek, 1993; Taylor, 2000; Brulle and Pellow, 2006; Holified et al, 2009). While the UCC's 1987 seminal study was the first to discuss and define environmental racism (UCC, 1987, pp. 3), environmental justice evolved from this definition oriented more toward a justice frame than on racism. This difference in framing would define the problems, solutions, and strategies for the movement (Brulle and Pellow, 2006) and later become important to how government agencies would interpret these issues.

The framing of environmental racism and environmental justice differ in their focus on showing the problem or establishing a solution (Bryant, 1995; Pellow, 2004). Framing of the movement is important in stating both problems and solutions, but also for the ability to build the movement and encourage support. The framing of environmental racism was limited in its ability to create broad support and the transformation of the movement from focusing on racism to justice enabled the involvement of more community groups, including the traditional environmental ones (Brulle and Pellow, 2005). Brulle and Pellow (2005) showed the limitations of the environmental racism frame as being too narrow to appeal to a broad base of supporters, and defined the problem in a narrow way, with less ability to unify other organizations. Although the framing was considered to broaden the focus from environmental racism to environmental justice, some researchers argue the frame is now too broad (Anthony, 2005; Neumann et al, 1998, Benford, 2005), while others contend it is too narrow (Faber, 1998), and ultimately its limited because the strategies used under a justice frame cannot create structural

change. While the definition of environmental justice takes a broad approach to conceptualizing the environment and what can be included under this frame, the omission of race leaves the causes more abstract and therefore more difficult to target (Pellow and Brulle, 2005).

Environmental Justice as a Movement

Environmental Justice as a movement began in the 1980s as a reaction to unhealthy environmental practices such as toxic dumping and land use decisions, but the origins of the movement can be traced to other social movements, land use policies, and recognition of hazardous, unhealthy places (Szasz, 1994; Foster, 1998; Cole and Foster, 2001; Bullard, 2015). Many environmental justice scholars see the environmental justice movement as a continuation of the civil rights movement more than the traditional environment one as the issues have focused on labor, housing, health, and the political power required to influence environmental or planning decisions (Anthony, 2005). The work of the environmental justice movement takes a social justice lens to environmental issues that question the structural factors producing place-based inequities that are rooted with institutional or structural racism practices (Bullard, 1993; Pulido, 2000; Pellow and Brulle, 2005). Although the environmental justice movement has roots going back with other social movements, the community discovery of abandoned hazardous waste beneath the working class community of Love Canal, New York in 1982 is often cited as the start of the movement. This struggle of residents of Warren County, North Carolina to oppose the siting of a poly-chlorinated biphenyl (PCB) dump, along with the growing awareness over the dumping of toxic wastes on Native land and other environmental hazards concentrated in communities of color, engendered the emerging link between environmental problems, health disparities, and people of color (Cutter, 1995; Bullard and Lewis, 1996; Cutter et al, 1996; Bullard and Johnson, 2000; McGurty, 2000; 2009).

Although the movement for environmental justice includes the word environment, the movement itself has less in common with the traditional environmental movement that was focused on conservation or preservation of "natural" environmental spaces (McGurty, 2009). The traditional environmental movement was founded on the conservation and preservation of land, usually in the form of natural park and reserves or endangered species. This movement of protection of space was successful with the creation of the State and National Parks system, but at the cost of the forced displacement of thousands of Native American tribes who occupied the land (Merchant, 2003). As Pulido and Peña (1998) showed, positionality determines how people relate to nature and the environment, which differs based on race and class. While wealthy white individuals and organizations were pushing for land protection from development, community of color were leading the movements for land rights, toxins, and issues of pesticides. Using the case study of pesticides, Pulido and Peña (1998) showed how the issue was approached from the traditional environmental movement as in Rachel Carson's 1962 classic work, Silent Spring, and the Chicano/Latino farmworker movement. Carson's work looked at pesticide reform in the realm of federal and state government action regulating pesticide use from an ecology or ecosystem perspective, but starting in the 1940s the government was regulating pesticide use. This regulation, however, did not consider the impact to laborers or farmworkers, an issue that wasn't focused on until 1969 when the United Farm Workers Organizing Committee (UFWOC) raised the issue and received replies that it was not an issue with workers. Although Cesar Chavez and Dolores Huerta started organizing farmworkers in the 1960s in the San Joaquin

Valley, the farmworkers didn't win the legal right to unionize until 1970. This unionization enabled them to push for pesticide reform from a labor perspective, and in 1970 they won a contract legally regulating the use of pesticides, benefiting the health of both farm workers and grape buyers. This example of the pesticide reform movement shows how the labor perspective was different from the ecology one, and that they were different in their issue focus, approach, and identification of problems and solutions (Pulido and Peña, 1998).

Public Participation as an Environmental Justice Issue & Strategy

The framing of the movement identifies issues that are defined by the problems, and in turn this creates solutions and strategies. The strategies will vary based on the problem or cause of environmental injustice. For example, problems of zoning, racism in site selection, or social capital all require different strategies, and different community groups have identified different causes and solutions. Despite these differences in strategies, they are similar to those used in the Civil Rights movement, and they are based on the idea the community most impacted by a development should have a voice in the planning decision (Bullard and Johnson, 2000). As Cole (1992; 1998) and Pastor et al (2001) showed, one environmental justice solution is for communities to utilize public participation for involvement in environmental decisions impacting their communities. Cole (1992) showed public participation benefits both communities and decisions makers by creating a consensus on decisions, and enables the community to be informed on the project (Cole, 1992), but later Cole (1999) argued that within public participation processes the community most impacted tends to be least represented (Cole, 1999). This lack of representation can be a point for planners as their role to engage with community residents (Burby and Strong, 1997), or the need for procedural changes to better include representative community members (Pulido, 1994; Schwartz and Wolfe, 1999).

In 1991 The United Church of Christ's Commission for Racial Justice convened the first People of Color Environmental Leadership Summit in Washington D.C. (Bullard and Lewis, 1996). At this summit the group created a document outlining 17 principles that define environmental justice, including the right to participate in decision-making, enforcement, planning, and regulation (Bullard, 1999; Shepard, 2002). One of the 17 tenants of environmental justice is that people should have meaningful and equal opportunities to participate in the decisions that impact them (Fung, 2004; Pateman, 1972; Pitkin and Shumer, 1982), but this is not always the case because of existing structural advantages and disadvantages afforded to different groups (Hunold and Young, 1998). Wilson and Briggs (2005) argued for a "geography of opportunity," which addresses the consequences of race and class segregation for the well-being and life prospects of the disadvantaged, while focusing on importance social capital. Wilson and Briggs geography of opportunity demonstrated how where you live impacts your social capital, but it's social distance that creates neighbors, not geographic proximity (Wilson and Briggs, 2005). Similarly, Wacquant (2000) argued state agencies and public institutions that once supported society are now negative social capital maintaining poor residents in a marginal and dependent position. Inner city disinvestment, welfare retrenchment, shrinking unemployment coverage, and planned shrinkage unravelled the support for poor minority communities, thus weakening their social capital (Wacquant, 2013). While the availability and

physical access for public participation may exist, other factors such as social distance may influence participation (Morello-Frosch et al, 2002; Corburn, 2004).

Public Participation as an Environmental Justice Issue

Public participation is an environmental justice issue because one of the principles of environmental justice is the right to be involved with environmental decisions (Alston, 1991). This right to be involved with environmental decisions stems from the recognition of the failure for government agencies to include communities of color in these decisions, and the negative implications on these communities (Kuhn, 1998; Bullard and Johnson, 2000). Despite the fact that most planning and environmental decisions processes now include mandatory public participation, these processes do not always include communities in a meaningful way. (Davidoff, 1965; Arnstein, 1969; King et al, 1998; Innes and Booher, 2004). As Arnstein (1969) demonstrated with her eight rung ladder of participation, there are varying degrees of public involvement that can range from nonparticipation though 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 is occurring when the community controls the process, and the process should work towards empowering individuals as the issue is the public does not have enough power in the public participation process (Arnstein, 1969). In a similar way, Davidoff (1965) argued there is a need for advocacy planning to increase power with the community (Davidoff, 1965). These ideas of empowering the public in the public participation process are to improve the process through increasing participation, but even when there are increased opportunities or an improved process, the standard public participation tools of hearings, review, and comments cannot meaningfully include the public (Innes and Booher, 2004).

Defining Meaningful Public Participation

Research around meaningful public participation has included issues of power dynamics and empowerment (Davidoff, 1965; Arnstein, 1969; Laurian, 2008; Fung, 2006; Innes and Booher, 2004; Forester, 2006; Sicottee, 2010), the shaping planning decisions (Laurian, 2008), community representation (Fung, 2006), encouraging participation through opportunities (NEJAC, 2000), participation tools and strategies (Chess and Purcell, 1999), legitimacy (Barnes et al, 2003), and the ability to address conflict and power differences within the participation process (Flyvberg, 1998; Young, 1990 Bryson et al, 2006; Forester, 2006; 2009; Quick and Feldman, 2011). Together these authors have supplied six key components of defining meaningful public participation. These six components include: community representation, information, forms of public participation, access, collaboration, and government responsiveness. 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.

Meaningful public participation is important for community members to be able to fully engage in the process, but also for increasing their ability to obtain procedural justice (Maguire and Lind, 2003). Procedural justice is defined as the process for how environmental decisions are made, but some see that within procedural justice is the idea that if environmental decisions are made through a fair process, then they are just regardless of the outcome (Turner and Wu, 2002). This notion of justice centers on the assumption that people are able to participate with environmental and planning decisions, and their participation is effective or meaningful. Community capacity and empowerment then become crucial to involvement with environmental decisions, as power distribution among communities differs based on income, race, and place. Subsequently, researchers analyzed the concept of community empowerment and access to resources necessary to fully participate in the decision process (Heiman, 1996), with procedural justice concerns including translators at public hearings or providing translations of documents (Foster, 1998). From this research comes the idea that collaborative approaches that build community capacity by allowing more authentic dialog of informed individuals are effective by increasing personal and professional networks and relationships (Innes and Booher, 2004). These collaborative models of participation should then result in greater procedural justice, which are more likely to lead to greater satisfaction among participants (Lawrence et al, 1997) but Foster argued these approaches must be coupled with distributional equity issues (Foster, 1998).

Complementing procedural justice is distributional justice, which is the fair distribution of resources and burdens (Roemer, 1998). While procedural justice focuses on the fair process in decision-making, distributional justice is most concerned with a fair outcome. These outcomes are also nuanced because a fair outcome could mean every place receiving an equal number of resources and burdens, but within an equity based distribution some places would receive more or less (Turner and Wu, 2002). The idea behind the equity model is that some places or communities have a greater vulnerability due to social factors like low-income, language, or physical or social access to other resources such as health care, healthy food, adequate and safe housing or high performing schools. These factors make people vulnerable or more susceptible to poor health outcomes, and increasing pollution in these areas would then negatively contribute to their health that would not have the same impact in a different place with more resources (Corburn, 2004). Since neither these resources nor environmental burdens are randomly distributed (Pulido, 2000), communities negatively impacted from these environmental burdens must organize and engage with public participation processes to work toward creating healthier places (Minkler, 2005). These community efforts have been successful at some government levels in creating stronger environmental regulation and engendering more attention for environmental justice (Szasz, 1994; Pellow and Brulle, 2005; Brulle and Pellow, 2006), but not all this success has led to improved outcomes for siting and concentrating environmental hazards in communities of color (Pellow and Brulle, 2005).

Environmental Agencies & Public Participation

In 1970, 20 years before the first People of Color Environmental Leadership Conference, the federal government created the Environmental Protection Agency (EPA) and the National Environmental Policy Act (NEPA), while California also established the California Environmental Quality Act (CEQA) (Olshansky, 1996). Together the EPA, NEPA, and CEQA

form the basis of the U.S.' and California's environmental laws to protect the environment and human health. In addition to being the U.S' first major environmental law, NEPA is a process for environmental review that occurs when a federal action may have human or environmental impacts. This federal action is broadly defined and includes construction, permitting, funding actions, and more. The NEPA process applies when a federal action may have a negative environmental or human impact, and requires the lead agency of the project to conduct an Environmental Impact Assessment (EIA) for publically disclosing these negative impacts, and mitigate them if possible. Part of this EIA process includes opportunities for public involvement through comments and review that should then be responded to or addressed in the EIA (Council on Environmental Quality, 2007).

These public participation procedures use many terms- community participation, community involvement, community engagement, stakeholder involvement, or stakeholder engagement- all meaning that any individual or group interested or impacted by an action should be given equal opportunity to be included in the decision process. The language stated in the EPA's Waste Management guide says public participation is important for "ensuring that decisions affecting human health and the environment embrace environmental justice" (NEJAC Public Participation and Accountability Workgroup, 2000, pp. 3). These participation guidelines also note the communities most burden by environmental decisions are already facing barriers to their meaningful involvement in these decisions, as well as representation in the development and enforcement of environmental laws (NEJAC Public Participation and Accountability Workgroup, 2000). Many of these communities are considered vulnerable because of the cumulative exposures to environmental toxins and having been historically omitted from environmental and land use decisions.

Under NEPA is the National Environmental Justice Advisory Committee (NEJAC), which oversees issues of environmental justice within the EPA. In order to help the EPA work toward achieving environmental justice with its actions, including those under NEPA, they provide a checklist for effective community engagement. This checklist defines effective community engagement as a process that is: 1) a two-way process for information, 2) increases the number of community members who identify as stakeholders, 3) community outreach and input at different levels, 4) emphasizes quality over quantity of opportunities, 5) recognition of community expertise, 6) includes efforts to "meet people where they are" 7) tailored to specific community. Here NEJAC also identified potential barriers to effective participation that includes:

1. Limited resources- funding and staff to conduct the needed activities over time
2. Limited coordination between federal, state, and local governments
3. Language and cultural differences
4. Identification of coalition building with local leadership
5. Limited cultural competency
6. Limited recognition of stakeholders with environmental justice issues
7. Limited trust between community, government, and regulated industries

Based on these limitations, the EPA suggests creating a customized engagement plan that focuses on education and empowerment and includes special considerations for rural areas

(NEJAC Public Participation and Accountability Workgroup, 2000). This recommendation for a specific plan for rural areas stems from the acknowledgement that rural areas face additional challenges to being included in the public participation. These additional challenges can include physical access to meetings and health concerns with developments such as multiple health exposures from agriculture and pesticides or water quality (NEJAC Meeting Summary, 2010).

CEQA and Public Participation

Based on NEPA, the California Environmental Quality Act (CEQA) was created to expand environmental protection. This California statute was established in 1970 with the goal of identifying, disclosing, and if possible, mitigating any significant environmental impacts of a project prior to its approval. CEQA itself does not regulate land use, but instead provides a framework for analysis and public disclosure of the environmental impacts, alternatives, and mitigation of impacts of a project (Warton and Lewis, 1976). Informing the public is the core of CEQA legislation, and when executed correctly, this is exactly what CEQA achieves, but CEQA is limited in its ability to inform, and informing is not the same as involving. Despite the inherent limitations to CEQA, the process of informing and disclosing, and not in outcomes or decisions, it remains a tool for environmental justice (Cole, 1993; Cole and Foster, 2001). Environmental justice activists and lawyers have pointed to CEQA's public participation requirements, or the lack of their fulfillment, as a means of challenging a project proposal. In this way, CEQA is an environmental justice tool because it provides two essential things for environmental justice communities: a legal avenue for challenging potentially harmful projects, and most importantly it provides a platform for community voice where concerned residents can speak their opinions, meet with decision-makers directly, and receive answers to their questions (Cole, 1994b; Kuhn, 1998). This aspect of including the community voice is noted as more important than CEQA being used as a legal tool because when lawyers go to court, community voices do not follow (Cole, 1993), which then omits one of the founding Environmental Justice Principles of "we speak for ourselves" (Cole, 1994b). At its best, CEQA can open a dialog between government officials, private corporations, and residents. Regardless of its intention, today CEQA is a powerful tool for working towards environmental justice because of the explicit inclusion for meaningful public participation (Cole, 1994b; Kuhn, 1998).

The Tanner Act (1986)

In addition to CEQA legislation requiring public input on all projects with an environmental impact, the 1986 Tanner Act in California was specifically enacted to make siting of toxic facilities more amenable to communities by including a seven-member committee comprised of three different interests. The Tanner Act cited previous procedures as not providing meaningful opportunities for public involvement as before Tanner, the only legal requirement in hazardous facility siting was CEQA and a review of the Health and Safety Code (Cole, 1999). The fact the California legislature passed the Tanner Act stating the then requirements did not allow for meaningful public participation in siting decisions shows the limitations for CEQA's ability to meaningfully include the public in any environmental impact review process.

Despite the California legislature's enthusiasm for implementing the Tanner Act for meaningful participation, Cole (1999), however, noted the law came from a lengthy process that assessed the hazardous waste facilities in California and is designed to permit these facilities "over local opposition yet purports to give local residents input in the siting decision" (Cole, 1999, pp.735). To ensure this local control and community empowerment, Tanner requires the creation of a seven-member Local Assessment Committee (LAC) that is appointed by the Board of Supervisors. Despite its best intentions, the Tanner Act has not always been successful in creating meaningful public participation. Using three case studies of the Tanner Act in California, Cole (1999) showed the limitations for community involvement with hazardous waste siting. In one case of Martinez, CA, the best-case scenario of the LAC where it worked as designed and active members, people were informed, engaged, and supported by local government agencies. This case is considered a best-case scenario because those involved with the process felt heard, and the proposed project was cancelled. In another example of the Tanner Act, Kettleman City is used to demonstrate the failure of the public participation process, as it did not provide opportunities for public input. The third case presented was also considered an unsuccessful use of the Tanner Act. This case was with Buttonwillow, CA and involved the permitting process to expand a toxic waste facility. In Buttonwillow, as in Kettleman, the community did not feel heard in the process or able to give input on the permitting decision. Ultimately, the waste site was approved for expansion, despite community opposition that included a lawsuit. Both the Kettleman and Buttonwillow cases were considered unsuccessful at involving the public in the permitting process because the committee members appointed by the Board of Supervisors were selected based on their support for the projects, public meetings were not held in convenient locations, and few to none of the committee members were from the impacted communities (Cole, 1999).

In addition to these challenges with the Tanner Act, the committee members appointed did not represent the racial makeup of the area in Kettleman or Buttonwillow. In Martinez, the committee members were 100% white and Martinez was 88% white. In Kettleman and Buttonwillow, however, their committees were also 86% (Kettleman) and 91% (Buttonwillow) white, but at the time Kettleman was 95% Latino and Buttonwillow 65% Black or Latino (Cole, 1999). These discrepancies with the racial makeup of the community versus that of the committee representing the community in shows the lack of representativeness of the committees appointed to represent the communities in Kettleman and Buttonwillow. Although the Tanner Act gave promise to public involvement with hazardous permitting and siting, its implementation by local county government agents has resulted in the process meeting legal requirements without meaningful participation (Cole, 1999).

Environmental Justice Strategies

The movement for environmental justice has utilized a variety of strategies beyond public participation drawing from other social movements (Szasz, 1994; Cole and Foster, 2001). These strategies include targeting multiple government agencies, the use of public participation and community organizing (Walsh et al, 1997; Foster and Cole, 2001; Sicotte, 2010), the ability to attract outside resources and support (Roberts and Toffolon-Weiss, 2001), use of media (Perez et al, 2015), coalition building (Mix, 2011), and legal strategies (Cole and Foster, 2001). Each of these strategies proved effective in stopping, slowing, or closing a polluting industry, or in

supporting the development of laws that could further protect the environment and health of a community. The environmental justice movement's success is then visible with the victories in local struggles, legal wins and losses, and changes in national environmental justice policy (Foster, 1998; Roberts and Toffolon-Weiss, 2001).

Community Organizing

One strategy for challenging permitting and siting decisions of polluting industries has been the successful use of public participation and community organizing. Sicotte (2010) used a case study of a neighborhood in Philadelphia that organized and successfully utilized the public participation process to build power in their community and halt the building of multiple polluting facilities, including distribution centers, factories, and waste facilities. This urban neighborhood is a somewhat unique case in that 60% of the land is zoned for industrial use, but also because the neighborhood's organization previously won them the ability to have a formal role with land use decisions. This win was the result of years of organizing into a formal group, and the city's desire to have them as a formal partner as the city knew it would be easier to work with them and include them from the start of projects. This desire to work with, and not against, came after years of community organizing where city council members were inundated with residents, rallies, and newspaper attention. Here this case shows the ability of community organizing to successfully utilize public participation, but only after the group applied political pressure to elected officials who ultimately found it easier to work with the group than against. In places without a local government or an urban voter constituency, low population and voter counts are an inherent political disadvantage (Sicotte, 2010).

Coalition Building

In addition to community organizing, the use of coalitions with public participation processes can bring together resources for effectively applying political pressure to sway environmental decisions (Morris, 1981; Mix, 2011). Drawing on strategies and success of the Civil Rights movement, Morris (1981) argued the use of coalition during the Civil Rights Movement were successful in their attempts to create policy reform, and they were most successful when implementing specific tactics and strategies, such as achieving increased voter registration (Morris, 1981). Other research has validated this work showing coalitions are most effective when they have a specific goal (Hathway and Meyer, 1993) or similar ideologies and purpose (Beamish and Luebbers, 2009). Additionally, coalition building can be most effective in places with a limited voting constituency or elected officials to apply political pressure on. In rural areas with low voter numbers and unincorporated places without local elected officials, such as a city council, political pressure is most effective when it comes from a larger coalition targeting a state or federal agency (Cole and Foster, 2001). In this way, collation building not only shares resources and information to build political power, but in rural or sparsely populated areas, coalitions bring together constituents from multiple political jurisdictions to target larger state or federal regulating agencies.

Litigation & Legislation

Legal strategies have been effective for targeting illegal or less inclusive public participation processes, as well as for challenging siting and permitting decisions (Cole, 1994; Colopy, 1994; Collin, 1994; Foster, 1998; Cole and Foster, 2001). These legal strategies have taken many forms, but the most prominent is the use of Title VI of the Civil Rights Act of 1964 (Civil Rights Act of 1964, § 6), which can be applied to any program or activity receiving federal funding and prohibits discrimination based on race, color, or national origin (Abernathy, 1981; Colopy, 1994; Collin, 1994; Worsham, 1999; Ramo, 2013). Although Title VI has been successful with the EPA on some environmental justice case, there are many more Title VI claims submitted than are accepted (Lombardi et al, 2015).

While in the early 1990s it was hopeful Title VI could be used with environmental justice issues (Mitchell, 1990), this hope was diminished as communities were attempting to use when courts were narrowing the interpretation of Civil Rights laws (Gordon and Harley, 2005). The landmark Supreme Court decision in 2001 of Alexander v. Sandoval codified the limitations of using Title VI by requiring these cases prove intent (Foster, 2008; Mohai et al, 2009). While Title VI was limited its ability before Sandoval to bring about environmental justice, the supreme court ruling has made it near impossible to show an agency was intentionally racially discriminatory in their actions (Mason, 2003).

Title VI is also limited in that it can be used only against a program or entity receiving federal funding. While Title VI applies at a federal level, California has a similar legal statute titled Government Code Section 11135 that states:

> No person in the State of California shall on the basis of, race, national origin, ethnic group, religion, age sex, sexual orientation, color, genetic information, or disability be unlawfully denied full and equal access to the benefits of, or be lawfully subjected to discrimination...by any state agency, is funded by the state, or receives financial assistance from the state. (CA Government Code 11135-11139.7, section a)

This California law is different from Title VI in an important way that still carries hope for its use with environmental justice cases because it does not require showing intent, only disparate impact (Ramo, 2013). Many lawyers and environmental justice advocates in California are now looking to the potential for using Gov. code 11135, including the California attorney general, Kamala Harris. In 2012, Harris' office published a fact sheet on how Gov. Code 11135 applies to issues of environmental justice and specifically how to use it with CEQA (Office of the Attorney General, 2012). This California law maybe promising for future litigation strategies, but all legal strategies are inherently limited due to their resources required (Cable, Mix, Hastings, 2005).

Despite each of the strategies having inherent limitations, together they have produced short and long-term environmental justice wins in the form of legislative and government changes. At both the federal and state level, environmental justice advocates have impacted policies, practices, and helped establish laws to further protect the health of low-income and communities of color (Brulle and Pellow, 2006; Mohai et al, 2009). Under the EPA, the

definition of environmental protection has expanded from enforcing federal environmental laws that were based more conservation and preservation of land to having a more human focus. This expanded definition is also evident by the shift in focus from issues pertaining to the Resources and Conservation Act to issues of air pollution and climate change. As the agenda and focus of the EPA has evolved, so have the laws it enforces, and the policies for enforcement. Before the EPA's creation in 1970, environmental laws included air, water, and land laws such as the Endangered Species and Preservation Act of 1966 and Endangered Species Conservation Act of 1969, Wilderness Act of 1964, Wild and Scenic Rivers Act of 1968, but also the Air Quality Act if 1967. Since 1970 the federal laws relating to the environment have expanded to include issues effecting human health, like drinking water, hazardous waste, and global warming (Gottlieb, 2005; College, 2011; Dunlap and Mertig, 2014).

National Environmental Justice Advisory Council (NEJAC)

While the EPA was expanding their definition of environment beyond wilderness and environmental protection for endangered species, by the 1990s environmental justice advocates were directly influencing federal policies. In 1990 the US EPA Environmental Equity Workgroup was formed as a response to political pressure (Cutter, 1995). This workgroup was designed to evaluate evidence that communities of color were more likely to host environmental burdens, identify factors contributing these burdens, and suggest strategies for improvement. The workgroup released a study in 1992 confirming earlier studies showing the correlation between hazardous waste facilities and communities of color. Although the workgroup showed a correlation, researchers criticized the study for only looking at facility location and not the EPA's enforcement or regulation of laws or decision-making practices (Mohai, 1993). Despite the methodological limitations of the study, it provided the motivation for future action and in 1992 Senator Al Gore and Congressman John Lewis introduced the first Environmental Justice Act of 1992. The Act had 44 sponsors, but never made it out of committee hearings and ultimately attempts to even bring the legislation to a vote failed (Hasler, 1993). The following year the National Environmental Justice Advisory Council (NEJAC) was founded to develop environmental justice strategies within the EPA. The 25 member NEJAC group is premised upon the importance of public participation as their role is advising and generating recommendations to the EPA on issues of environmental justice. Despite their intentions for advising the EPA on issues of environmental justice, their role has been criticized as lacking enforcement or the ability to bring about environmental justice (Konisky, 2015)

While the creation of the EPA Environmental Equity Workgroup and the formation of NEJAC were historic wins for the environmental justice movement signaling the institutionalization of environmental justice issues, Clinton's executive order was the first major action on environmental justice bringing legitimacy and further attention to the movement (Bullard, 2000). Executive order 12898 officially titled, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, included six sections for directing federal agencies to create and implement environmental justice strategies. Of these six sections, one is dedicated to public participation stating federal agencies may translate documents and ensure all documents and notices are publically accessible (Executive Order 12898, 1994). While the signing of the order was a move in the right direction, the vague

language on implementation left the order with little enforcement ability. One criticism often brought against the order, is its limited ability to state how environmental justice will be incorporated into environmental decisions, as its focus is on the adopt and implementation of strategies left to agencies' discretion on what this ultimately looks like (Bass, 1998).

From the signing of executive order there are environmental justice programs in the 17 federal agencies including the Environmental Protection Agency (EPA), Department of Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of Transportation (DOT), Small Business Administration (SBA), US Health and Human Services (HHS), US Housing and Urban Development (HUD), Department of Energy (DOE), and the US Department of Agriculture (DOA). While the EPA is considered the lead actor for implementing executive order 12898, all of these federal agencies must comply. They show this by creating out annual reports, lead work groups, or hold annual meetings to show how they are working toward achieving environmental justice in their agencies. In 2005, however, the EPA dropped race as a factor for identifying vulnerable or disadvantaged communities targeted for prioritization. The agency announced their decision on the grounds that all communities should be treated equally, regardless of race. This action led to the EPA's Office of Inspector General stating the EPA has failed to implement the intent of Executive Order 12898. In 2008, President Obama appointed a new administrator of the EPA, who declared environmental justice as one of her priorities (Huang, 2014).

California Environmental Justice Laws

From federal legislation in the early 1990s came a wave of state laws focused on environmental justice. At the state level, Senate Bill (SB) 115 passed in 1999, known as the first environmental justice bill. Although this was the first environmental justice bill passed in California, it was not the first to be introduced. Potential environmental justice bills were proposed in California going back to 1991, but then Governor Peter Wilson vetoed each one based on the argument that CEQA legislation was sufficient for addressing these issues (Peter, 2010). Although the five bills introduced between 1991 and 1997 were vetoed, they paved the way for the future environmental justice laws (Farrell, 2007). SB 115 (Solis) provided a statutory definition of environmental justice and directed CalEPA to develop an environmental justice mission statements under the Office of Planning and Research (OPR). It also created a framework for coordinating environmental justice efforts in California, but did not curb disproportionate impacts with the idea being that through the coordination, the impacts would not happen (Cal. Government Code § 65040.12 and Cal. Public Resources Code §§ 72000-01). Cal EPA later implemented SB 115 through its Environmental Justice Working Group and Citizen Advisory Panel, two groups it was mandated to create from SB 89 (Escutia), which was passed and signed in 2000. In 2004, CalEPA released their Environmental Justice Action Plan, and in 2014 they released an update to the plan. For their 2004 release, the CalEPA invited 250 community organizations to participate in their identification of environmental justice issues and concerns (Office of Planning and Research, 2003). While the success of these laws depends on the operalization of success set by the CalEPA, they have supported the codification of environmental justice issues in CalEPA's agenda. This operalization matters because if success

is measured by the number of staff hired, committees organized, or grants delivered, then CalEPA is meeting its goals (CalEPA, 2014; CalEPA, 2016), but if success is measured by the number of communities of color hosting a disproportionate burden of environmental hazards, then the environmental laws are failing the communities that pushed for them and need them the most (UCC, 2007).

Conclusion

As evidenced by the state and federal laws, committees, workgroups, and plans, the environmental justice movement and advocates have made strides bringing attention to the health and environmental hazards facing their communities. Despite the proliferation of environmental justice focused laws, changes with pollution concentrated in communities of color have been slow, if occurring at all. This slow implementation is due to a closed political environment or because even good environmental policies are limited by their implementation (Pellow, 2004). While the movement's success is visible through the numerous laws created in direct response to community organizing or action taken to reduce pollution in communities of color, there is much to do in overcoming environmental racism. Research conducted 20 years after the UCC's 1987 report showed the problem of pollution concentrated in low-income communities of color has not only not improved, but also in some places worsened (UCC, 2007). Other research showing the lack of enforcement of environmental laws and Title VI, and the retrenchment of environmental justice policies points to the need for evaluating the movement and strategies (Benford, 2005).

Public participation is both one potential strategy for working toward environmental justice, and itself an environmental justice issue. It's a strategy based on creating more just decisions based on a fairer process, but its success depends on its implementation. Scholars have shown the limitations of public participation in that the legal requirements are not enough to create meaningful public participation and what is really needed is to build community capacity or social capital (Innes and Booher, 2004), along with what planners can do to support or encourage this increase of capacity (Forester, 2006). The promotion of community participation through empowerment, capacity, or social capital, however, will not be able to achieve meaningful participation if the government agencies implementing these processes do not consider the community, the opposition and supporters, and what they need to be meaningfully involved. While the inclusion of public participation is in itself a change for communities once marginalized from environmental decisions, the way in which government agencies interpret the requirements around public participation has varied. These variations in implementation have created situations where governments have increased opportunities for participation by providing more meetings, more reports, and more comments, but this has not necessarily led to more meaningful participation or improved outcomes (Burton and Mustelen, 2013).

Through the use of community based strategies, the environmental justice movement has helped create new tools for community involvement with environmental decisions, along with assisting government agencies with being more informed on the health and environmental concerns facing communities of color. Since 1982 and Warren County, the federal and state

government have recognized the need for environmental justice polices, but these laws and practices have fallen short in protecting communities (Pellow and Brulle, 2005). Since public participation is the only strategy that is a state mandated legal requirement, communities should know how to use it effectively to their advantage, what the opportunities are, and the limitations for its use. This leads to questioning the ability for communities opposing toxic facilities to effectively use public participation, and examine what other strategies have they used to make the process more meaningful.

Chapter 2 References

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Chapter 3: The Roles and Challenges for Government Agencies & Community Residents in Permitting Hazardous Facilities

Local government agencies determine land use through creating and enforcing general plans and zoning ordinances. Due to the nature of land use in different regions, these general plans and zoning practices will look different in urban and rural areas. These differences matter beyond population densities because rural areas dominated by agriculture uses require large amounts of space, but this limits the space available for development and growth. Without intentional planning for high-density development, these rural spaces remain rural places. While land use planning for agriculture or preservation is debated elsewhere (Pfeffer and Lapping, 1994; Geoghegan, 2002), rural places remaining rural is important from an environmental justice perspective because toxic facilities are often sited in rural areas (Epstein and Pope, 1982; GAO, 1993; Mennis, 2002) and justified because of the low population densities (Cutter, 2012). Rural populations are inherently at a disadvantage to oppose the siting and expansion of these facilities because there are fewer residents to challenge the decision, and the project can occur with little public knowledge (Cerrell Associates, 1984). Although today state and federal laws require public participation on projects receiving federal financing and state and federal permits, rural residents continue to face barriers to being meaningfully included in the permitting process.

While planning commissions have a strong hand in the development of general plans, the public has little to no involvement in these land use decisions. In rural and unincorporated areas, these decisions are made at the county level, which can be even further removed from the public's involvement by having no city council representation, or members of the commission residing within the places they are creating. Although the public is not involved with the local land use decisions, there are opportunities for their involvement with public or private projects that involve the issuing local, state, or federal permits through the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA) legislation. The intention of these two laws was to regulate environmental protection, while also meaningfully involving the public. While the CEQA process has been researched for its ability to improve environmental decisions (Varner, 1991; Olshansky, 1996; 1996b; Cole et al, 2004) or the importance of including the public in the CEQA process (Kuhn, 1998; Cole, 1995; Mihaly, 2010), less is known about the limitations for CEQA to involve the public in a meaningful way, especially when other opportunities for public involvement are available and the community desires to be engaged with the process.

This chapter uses the case study of Kettleman City to demonstrate the benefits and limitations of CEQA and its public participation requirements to meaningfully include the public in the landfill permitting decisions. Kettleman City is a highly organized community that fought to be involved with the landfill incinerator proposal meetings in 1991 and expansion proposal meetings in 2009. Comparing the two cases of the incinerator and expansion proposals with a community that has been engaged since learning of the landfill's existence shows the challenges they have faced, how these challenges have changed over twenty-five years, and most importantly, the possibility for CEQA and other public participation requirements to meaningfully include the public in these permitting decision. The case of Kettleman City reveals the challenges to being included in the CEQA public participation process, as well as participation opportunities beyond CEQA with the permitting of a hazardous facility.

The Federal, State, and Local Permitting & Public Participation Requirements

Federal, State, and local government agencies all have a role in permitting hazardous waste facilities. These roles vary by government level because although the federal government sets permitting regulations, it's state governments that approve permits, and local governing agencies implement the process. At the federal level, the Resource Conservation and Recovery Act (RCRA) covers the management of hazardous waste, but the requirements are enforced through California government agencies, the California Environmental Protection Agency (CalEPA) and the Department of Toxics Substance Control (DTSC), which approve the state permits after county governments approve the Environmental Impact Review (EIR) and conditional use permit. While permits must be obtained first in the local jurisdiction, the application for a hazardous waste facility starts with the Department of Toxic Substance Control (DTSC). In operating a new facility, applicants must apply for a RCRA permit, which begins the process and the public is notified from the beginning. In the case of Kettleman City, the landfill existed on the current site since 1979, and it was a disposal site even before that time. Although today there are laws requiring public noticing for permits, meetings and informing the public that go back over forty years, in the late 1980s, the Kings County Board of Supervisors did not comply with these laws by not properly informing residents of the proposal and calling a vote on the permit without notifying the public (Corwin, 1991). It was this lack of complying with legal obligations to provide meaningful public participation opportunities that won the lawsuit against the incinerator proposal in 1991 (Cole, 1993). In 2009, however, with the Kings County Board of Supervisors complied with the legal requirements for public participation around permitting the expansion proposal, but despite their legal compliance, residents opposing the expansion project faced challenges to being meaningfully included in the permitting decision.

RCRA and CEQA Public Participation Requirements

In California, the key legal requirements regulating the permitting of hazardous waste are the federal Resource Conservation and Recovery Act (RCRA) and the California state California Environmental Quality Act (CEQA) (DTSC, September 1998). RCRA was enacted in 1976 and is the principle federal law in the US governing the treatment and disposal of hazardous waste. Under this act the Environmental Protection Agency (EPA) is authorized to regulate hazardous waste throughout the US, and established the process for permitting hazardous waste in California. This process was designed to ensure hazardous waste was handled, treated, stored, and disposed in a manner safe for employees and surrounding communities. The EPA regional offices issue permits for the treatment of hazardous waste, which in California is district nine, and the EPA requirements of public participation in the permitting process of hazardous waste are located in title 40 of the Code of Federal Regulations (CFR). While some public participation practices listed there are legal requirements, others are suggestions to encourage dialogue between agencies, applicants, and the public. The EPA states the permitting process offers multiple opportunities for public participation that includes staying informed on proposed projects through mailing lists and list serves, submitting written comments on projects, and requesting to meet with agency officials (McGregor, 1990; Munton, 1996).

The California Environmental Quality Act (CEQA) legislation takes the federal policies for public involvement a step further by requiring public involvement with the public disclosure and

potential mitigation of negative environmental impacts. While the RCRA process for permitting hazardous waste includes opportunities of public input with the application for hazardous waste permits, CEQA takes it one step further by requiring the public disclosure of negative impacts, and opportunities for public engagement with these findings (DTSC, May 1998). Established in 1970, the California legislature passes CEQA with the goal of identifying, disclosing, and if possible, mitigating any significant environmental impacts of an environmental project prior to the project being approved. The intention was that CEQA itself would not regulate land use, but instead provides a framework for analysis and public disclosure of the environmental impacts, alternatives, and mitigation of impacts of a project. The fundamental objectives, and specified intent, of CEQA are to prevent significant and avoidable environmental damage by identifying and considering the environmental impacts of a proposed, and to inform government officials of these the potential negative impacts as well as disclose them to the public (Barbour and Teitz 2005).

One aspect of achieving this goal for informing and disclosing is through an Environmental Impact Review (EIR). The EIR is developed by the project's lead agency, and they must adhere to specific legal requirements for completing, circulating, and updating the EIR. After filing a Notice of Preparation (NOP) with the Office of Permitting (OPR) that includes a project description, location of project, and probable environmental impacts, the lead agency will begin the draft EIR immediately without needing to wait for responses from NOP. The lead agency then holds scoping meetings to determine the scope of the environmental information required, and must he held no later than 30 days after the lead agency or project applicant has requested the meeting. Although the State of California encourages and suggests these scoping meetings be made public, they are not legally required to be public (California Natural Resources Agency, 2016). By not including the public in these early stages of development, the lead agency sets the agenda for the project and creates a barrier for public opinions and concerns from the beginning.

Once the EIR is complete, it is circulated by means of a notice of public review. This notice is achieved by placing a notice a local newspaper with the largest general circulation in the area, and displayed on government websites. The notice must include the project description, a 45-day public comment period, the identified lead agency, location of information, and the date, time, and location of any public meetings. For projects occurring in rural areas, these notices immediately become a barrier for inclusion in the project as newspapers, even the largest one, are limited in their circulation, and Internet access is required to view the documents online, plus they are published in English. In Kings County, the largest newspaper is the Hanford Sentinel, an English printed-paper. This 45-day comment period is imperative in the process though because comments submitted during this time receive written response from the lead agency. The lead agency must consider all of the comments received, reply to them, and they can choose to use them to make changed to the EIR (California Natural Resources Agency, 2016).

The 45-day notice must also be posted at the project site, mailed to anyone on the project mailing list including residents and property owners within a ¼ mile radius for projects including burning hazardous waste, and placed with the draft EIR in information repositories, such as libraries in the proposed area (California Natural Resources Agency, 2016). Again, the noticing requirements presents challenges for rural areas were spatial and social distances become a challenge to the process. In Kettleman City, no one lives within a ¼ mile of the site that is 3.5

miles away, requiring residents to know about the project through other means. Changes in technology and the way people received news and information have also made these requirements outdated as many people now get news and information from the Internet, and not newspapers or libraries. Posting notices in newspapers and libraries, and in English creates a barrier for residents to being informed on the project, and limits their involvement at meetings and providing comments.

Informing the public is the core of CEQA legislation, and when executed correctly, this is exactly what CEQA achieves, but CEQA is limited in its ability to inform, and informing is not the same as involving (Olshansky, 1996). As Table 6 shows, there are multiple opportunities for public participation within the EIR process, but the level of involvement varies within a narrow window of options from public comment to public hearing. The table highlights CEQA's public participation requirements along with how Kings County, as the lead agency, fulfilled these requirements for the expansion project. Kings County then provided all of the legally required opportunities for public participation and complied with the notice requirement. In 1988, the year the incinerator was proposed in Kettleman City, CEQA guidelines were revised to include the provision of electronic formats whenever possible, including notices of all public hearings (Barbour and Teitz, 2005). Although this provision was made available to government agencies, its unclear how many people were able to take advantage of these opportunities in rural places that even today have limited Internet access.

Table 6 also highlights the role of the government agencies and the public within the CEQA process. The role of the government with CEQA is to lead the process and use the information they identify to make a decision on the project, while the role of the public is more limited than the government role with providing comments on what the government has identified, or commenting on the process through legal action challenging the process. Originally CEQA required identifying environmental impacts of the proposed project, as well as alternatives and the selection of whichever had the least impact, but changes to CEQA in 1976 introduced statements of overriding considerations. The introduction of overriding considerations shifted the idea of CEQA from both a procedural requirements and evaluation of outcomes to only relying on the procedural (Barbour and Teitz, 2005).

CEQA's Public Participation Limitations

As it is written now, CEQA is more procedure focused than outcome driven. That is, permit decisions based on CEQA analysis assesses if the process was carried out correctly and legally, rather than assessing the actual outcome of approving the project. The aspect of the original CEQA language that did require an assessment of the outcomes, including alternatives and the permitting based on the scenario with the least impact was removed with the introduction of overriding considerations. Now, an EIR must include the impact of the project and if a significant impact is found, a statement of overriding consideration can be added to justify the need for permitting a project known to cause a significant environmental impact. These considerations are called "significant, but unavoidable" and by including them in the EIR, their declaration make harmful outcomes a procedural issue instead of an outcome evaluation.

Table 6: CEQA Public Participation Requirements and Kings County Opportunities for the landfill expansion proposal

CEQA Requirement-	Public Participation-	Kings County Opportunity- **Expansion Proposal**
Step 1. Project Definition		
Prepare Environmental Impact Classification form.	No requirement for any public involvement.	None.
Step 2. Negative Declaration		
CEQA Requirement	Public Participation	Kings County Opportunity
File public Notice of Intent; provide 30 day public review.	Requirement for public comment submission with an option to have a public hearing.	WM filed a notice of intent on April 11, 2005 and application submitted on July 12, 2005 and circulated for 30 days.
Step 3. EIR		
CEQA Requirement	Public Participation	Kings County Opportunity
File and circulate Notice of Preparation; provide 30 days for public comment	Requirement for written comments with an option for meetings	Filed in 2004 and circulated for 30 days. A revised NOP was circulated in August 2005.
Option to have a scoping meeting	Attend a scoping meeting to provide feedback on the project proposal	None.
File a Notice of Completion and publish a Notice of Availability. Circulate copies of both for 45 day review	Submit written comments on the draft EIR.	Circulated in 2009.
Host a public hearing on the Draft EIR	Submit comments on the draft EIR.	Kings County Planning Commission held public meeting on October 5, 2009.
Prepare responses to draft EIR in a final EIR.	No requirements for public involvement.	None.
Provide responses ten days prior to project approval.	Review the responses.	Reviewed responses and provided comments.
Certify the Final EIR and Final NOD.	30-day statute of limitations for legal challenges.	Certified December 2009.

Since CEQA is procedurally focused instead of outcome driven, the compatibility of CEQA legislation with Environmental Justice policies is limited to procedures. This means that as the main environmental law in California, CEQA can only go as far including the public in the process of informing and disclosing. The impact then of public participation is important as a vehicle for community voices and a legal tool for opposition, but limited in the ability to consider these voices or concerns in the outcomes. One main thought of researchers is to amplify the community voice through the government agencies support in empowering community involvement, building social capital, or strengthening community capacity to be involved in the process (Innes and Booher, 2004; Forester, 2006), but within a procedurally driven policy such as CEQA, community empowerment in the process is confined to the process. Even when community residents are fully empowered to participate in the process, the limitations of the process mean their engagement only goes so far.

Despite the inherent limitations to only include the public in the process of informing and disclosing, and not in outcomes or decisions, it remains a tool for environmental justice. Environmental justice activists and lawyers have pointed to CEQA public participation requirements, or the lack of their fulfillment, as a means of challenging a project proposal (Cole, 1993; Ramo, 2013). In this way, CEQA is an environmental justice tool because it provides two essential things for communities: a legal avenue for challenging potentially harmful projects, and most importantly it provides a platform for community voice where concerned residents can speak their opinions, meet with decision-makers directly, and receive answers to their questions (Cole, 1993). This aspect of including the community voice is noted as more important than CEQA being used as a legal tool because when lawyers go to court, community voices do not follow, which then omits one of the founding Environmental Justice Principles of "we speak for ourselves." At its best, CEQA can open a dialog between government officials, private corporations, and residents (Brostrom et al, 2016). Where this ideal falls short, however, is when the government agencies involved interpret the legal requirements in a way that limits the dialog by creating barriers to the platform for community voices to be heard. CEQA requirements are already limited in their ability to provide community input on a project because they are designed to inform and disclose, so any barriers to being included in this already limited public participation process makes the process less meaningful for the public involved.

The Role of DTSC and Kings County

While CEQA legislation regulates the permitting process for hazardous waste facilities, two government agencies actually approve the permits based on the CEQA process. First, the local jurisdiction and lead agency, in this case Kings County, must approve and accept the EIR at a public meeting open for comments, and then the permit is reviewed by the state agency, the Department of Toxics and Substance Control (DTSC). In 2012, due to the lack of transparency and standardization with permitting, DTSC's permitting process underwent a review that found 20 ways DTSC could improve its permitting process. These recommendations, conducted by an external consulting company, CPS HR Consulting, highlighted issues within DTSC's permitting process including the need for DTSC to develop clear criteria for approving, denying, and revoking permits of hazardous facilities (CPS HR Consulting, 2013). Although the review does not provide suggested criteria for permitting, the authors documented a major problem with permitting hazardous waste criteria in California, namely there are none. Since this 2013 report,

DTSC developed a Permitting Enhancement Work Plan (DTSC, 2014). This new two-year plan was specifically focused on defining the permitting process, standardizing metrics, enforcement, informing the public, and identifying environmental justice concerns (DTSC, 2014). While DTSC's plan has yet to be evaluated, the Kettleman Hills Facility was permitted under the old permitting paradigm, which lacked criteria. DTSC's public notice for the KHF stated their role in the permitting the KHF was to evaluate the facility's application for completeness, and then determined to prepare or deny a draft permit (DTSC, May 2013). Although the lack of clarification with the permitting process was later acknowledged by DTSC staff (DTSC, 2014), as the lead agency overseeing hazardous waste in California they have a responsibility to ensuring the facilities they permit undergo a fair and transparent process.

Since the Kettleman City Facility is located in an unincorporated area of Kings County, the Board of Supervisors (BOS) also has a role in the permitting process. While the planning commission hosts the EIR meetings and facilitates the public participation meetings, the BOS must then approve the conditional use permit (CUP). Once the EIR and CUP are approved and granted, DTSC reviews the permits and approvals and determines whether to grant their state permit. In addition to the county and state permits, the Kettleman Hills Facility requires additional permits from regional government agencies. These regional government agencies include the California Regional Water Control Board- Central Valley Region (RWQCB) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPC) (DTSC, May 2014).

Other Public Participation Opportunities

The Tanner Act (1986)

In addition to the Board of Supervisors, DTSC, and numerous regional organizations offering public participation opportunities in their permit review, another state law regulating the permitting of hazardous waste includes requirements of public involvement. AB (2948), (here after known as the Tanner Act), was introduced by assembly member Sally Tanner in 1986 to expedite the approval of hazardous waste facilities regarding siting or permitting of new or existing facilities. The goal of the bill was to expedite the process while ensuring the company's compliance with existing laws, create a means for giving the public a voice in the process, and create a means for appealing local land use decisions. The Tanner Act goes beyond information and disclosures, as it requires the Board of Supervisors (BOS) appoint a seven-person committee known as a Local Assessment Committee (LAC) to represent the community's interest in the permitting process. The LAC is extremely important to the permitting process because this committee establishes criteria that would make the permit approval acceptable to the community. These criteria then become legally binding requirements for the facility owner, or WM, to comply with in order to receive the permit. The applications of these criteria the committee can establish are really open ended, so they can require the company to provide resources or just about anything that would benefit the community Cole, 1998).

While this law should provide additional community voices and representation in the permitting process, the language does not require a diversity of perspectives. It only requires the

BOS to create an LAC, and the BOS in Kings County has interpreted these community interests on the LAC generously. Since this act pertains to new and existing facility permits, the Kings County BOS was required to appoint a LAC in both 1988 and 2005, when WM submitted applications for the incinerator and the expansion. In both cases the BOS appointed members either not from Kettleman City, or selected residents from Kettleman who were outspoken pro-WM supporters. In research focused on the efficacy of the LAC in permitting decisions, Cole (1998) interviewed members, and applicants, for the 1988 LAC incinerator. Cole's interviews reveled why the one Kettleman resident was selected for the LAC stating:

> Maya, who later became an outspoken opponent of the project, laughed accounting how he was chosen for the LAC. "I told them I was for it (the project) and I was chosen. When they found out I was against it, they couldn't do a damn thing about it. (Cole, 1998; pg. 743)

Maya would be the one Kettleman City resident on the 1988 LAC, and he was also the only Hispanic member representing a predominantly Hispanic community. The lack of Kettleman residents, and the lack of Hispanic members on the LAC became a point of contention with opponents of the incinerator as they then felt the LAC did not reflect them or their interests. To demonstrate their opposition to both the incinerator and LAC makeup, opponents would attend LAC meetings and openly call for the committee's resignation. Despite their objections to the 1988 LAC, the committee proceeded with determining their recommendations Cole, 1998).

Despite community opponent protest, objections, and calls for the LAC's resignation in both 1988 and 2008, the BOS was procedurally compliant with the Tanner Act in their selection and responded to the concerns of the LAC makeup stating they did not receive applications from many Kettleman residents. One Kettleman resident and organizer responded to this statement with:

> The County always said we didn't get any applications, but they also didn't advertise it. No one knew about it. We had someone on our staff at the time who did apply and she was Latina. She applied as the environmental rep and was denied. (Marina[9], 42, Kettleman City resident and organizer)

Despite the BOS statements they did not appoint more residents from Kettleman due to the lack of interest, more than one person from the area applied for community and environmental reps. When the LAC was formed in 2005, expansion opponents spoke out against the committee's lack of Kettleman resident's representation and the seemingly overrepresentation of Kings County Farm Bureau interests. Even the environmental rep was questioned for her ties to the farm bureau and the lack of information on her organization. A community advocate explained:

> The environmental interest was the Farm Bureau, which isn't usually seen as environmental organization. The other one was a weird environmental group no one had ever heard of. There was no website. We asked for contact info and there was none. It was very unclear if that entity even existed. (Ana, 34, community advocate)

[9] The names have been changed to protect the interviewee's privacy.

While the organization representing the environmental interest wasn't directly the farm bureau, the representative did have close ties to the farm bureau. The close ties to the Kings County Farm Bureau were questioned because of the farm bureau's interest in permitting the expansion of the KFH. Kings County's economy, being a predominantly rural county, relies on agriculture, dairies, and agribusinesses (Kings County Association of Governments, 2011), and these industries are considered hazardous waste generators because of the pesticide disposal and above or underground storage tanks (CalEPA, 2013). The EPA then regulates some, but not all, pesticide disposal as hazardous waste (USEP Pesticide Disposal Website). The Kings County Farm Bureau would then have a beneficiary interest in the expansion of the KHF as they represent the farming industry in Kings County, which requires the use of hazardous waste disposal facilities.

LAC Committee Representatives

Looking closer at the backgrounds and organizations of the other LAC members, from both 1988 and 2005, reveals a tight network of interests between members, government officials and the Kings County Farm Bureau. Based on information from a 1996 PhD dissertation, the LAC formed in 1988 for the incinerator included a farmer from Kettleman City, a former member of the Kings County Planning Commission, a retired judge, a former member of the Corcoran city council, a Hanford business man later elected to the Board of Supervisors in 1994, a retired Avenal pharmacy owner, and a community college student who in 1993 became a member of the Kings County Planning Commission (Kennedy, 1996). The majority of this LAC supported the incinerator, all except the farmer from Kettleman, who is referenced above stating his opposition to the incinerator. According to the same dissertation, which interviewed many of the members, the Kettleman resident was encouraged to apply as the community representative. It was also unclear which interest were represented by who as it wasn't made clear during the process, and one member when interviewed three years after the committee meetings could not recall which interest he represented (Kennedy, 1996).

The LAC appointed in 2005 had similar issues with their representation as members had ties to the Kings County Farm Bureau, other boards standing to benefit from the permit approval, hazardous waste connections, or were openly WM supporters. The original seven members shown in Table 7 included Vern Grewal, Aletha Ware, Jackie Douma,Kelly Deming, Jim Verboon, mari Lynn Starrett, and Craig Schmidt (LAC Final Recommendations, 2009). Other members were appointed to replace those who had to step down or resign for various reasons, including personal or potential conflicts of interest (Table 8).

Community residents opposing the expansion project also opposed the LAC formation from learning about the committee in 2008 (Yashimata, April 17, 2008). They opposed the LAC committee members on the basis of the lack of racial diversity, the lack of diversity in perspectives on the expansion decision, and the seemingly other interest being represented beyond the stated three interests (community, business, and environmental). When the LAC formed in 2005, the chair of the LAC, Jim Verboon, represented one of the two environmental group interests on the committee, but Verboon was also well networked to other LAC members and interests. According to his profile on the Madera County Farm Bureau website, Verboon is a farmer who served on numerous California Farm Bureau committees (Madera County Farm

Bureau website), he also served on the Kings County Water Commission for district 3 (Kings County Water Commission website), and as the president of the Kings County Citizens Health & Environment (990s Foundation Center, 2006). This organization had additional representation on the LAC was Kelly Deming, the other environmental group representative, was the secretary of the Kings County Citizens Health & Environment (990s Foundation Center, 2006). The two environmental interests on the LAC were networked prior to the LAC through their shared leadership roles with this other organization, the Kings County Citizens Health & Environment as well as the Education and Agriculture Together (EAT) Foundation (Madera County Farm Bureau; Nidever, 2014).

Table 7: The Original Seven LAC Members Appointed in 2005

Years LAC	Member Name	LAC Interest Represented	Other Interests Represented
2005-09	Vern Grewal	Community	• Former employee of PerkinElmer
2005-09	Aletha Ware, Vice chair	Community	• Kings County Water commission • Chair, Kettleman City Community Services District
2005- 07	Jackie Douma	Community	• Unknown
2005-09	Kelly Deming	Environmental or Public Interest	• Secretary of the Kings County Citizens Health & Environment • Director Kings County Farm Bureau (1988-2003)
2005-09	Jim Verboon, LAC Chair	Environmental or Public Interest	• Local farmer • Kings County Water Commission for district 5 • Director of the Kings County Citizens Health & Environment • Relative on the BOS
2005-09	Mari Lynn Starrett	Business or Industry	• Unknown
2005-08	Craig Schmidt	Business or Industry	• Former PG&E employee

The group Kings County Citizens Health & Environment lacks a website and their contact information is difficult to find making it seem as though the group appeared just before the LAC meetings. Despite the lack of public information, news articles show the group formed in 1988 by Alene Taylor during a legal battle between farmers and residents in Kings County against a power plant proposal in Hanford (Nidever, 2007). After the political win against the power plant, Alene Taylor went on to serve two terms (eight years) on the Kings County BOS for district 5 from 1996-2008 (The Hanford Sentinel Editorial, 2014). The difficulty with this environmental group is the lack of transparency with their public information, as well as their relationships to other members, organizations, and political positions.

Of the three original community interests (Ware, Douma, and Grewal), only two remained on the committee through 2009 (Table 8). Douma's seat was vacated in 2007 and an extensive Internet search returned no information on her or why she left the committee. Ware and Grewal remained as community representatives, and while Ware was an outspoken supporter for Chem Waste, Grewal's former employer was a generator of hazardous waste (Yamashita, 2008) calling into question the ability of either of them to be objective in their recommendations. Ware has been a long time resident of Kettleman City, moving there in 1968 (Yamashita, 2008), she has been active throughout the community including serving on as the chair of the Kettleman City Community Services District (KCCSD). This organization has sent letters of support, signed by Ware, for the permit approval of the KHF. In one letter dated September 25, 2013, Ware addressed the Central Valley Regional Water Quality Control Board in support of the expansion permit. Ware cited Waste Management long time assistance to the KCCSD and considers them an "outstanding corporate citizen and a strong supporter." Ware noted Waste Management's contributions to the community, including providing $50,000 for drinking water, their employment of dozens of people, and the company contributions through charity, taxes, and payroll (Ware, 2013).

Of the seven original LAC members, two were replaced and these two were then again replaced more than once (Table 8). Ceil How Jr replaced Douma as the community representative, and was later replaced by David Block in 2008. Ceil Howe Jr operates Westlake Farming, one of the largest farms in the west that in 2001 owned more than 60,000 acres in the Tulare Lake Basin (Cline, 2001). As of 2016, Howe's farms are down to about 25,000 acres of farmland and farms just 4,000 acres of it, as he has sold or leased land to a solar power company and 15,000 acres to the Los Angeles sanitation district (Lindt, 2016). This sale or lease to the Los Angeles sanitation district was controversial at best as in 2005 the district built a plant on the Westlake farmland to process 500,000 tons annually of treated sewage to be used as fertilizer (Nidever, 2005). This fertilizer is used throughout the county on agriculture and is a practice the Howe family had employed for a while. In 2001, Howe landed in court after he illegally seized land from nearby farm owners to build a pond to store fertilizer sludge. To build these ponds, Howe took 21 acres of his neighbor's farmland and built a 740-acre drainage pond (Arax, 1999). Being one of the largest farm families in the area, but not a resident of Kettleman City caused speculation of Howe representing the community interest on the LAC. In 2008 Howe switched interests on the LAC from community to business, but the reason given was to allow someone else fill the vacant LAC seat. The BOS stated they could not fill the vacancy left by Schmidt in business, so they moved Howe to business to open up community reasoning more people could apply for that seat (Yamashita, May 19 2008).

Howe continued to serve on the LAC as a business representative until 2009 when Alvaro Preciado replaced him (Table 8). During the January 8, 2009 LAC meeting, Preciado was introduced as the newest member (LAC Meeting Minutes, January 8, 2009). One month before this announcement, however, Preciado participated in a community protest against the LAC formation in Kettleman City. At the protest Preciado spoke out against the LAC and stated he too had received little notice of the public meeting in Kettleman City (Yamashita, Dec 8 2008). After joining the LAC Preciado, an Avenal resident and then wastewater treatment employee (Yasmashita, March 10 2009) did not protest the committee, and during the end of the permitting process Preceiado was elected to the Avenal city council (Eiman, 2014) and later as the mayor

pro tem of Avenal (City of Avenal website). The other business and industry interest was represented by Avenal resident Mari Lynn Sterrette, of which no public information was available, despite a thorough Internet search. Again the lack of public information available for someone who is supposedly representing the public, and a business industry should not be allowed. The legal requirements of the LAC however, do not require members to make themselves publically available or discuss their interests publically. Despite this limitation with the LAC requirements, there are only seven people selected to represent the entire impacted community, and these seven people should be more publically visible so those who cannot have a voice in the process understand which voices and perspectives are being heard.

In July 2008, David Block filled Howe's other LAC position as community interests (LAC Final Recommendations, 2009). Block was a retired environmental scientist from Merced County Environmental Health division who worked on underground gas tanks (Merced County Department of Public Works). Due to the potential for leaks or leaking underground storage tanks (LUSTs), the EPA and the California State Water Resources Control Board regulates them, and in some cases as hazardous waste (State Water Resources Control Board). Block, a Hanford resident, is another member living outside of the most impacted area of Kettleman City. Having residents from Kettleman City represent the community interest was a main objection of LAC opponents, but the BOS selected only one Kettleman resident and she was an outspoken supporter of the landfill. The additional community representatives were not from the most impacted community of Kettleman City, and their connections to working in industries handling or producing hazardous waste seem like obvious areas for conflict of interest. While their industries were not being represented, having only pro-WM or pro-hazardous waste representatives cannot balance the opinions and perspectives of the LAC committee (Table 9).

Table 8: LAC Members and their replacements 2005-2009

LAC Interest Represented	LAC member name: time on LAC	Replaced by: Time on LAC	Replaced by: Time on LAC
Community	Vern Grewal: 2005-2009		
	Aletha Ware: 2005-2009		
	Jackie Douma: 2005-October 2007	Ceil Howe Jr :Feb 2008-May 2008	David Block: July 2008-2009
Environment	Kelly Deming: 2005-2009		
	Jim Verboon: 2005-2009		
Business & Industry	Mari Lynn Starrett: 2005-2009		
	Craig Schmidt: 2005-2009	Ceil Howe Jr: May 2008-July 2008	Alvaro Preciado: Jan 2009-2009

(Source: LAC Final Recommendations, 2009)

Table 9: Final LAC Members, interests, and affiliations (2009)

LAC Years	Member	LAC Interest	Other Affiliated Interests
2005-2009	Jim Verboon, Chair	Environmental	• Kings County Water Commission for district 5 • President of the Kings County Citizens Health & Environment • Member of E.A.T foundation
2005-2009	Kelly Deming	Environmental	• Secretary of the Kings County Citizens Health & Environment • Member of E.A.T foundation
2005-2009	Aletha Ware	Community	• Chair, Kettleman City Community Services District
2005-2009	Vern Grewal	Community	• Former employee of PerkinElmer (generator of hazardous waste)
2005-2009	Mari Lynn Sterrette	Business & industry	• Unknown
2008-2009	David Block	Community	• Retired environmental scientist from Merced County Environmental Health division
2009	Alavaro Presciado	Business & industry	• Elected to Avenal City Council

The Kings County Board of Supervisors, Kings County Farm Bureau and Waste Management

The clear potential for conflict of interest between LAC members and the approval of the expansion permit became a contentious issue for Kettleman City expansion opponents (Yamashita, April 17 2008). In addition to community concerns of the LAC accurately representing Kettleman City interests, residents were also concerned with the Board of Supervisors (BOS) and their close ties to the Kings County Farm Bureau, an organization that supports Waste Management. Although an elected board, the Board of Supervisors have all been endorsed by, received campaign money from, or are otherwise connected to the Kings County Farm Bureau (Kings County Farm Bureau, 2014). The Board of Supervisors' support for Waste Management has been shown through individual members praising the company for the services, but also through the unanimous support for the projects, sometimes in legally questionable ways. In 1989, the Board of Supervisors (BOS) did not hold a public hearing and called a vote on the incinerator permit before a new board could come into place. According to a 1989 Los Angeles Times article, one member of the board, Les Brown, had been voted out and before he could step down the board called a vote where the incinerator permit passed unanimously. The supervisor replacing Brown in 1990, James Edwards, would potentially oppose the incinerator project (Corwin, 1991). Edwards only served one term on the board and was replaced by a Kings County Farm Bureau backed candidate, Joe Neves, who in 2016 served on the board (Kings County Board of Supervisors, 2016). After leaving the board, Brown took a position with a lobby firm in Sacramento specializing in hazardous waste issues (Corwin, 1991).

The close network of the BOS, the Kings County Farm Bureau (KCFB) and Waste Management is a concern for residents because the KCFB and WM are wealthy organizations that stand to either gain or lose with the expansion approval. In 2014, agriculture in Kings County was valued at $2.47 billion dollars, a 9% increase from 2013 (Lurie, 2015). Farms and dairies, both represented by the KCFB, rely on the KHF for waste disposal, especially pesticides that require special disposal treatment. The location of the KHF is then ideal for the large agriculture businesses in Kings County, and is an incentive for permitting of the facility's expansion. In the May 2012 issue of the Kings County Farm Bureau (KCFB) Update, author Amy Fienen published an article siting Waste Management's positive contributions to the Kings County economy siting the need for the expansion. The article stated the project will bring jobs to the community and the $50,000 donation from WM to the Kings Community Action Organization (KCAO) will help them secure a state grant for future services, further investing in the local community (Fienan, 2012). The article was published under the "Business Spotlight" section that said, "Business Spotlight features KCFB's Business Support Members," which the August 2012 edition list Waste Management as one of the Farm Bureau's financial supporters (Kings County Farm Bureau, 2012). Under the directory of donors, it encouraged readers to support their supporters by stating, "The businesses individuals, and organizations on this page are showing their support of the agriculture industry and, in particular, Kings County Farm Bureau. Please show your appreciation by supporting them in return" (Kings County Farm Bureau, 2012, pp. 13). Another member listed in 2012 as a member of the Kings County Farm Bureau was the Kings County Water District (Kings County Farm Bureau, 2012). The Kings County Water District will gain from the permit approval because through the LAC recommendations Waste Management agreed to pay off Kettleman City's debt to the Water District, about $500k, but only if they receive the county permit (LAC Final Recommendations, 2009).

The Farm Bureau received money from WM, and they also published articles in their local news in favor of WM. In the January 2013 edition of the Kings County Farm Bureau (KCFB) Update, an article titled "Waste management Addresses Spill Violations" discussed the recent violations at the KHF stating that "while DTSC has found these violations, they do not tell whole story" (Kings County Farm Bureau, 2013, pp. 4). The article is dedicated to Waste Management's perspective on the spill violations that "DTSC is not alleging that the spills are violations. Rather, the alleged violations are about reporting protocols for small spills that occur at our facility" (Kings County Farm Bureau, 2013, pp. 4). Waste Management did not believe they needed to report the spills and they "disagree with DTSC's interpretation of our permit, but are currently working to resolve the disagreement" (Kings County Farm Bureau, 2013, pp. 4). The article concludes by urging readers of the KCFB update to get the facts on Waste Management's operations (Kings County Farm Bureau, 2013). The printing of articles from only the perspective of WM that encourage support for the company shows the farm bureaus' support for the company.

These committee selections demonstrate how this additional opportunity for committee representation is beholden to the Board of Supervisors and their interest approving or denying the landfill permit. One challenge here is that because Kings County is a rural county, and Kettleman has such a small population, the BOS could easily justify their selections from outside the Kettleman area, even though Kettleman would be the area impacted most from the

incinerator or expansion project. Although the Tanner Act has the potential to generate meaningful community involvement from diverse perspectives that could lead to better outcomes, the local government's selection of members tightly networked to each other, the powerful agriculture lobby, and government members themselves, shows the lack of consideration for having meaningful public involvement in the process.

Another challenge for opponents is that although opponents to the expansion called the LAC process "illegal" (Yamashita, Dec 8 2008), the process itself was legally compliant as it adhered to the legal requirements in committee formation, public noticing, and holding meetings. Despite being legally compliant, it was the way in which these legal requirements were carried out that led to opponent's frustration. In 2008, the newspaper The Hanford Sentinel hosted a space for LAC and community leaders to come together and discuss their concerns. The Sentinel authors stated they felt the meeting was productive, and in the end while the county followed the law with the LAC, "…we feel it did not follow the intent of the law. There are no Latinos represented on the board and the only local resident of Kettleman City is an outspoken advocate for Chem Waste, who also has directly benefited from the company" (Hanford Sentinel, 2008). This meeting, as well as the LAC meetings show that the issue was not the LAC doing anything illegal, which would be a much easier problem to address, but the problem was that the BOS had the power to form a committee that had a unified perspective that supported the permit approval, and the LAC had the power to host meetings at times and locations without considering what would best encourage public participation. In this way, a process that should have supplied additional opportunities for public input and a diversity of perspectives reflective of the community most impacted by the permit was lost to the political power of the BOS and political economic network of politics, farming, and other financially lucrative Kings County industries.

LAC Impact on final recommendations

The importance of the committee selection is demonstrated through their final recommendations. While again, their role was not to approve or weigh-in on the approval of the permit, they were tasked with achieving consensus on what community benefits WM should provide specifically to Kettleman City. Since the benefits being determined were directly for the benefit of Kettleman City residents, it would have made sense to have more Kettleman City representation on the committee to inform WM on what they need. Instead of Kettleman residents having an opportunity to speak for themselves with a vote on what they need and want in their community, the BOS selected non-Kettleman residents to decide what they needed. Although Kettleman residents were encouraged to participate in the meetings, the final recommendations make clear the intention of the committee (LAC Final Recommendations, 2009).

The process for achieving consensus included the LAC member's suggestion and negotiations with WM, and while public meetings were held to encourage public input, the finalizing of recommendations was up to the LAC. As news articles and the Final LAC recommendations show, the LAC process was with much opposition (LAC Final Recommendations, 2009). Throughout the 23 meetings held, opponents wrote letters and protested the LAC meetings calling for the committee's resignation (Yamashita, April 17, 2008; Yamashita, Dec 8, 2008) and later denounced the recommendations (Yamashita, April 29 2009).

These recommendations are the product of committee representation that did not adequately represent the committee, and having more Kettleman City residents or opponents of the expansion project may have produced a different set of recommendations.

Opponents to the LAC committee, the process, and recommendations were not passive bystanders in this additional opportunity for public participation, as they applied for seats, opposed the committee, and attended meetings. Despite their best attempts, they were continually met with challenges to their meaningful inclusion in this process that are disused in chapter 4. These challenges included the BOS selecting LAC members that did not accurately reflect Kettleman City residents or a diversity of perspectives regarding the landfill approval. Instead of being an opportunity to engage with the permitting process, the LAC was a group tightly networked with one another and the Kings County Farm Bureau. The interest represented by these members other than their LAC appointed interest are then clear in the final set of recommendations

CEQA Limitations & 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 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)

> 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, community 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. The issue here is the Kings County Board of Supervisors is not 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, comments and meeting attendees 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 each of the respondents also included listening or a form of accountability. Kettleman City residents, organizers, and advocates 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. (Mona, 67, community advocate)
>
> 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. (Pamela, 78, Kettleman City resident and organizer)
>
> 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 it's 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, 32, organizer)

From these residents and organizers comes a definition of meaningful public participation that includes listening through responding or accountability, as well as discussions and collaborations on projects. This accountability is defined as the government or lead agency responding to comments and acknowledging community concerns, not only through verbal acknowledgement, but also by integrating public comments into the decision. Together accountability with collaborative process could encourage shared power in the process. This element of shared power is seen through 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. Also visible here is sense of frustration with government officials not collaborating on projects, allowing time to speak, or taking into account concerns.

Another challenge with CEQA and public participation is that while CEQA requires opportunities for public comments at meetings, it does not require a response from government officials. Those involved with the meetings can voice their concerns, present evidence or testimony, or ask for a response without being legally entitled to a reply. Even when a response is required, it is only that, a response that is required, so when the lead agency, Kings County, is required to respond to written public comments on the EIR, they are not required to act on these comments. Although the Kings County Planning Commission and DTSC replied to all of the written comments they received on the EIR, those opposing the incinerator and expansion project

did not feel the government was responsive to their concerns. When asked if they felt the government was responsive to the community, organizers and residents replied:

> Of course not. They are in bed with Chem Waste. Always have been, always will be. (Charles, 46, community organizer)

> No. I think there was a really bad attitude with them. I think they feel like the people that live out here are expendable. I heard the BOS representative for our area at that time of the incinerator, he just passed away last week so I won't speak ill of him, but I remember at that time asking him, well you know that tax revenue generated from the landfill, where does it go? How do we see it back? How do we benefit? And he says, oh you people benefit from it with your food stamps, your medical, and your WIC. I remember thinking, whoa. I'm not getting my part because I don't get that stuff. That is the mentality that we will take care of you with social services and you just shut up and take it. (Marina, 42, Kettleman City resident and organizer)

> The thing is- you know, we are not, we are not in the fifties anymore and the segregation created like a government isn't making people drink out of different faucets. They do their fighting a lot trickier nowadays, you know? When we go to meetings, we scream at them, we scream at them. They stay quiet now instead of answering back, you know? That's the thing, is like, things like that and they've learned. They've been learning as much as we have about how to defend themselves, and it seems like while we win so many battles but there are so many things that are the same as America in the 1930s in terms of the way they make their decisions. It's just a bunch of people that don't live anywhere close to the situation, don't really have anything to do with it, deciding for a bunch of people. (Leo, 22, Kettleman City resident)

While the government has been compliant with public participation laws, they can hold meetings and respond to comments without being accountable to take action. Residents and organizers opposing the expansion believe the government officials are not responsive to them because they have few resources or political power, and they believe the government is incentivized to approve the permits for tax revenue, and that Kettleman residents will benefit from these taxes in the form of social services. They also see the government agencies making decisions for places where they do not live, and are therefore not invested in the outcomes. Being an unincorporated rural area, residents who disagree with these decisions have limited opportunities for electing officials that would be more responsive to them.

Information & Access to Meetings

Community residents face challenges to being heard at meetings, and feeling meaningfully involved with the process once there, but they also face challenges to receiving information on the meetings and then accessing the meetings themselves. In both 1991 and 2009 information and access to meetings has been a challenge, and while some aspects of these challenges are the same, new ones have developed. During the incinerator proposal many Kettleman City residents were unaware there was an incinerator proposed four miles from their homes, and some were unaware of the existence of the landfill. Public noticing has always been

an issue for Kettleman City because the CEQA noticing for projects requires public notices placed at the project site, in public spaces, such as government buildings, and in newspapers. For rural places like Kettleman, posting a notice on the site is four miles away, across a major interstate highway that people are not likely to pass by and notice is a barrier to information. Notices posted in the library are not a guarantee either that people will see them, but the limited number of public places in rural areas makes the library the best location. Newspaper notices usually went into the English printed Hanford Sentinel justified by the fact it is the most read newspaper in Kings County, but many people in Kettleman are Spanish-only speakers or English is their second language. When asked about his concerns with accessing information on projects, one organizer replied:

> For instance, too, another thing that we noticed out here is, sometimes when they put these notices they'll put them in English-speaking paper, but they won't put them in Spanish speaking paper. Another thing is the Spanish speaking papers only come out once a week. Where the English come out every day. When you're dealing with Spanish speaking people the best place to put it is on television or the radio. Television and radio versus the newspaper. There are a lot of issues that come to play in how the access actually comes to be. (Alejandro, 52, organizer)

Placing a notice only in the English newspapers is a concern when the majority of the community communicates better in Spanish. There are other options for informing people that include television or the Spanish newspapers, but the legal requirements only call for a public notice in a newspaper, and do not specify it has to be in the language of the majority of the community.

These noticing issues made getting information to people on projects and meetings a challenge, and these difficulties are compounded with issues on the government side sending out notices in a timely manner. One government employee recalled the noticing process:

> At this time (2013) in Kettleman we were having a lot of glitches (around public participation) that were requiring us to re-notice public participation events. We saw we were having a lot of breakdown with the manual process for noticing. (Mark, 46, state government official)

This employee was aware of the issues on the government's side getting the information out to people as there were issues with the noticing of the period for comments after the DTSC permits were approved in 2014. In 2013 the meetings had to be re-noticed and the comment period extended twice due to noticing failures (Grossi, October 14 2013). If people are unaware of the meetings, or confused by conflicting notices they are not likely to attend meetings, which leaves the impression they are not concerned with the project.

Even when people were able to learn about the meetings, they were always held in Hanford, about 35 miles away from Kettleman City, in the afternoon and the evening. The planning commission and BOS host these meetings in Hanford because it is the largest city in the county and the county seat, but the distance to Hanford from Kettleman is a challenge for

residents, especially when public transpiration is limited. At the 2009 planning commission meeting, one Kettleman resident who attended the meeting recalled:

> People got to testify, but if the hearing isn't in the community and they have to travel, they can't stay that long. A lot of people, like what happened in 2009, some people got to speak, some didn't. (Pamela, 78, Kettleman City resident and organizer)

The distance between Kettleman City and Hanford was an issue for people who wanted to attend the entire meeting, but so was the timing of the meeting. One planning commission meeting was held on a weekday at 2pm, which was near impossible for those employed during the day, but the evening meetings are equally challenging. A Kettleman City community organizer explained:

> There is no public transportation at night, so even if they were at night, but most of the time they were in the middle of the day, its 40 miles away. People here are farm workers. They aren't going to take off a day to go to a meeting. It just doesn't happen. (Marina, 42, Kettleman City resident and organizer)

Hosting meetings during the afternoon hours made attendance difficult for residents employed during the day. Many of the Kettleman residents work in agriculture, which requires long hours starting early in the morning, so long meetings that start in the evening and are a 40-minute drive away cannot accommodate these residents. A resident and organizer involved with the incinerator project recalled:

> There's people that get out at 2am to get to work and don't get home until late at night. So they didn't have time to participate. They couldn't go to the meetings that were done over in Hanford. That's another thing we protested. They had to come over here and do their meetings. (Pamela, 78, Kettleman City resident and organizer)

Although the organizers requested these meetings be moved to Kettleman City the planning commission and BOS continued to hold meetings in Hanford. This was as much a challenge for people opposing the incinerator in 1990 as those opposing the expansion project in 2009.

Police Presence and Intimidation

Both Planning Commission permitting approval meetings were held at a building at the Kings County fairgrounds near Hanford. Despite the Planning Commission using the same building for hosting meetings in 1990 and 2009, many participants in the 2009 meeting expressed unfamiliarity with the building and location. In addition to its being an unfamiliar building, participants at the meeting in 2009 were met with a heavy police presence. While not usual practice to have a canine unit at EIR meetings, one community organizer shared, "I asked one of the cops why are you putting a canine unit and he said to send a message to you activists. It worked" (Interview, 2015). There had never been violence towards the government agents or anyone at any of these public meetings before this one, so the county did not justify the heavy presence of police and canines. Community members and others in opposition to the expansion

project felt the only reason to have police and dogs were to intimidate people. One community advocate stated:

> I had never been to a hearing like that before. It was the most intimidated I have ever felt as an attorney. I am an American citizen, I am White, I speak English, and I remember going into the meeting there was already problems with I think Chem Waste hired a translator. People immediately started asking questions of why didn't the county provide it? Chem Waste is translating testimony for the county and there were questions asked so hostilities rose immediately. (Diana, 31, community advocate)

During this same meeting, the police knocked Ramone, an elderly man, to the ground for demanding the county translate his testimony, and that he would receive the full time allotted to English speaking commenters. When the meeting began, the county announced English-speaking commenters would receive five minutes for their comment, but Spanish speakers would receive two and a half minutes, to account for the additional two and a half needed to translate their comment. As the man refused to take his seat, the police pulled him out of the meeting. A Kettleman resident present at the meeting remembered:

> They jumped Ramone, about eight cops, and dragged him out. He was kicked out for demanding equality. It was intimidating. Some Waste Management workers were making racist comments. It was ugly. It was at the next hearing that they parked a canine squad on the steps of the hearing. (Dana, 39, Kettleman City resident)

The removal of Ramone occurred early on at the start of the meeting and set the tone for the rest of the time. People were intimated to be there, and that intimidation carried on throughout the meeting. One woman stated:

> I started walking toward the car and the policemen were with their guns out and I said what are you doing? I only have my cane. You think I am going to shoot you with my cane? I was so upset. I got in the car and we left. (Pamela, 78, Kettleman City resident and organizer)

While intimidation was not the reason this community member left, she was angry and upset by the police presence to the point she wanted to leave and did not give public comment in opposition to the expansion project.

At a the BOS meeting in December 2009, held this time at a Hanford county government building, the police and dogs were also present. Here a civil rights lawyer who attended the planning commission meeting at the fairgrounds in 2009 and the one at the county building remembered:

> We made it known that we don't want that police presence, but they were there. They had police dogs. The entrance of the hall there were police dogs tied up that you had to walk past to get into the meeting. I had never seen that before…police dogs?! We had more numbers, so it felt safer. One problem with the first one was we were outnumbered and I

> felt unsafe. It was hostile. People were laughing and taunting, like when the guy was kicked out everyone was clapping. (Diana, 31, community advocate)

After the first meeting at the fairgrounds with the police and canine units, community residents, organizers, and lawyers told the Kings County government they did not want to attend more public meetings for comments with the heavy police and canines. Despite their requests for accessible meetings without police and dogs, and despite there never being a need for police and dogs, the county again had them at the meeting in Hanford.

Language & Translations

In addition to the police, the lack of availability for translations made the meeting inaccessible for many Spanish speakers. At the meeting in 1990 and again in 2009, the Kings County government lacked translation services or they were provided in a way that disadvantages community residents in need of this service. During the incinerator meetings the translation services were not adequate for Spanish speakers to fully participate. One Spanish and English speaking resident at the incinerator meeting recalled:

> They weren't translating documents or having translators there, or when they were there they weren't translating well. A lot of it is technical words people don't use on a every day basis. One meeting, I was like 17, they were saying, they were talking about when the incinerator would be in operation there would be a percentage, tonnage, of toxic dust, toxic ash emitted daily and the translator translated "toxic ash" into "a slight smell in the air." I sit up and I say, no, that's not what they said! They said ash, and that is different from a smell. (Marina, 42, Kettleman City resident and organizer)

Even when translations were provided at the meetings, they were not always accurate translations of what was being discussed, which disadvantaged Spanish speakers from participating fully. At the final EIR meeting in 1990 Spanish speakers were asked to go to the back of the room for translation services. The idea of participating in the meeting from the back of the room did not sit well with community members, as one community member turned-organizer remembered:

> We asked for translation and they sent us to the back of the room and I said, no, we aren't going to the back of the room. We are going to the front and you are going to give us translation there. We went to the front and they gave translation. It was the planning commission (meeting) they weren't translating to them! They had to listen to the testimony. We waited and waited and it was 1am and people had to work at 6am and we got up and said this is an unfair meeting. (Pamela, 78, Kettleman City resident and organizer)

Community residents were fully committed to participating, even if it meant fighting to be included in the process and remaining at the meetings late to be able to comment. Community organizing efforts and the incinerator lawsuit both helped residents overturn the incinerator

permit that was approved by a process that did not meaningfully include them by limiting their access to the procedures.

While the intention of CEQA public participation is to inform and disclose, even these limited legal requirements become difficult when carried out in a way that makes accessing meetings difficult for project opponents, or anyone requiring translations. What this shows then is not only CEQA's limited ability to fulfill its public participation requirements, but that the lead agency merely holding a public meeting, whether it actually informs the public or not, can be considered legal compliance with CEQA. This also shows that even when a community, or a group of opponents is fully committed to being involved in the process, the lead agency can meet the legal requirements and still create barriers for their participation. In this way, not only does legal compliance with public participation not always equate to meaningful participation, but a lead agency can be legally compliant with the procedures and the process itself can create barriers to public engagement. The process becomes the challenge when it creates barriers to meaningful participation through inconvenient or inaccessible meeting locations, times, inadequate public noticing, limited or lack of translations, a heavy police presence at meetings and police intimidation, limited community representation on committees involved with decisions. Together or individually these challenges create structural barriers to public participation, so while although legally compliant, the process does not always lead to meaningful participation.

Conclusion

This chapter demonstrated how even when carried out fully and legally, CEQA requirements for public participation do not necessarily meaningfully include the public. This lack of meaningful participation occurs not only because the requirements are opportunities for comments, but because it assumes equality to start. Even if the process were to change to accommodate differences with translations and accessible meetings, the structure of the meetings ensures the public is never granted power to directly sway or influence the decision. The participation tools made available to them are public comments, which at meetings do not even require a response. This lack of a required response at meetings is also a lack of accountability from the government as those making a decision can act despite opposition and this allows the government agencies to carry out a process that is legally compliant despite presenting barriers for meaningful public participation.

Although, CEQA requires public participation in the permitting process and the Tanner Act includes additional participation requirements for permitting hazardous waste, Kettleman City residents opposing the landfill expansion and the incinerator projects felt the process was not meaningful for them. Additional requirements that expand participation opportunities and the role of public involvement with the permitting process through public meetings and community representation on committees should have created more meaningful public participation. Here an analysis of the interviewees' experiences, along with public meeting minutes, newspaper articles, and other public documents show the challenges community residents faced in being meaningfully included in the public participation process. There challenges opponents faced, however, are both symptoms of an ineffective system to meaningfully include the public, but

also represent the government's ability to enforce or construct barriers to meaningful participation. In this case the Kings County Board of Supervisors selected an LAC that lacked a diversity of opinions and was tightly politically networked, which then set meeting times and locations without having to consider engaging the public. Additionally, the Kings County Community Development Agency and Board of Supervisors held their meetings in a similar fashion, but they also chose to have police present at the meetings, which was intimidating to the most seasoned of lawyers, let alone would be to people new to engaging with the political process.

These challenges presented then are in some ways limitations of the procedures, but also with the local government's interpretations of carrying out these procedures. Instead of encouraging or supporting meaningfully public participation, the government can use the participation process to support a decision. This was evident with the government actions that could be seen or legally explained as safety measures, but discouraged public participation. Holding a meeting at the fairgrounds with police present was justified as necessary to accommodate the number of people and provide their safety, but the reality was creating an intimidating environment for opponents to participate. This is also evident because even when people are informed and able to access public meetings, at best their role is passive in being informed on what the government has already decided. The procedures themselves are limited in allowing meaningful public participation, but the local government can use these limitations to support their decisions because being compliant with the laws renders challenging the decision or process difficult.

Chapter 3 References

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Chapter 4: Community Resilience: 25 years of community-strategies

"The city folks would get paid from 8 to 5 o'clock and were sitting down with lunches and we were coming home and going to these meetings at dinner time when we should be feeding our families, but we would go to these meetings and sit down and we couldn't even get a bottle of water. (A community organizer) says, 'So, what are you going to do about it?' I'm thinking, what can I do about it?" (Mona, 67, community advocate)

While legal compliance with CEQA and other environmental regulations is not sufficient for meaningful participation, residents and organizers have taken action to be included in the process in a more meaningful way. This chapter focuses on community resilience and the demonstrated efforts to continue opposing the landfill projects by utilizing resources available, creating new ones, and adapting to social and political changes. Here Kettleman City residents and organizers were interviewed on how they responded to meeting barriers to engaging with the public participation process, what actions they took to make the process more meaningful, and how they were included. They were also able to compare how the process changed from the incinerator meetings starting in 1988 to the expansion meetings in beginning in 2005. While community residents continued to respond to the Kings County Planning Commission and BOS decisions they opposed, the government has also responded to them. In some cases, this government response was a move toward procedural equity by providing translation services or moving meeting locations and times, but in others the government's actions made the process less accessible, such as having police and canine units present. 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 more strategies do not mean a better government response, as more public participation opportunities do not equate to a more meaningful experience. While some strategies are more effective than others at producing procedural changes, targeting only these procedural changes is not always effective for impacting the overall decision. These procedural changes are a move in the right direction for procedural equity, but this also shows the limitations using the public participation process for impacting outcomes.

As argued in chapter 3, legal compliance is a necessary, but insufficient factor for achieving meaningful public participation. This chapter examines how rural, unincorporated community residents have worked toward overcoming barriers to their meaningful inclusion in the public participation process, and examines what challenges remain. While some government agencies have improved their public participation efforts by increasing access and opportunities for participation, residents of impacted communities continue to encounter challenges to their meaningful involvement.

Has the public participation process improved?

Since the incinerator proposal in 1988, there has been greater attention on the challenges for rural, low income, and communities of color being represented in government decisions (UCC, 1987; 2007 Bullard, 1990; 1993; 2006; Morello-Frosch et al, 2001; Pellow, 2004; Bullard et al 2008; Walker, 2009; Mohai et al, 2009). Additionally, California state agencies have

evaluated their permitting process and public participation strategies to assess how they could better include the public in their permitting decisions (DTSC, 2001). The EPA and DTSC have also created environmental justice working groups, staff positions, and published reports discussing the challenges facing rural, low income, and communities of color in being involved with these decisions (CPS 2013; US EPA, 2014). This increased recognition of challenges facing resident's involvement should have then been accompanied with policy changes to the permitting process to enhance the public participation strategies (DTSC, 2016). While the government agencies have produced reports demonstrating the challenges, their policies have not matched this recognition, and not every government agency recognizes these challenges. Although the government has made some concrete efforts to improving their procedures, these changes have come from community organizing and coalitions demanding the government change.

While improving the public participation process was not always a stated intention of community groups in opposing the landfill projects, it has been a priority to be included in these processes to hopefully shape the outcomes. In their attempts to being included in the process, they have been successful at making state government agencies more responsive and inclusive to communities, but not the local county government. Community groups have been successful with some overcoming challenges to meaningful public participation, but not all. Through the use of community-based strategies, opponents of the landfill projects were successful in having their voices heard in the public participation process by having meetings moved to Kettleman City, extending comment periods, and providing translations of documents and at meetings. Despite these improvements to the public participation process, however, challenges remain for including the public in a meaningful way. Here, community residents, organizers, and activists were interviewed on their experiences overcoming challenges to the public participation and permitting processes with the incinerator and expansion proposals. These interviews revealed numerous community-based strategies for opposing the projects that utilized the public participation process as a tool for being included in the permitting process. This analysis shows many of the same challenges remain over the 25 years of public participation because despite the community groups' best efforts to challenge the process, difficulties to meaningful inclusion remain.

Community Residents Experience of an Improved Process

Kettleman City residents who opposed the landfill expansion proposal and were also involved with the original incinerator decision are able to compare the two processes and assess how, if at all, public participation has changed. Individuals who participated with meetings at 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. When asked about comparing the incinerator and expansion projects, two organizers involved with both recalled:

> 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, 32, 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 on their experiences at public participation meetings feel some aspects of the procedural process have improved, such as translations and access to government officials, but these feeling 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, one 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… (Charles, 46, community organizer)

Although the public participation process has improved with small wins, such as 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. Challenging on procedural issues has been the core of using CEQA litigation to oppose permitting and siting decisions (Cole, 1993; Cole and Foster, 2001). CEQA's strength is also its limitation that is procedurally based and not outcome driven. Being procedurally based, however, means there is room to challenge a decision if that process did not adhere to legal requirements. The challenge of relying on procedural issues to contest an outcome leaves open the possibility for the process to be both legally compliant, but not meaningfully involve the public. It is this case where you have a process legally compliant, which may itself be a win for the community such as ensuring adequate noticing or opportunities for public input, but then the big decision, the ultimate outcome is one the continues to site and permit the concentration of pollution in communities of color.

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 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. Alejandro, 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 as, "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, all have been involved with community strategies to work toward a more meaningful process.

The fact community residents, organizers, lawyers, and community groups are able to compare the incinerator and expansion proposal permitting processes shows their commitment to being involved with decisions impacting their communities. As seen in chapter 3, they experienced challenges to being meaningfully included in both landfill-permitting decisions, but they persisted with opposing the landfill proposals. To address these challenges, they utilized and developed new community based strategies to ensure their voices and opinions were heard in the process. Despite being a low income, predominantly agriculture community with few financial resources to oppose the largest waste management company in the world, they were successful opposing the incinerator proposal. This success should have predicted another successful opposition in 2009 since the community had more experience and the government's acknowledgment of the challenges to their meaningful participation, but ultimately they encountered new challenges limiting the efficacy of their strategies.

Effective Community Strategies for Strengthening the Public's Role

Interviews with Kettleman residents, community organizers, and community groups revealed their strategies for opposing the landfill projects through being meaningfully involved in the permitting process. These interviews showed six community-based strategies that included: community organizing, nonprofit formation, use of media, use of technology, coalition building, and the use of litigation. In 1991, opponents used only four of these strategies: community organizing, nonprofit formation, use of media, and litigation. The use of technology and coalition building were two additional strategies opponents developed in 2009. The public meetings hosted by Kings County planning commission, BOS, and DTSC have improved in some ways by providing more opportunities for public participation, but this has not always expanded their ability to meaningfully include different viewpoints or needs. Evaluating the strategies based on their ability to produce procedural changes or strengthen the community role in the process shows some aspects of the public meetings improved, but others were less inclusive in 2009 than they were in1991.

Strategies, Success, and Limitations

Community organizing has enabled Kettleman City residents to be more informed on projects, educated on state and local government proceedings and the community's role in the process, assisted with transporting people to meetings, rallies, and protest, and overtime has been able to accomplish long-term policy changes. 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)

History of Community Organizing

One factor enabling the quick mobilization of the community was some Kettleman residents who were agriculture workers were simultaneously working with the United Farm Workers (UFW) union. The UFW had been active in the area since 1962 when they successfully organized the agriculture labor unions in nearby Delano, and 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 (Perkins, 2015). Here Perkins interviewed three individuals 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 Kettleman City 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." Here Pamela speaks to issues concerning Kettleman City residents and their ability to engage to politicians, health and immigration status. Based on U.S. Census data, the percentage of people foreign born in Kettleman City increased from 1990 to 2000, declined in 2010 and increased slightly between 2010-2014 (Table 10). The same trend is seen with the percentage of people who are not a citizen. In 1990, the year closest to the incinerator proposal, and 2010 the year closet to the landfill expansion, 45% and 33% of the population in Kettleman City was not a citizen (Table 10). This lack of citizenship status could potentially deter people from participating in local politics. Although interviews revealed many people who participated and spoke out despite their lack of formal citizenship, citizenship remains an important predictor for participating in politics. Citizenship in the U.S. is required for formal engagement with politics, such as voting, but the lack of citizenship can deter people from participating in informal political activities, such as protest or public participation. There is evidence, however, that those who feel most threatened by a potential policy or decision will become politically engaged with the issue (Ramakrishnam, 2005), and that included those who are not a citizen (Barreto et al, 2009). Here community organizing plays an important role in empowering people to speak out against the landfill projects they opposed. The history of community organizing in the area had a role as well, since some of the residents already had experience working with the UFW and continued what they learned in Delano in Kettleman City.

Table 10: Foreign born and immigration status, Kettleman City (1990-2010)

Foreign Born:	1990	2000	2010	2014
Total Population	1,411	1,499	1,439	1,648
Foreign born	47%	62%	42%	47%
Percent not a citizen	45%	52%	33%	37%

(Data: U.S. Census 1990-2010, and American Community Survey [ACS], 5-year estimate 2014)

Community Organizing and LAC Meeting Attendance

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. LAC meeting minutes show that while the LAC formed in 2005, only three meetings occurring that year, with the next meeting held in 2008 (LAC meeting minutes, 2008-2009). 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 9 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 members and the lack of Kettleman City representation. They also stated at the early meetings held in Hanford, opponents to the LAC requested the meetings be held in Kettleman City. These public comments led to a discussion of moving the meetings and all of the remaining LAC 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 (LAC Meeting Minutes, 2008-2009), 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 commenting speaking out against the lack of Kettleman representation with LAC members. 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 members 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, but residents did apply and were not selected (LAC Meeting Minutes, 2009). While organizing was unable to sway the LAC composition, they were successful in moving the meetings to Kettleman City where more people participated, and more were able to voice public comments.

Nonprofit Formation

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. 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 late civil rights lawyer and founder of the Center for Race Poverty and the Environment (CRPE), Luke Cole (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.

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 because 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. During an interview Kettleman City resident and co-founder for 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 (Walsh et al, 1997). Being informed from the start and being notified of projects is then crucial to challenging unwanted projects. In this way community organizing has helped make the public participation more meaningful because by informing people, the community organizers empowered them to participate. This was more successful with the incinerator since the community was able to stop the project, but it was still successful with the expansion project because more community residents participated in the process with the planning commission, the BOS, and the LAC meetings than would have without organizers.

Media and Technology

In addition to community organizing, technology has changed the way people receive projects updates and information. Community groups have been utilizing the media in the form or news reports as a strategy for meaningful participation by increasing public awareness and applying pressure to the government agencies, but 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 one government official stated:

> 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. (Mark, 46, state government official)

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 more quickly by using websites, email, and list serves over posting notices in newspapers or on sites.

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, but also serve as recruitment for new members. This enables people to find organizations working in their area, and allows the groups to address environment concerns and issue press releases in real time, without having to rely on local newspapers, although local newspapers have played an important role informing the public. El Pueblo has been frequently cited in the Hanford Sentinel, the local newspaper based in Hanford. 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 more traditional media 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 known as the IVAN model. 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 2008-2009. As of July 2015 there are six IVAN networks in six counties throughout, 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 (ivanonline.org). 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.”

IVAN has been effective at bringing both community members and government officials to the table to discuss issues impacting communities. 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.

In 1988, 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. This is a limitation for government agencies being able to catch up to using technology and knowing how people get information. 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 2005-2009 expansion proposal 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 were held, which did not leave residents enough time to make plans to attend. 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.

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 twenty-three groups from only the central valley region of California. In contrast, CEJC was formed in 2014 and consists of fifty-five environmental justice groups from around the entire 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.wordpress.com). 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 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? Nonetheless if we are going to treat this permit as a special and controversial decision, then I think it is fair to place special restrictions or ask for the expansion 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 its inaugural members. CEJC officially formed in July 2014 with eighteen urban, rural, and indigenous groups across California, and by November 2014 there were 55 groups who met in Kettleman City for the first coalition meeting (cejcoaltion.org). While many of the groups participating in the coalition had been working together for years, the coalition meeting 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 one hundred people in attendance representing almost fifty 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. After a brief large group discussion, the group went into break out workshops of: 1) reforming the DTSC 2) cumulative impacts 3) civil rights 4) creating the group governance structure. The workshop on reforming the DTSC focused on bringing the control back to communities. The recommendations focused around reforming the DTSC so that communities impacted by the issues being decided would have more control and greater voice in the decisions. After these discussions two issues for the group remained on who would speak for them if they obtained greater control, and who would represent the impacted community.

CEJC chose the DTSC reform campaign as their inaugural campaign because all 100 representatives in attendance at that first meeting agreed DTSC impacts all of their communities, and the 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 is 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). This 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). Despite this lack of acknowledgement from the government, the community continued to organize and protest the facilities and ultimately 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 is 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 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 land fill. (Marina, 42, Kettleman City resident and organizer)
>
> Those PCBs came from the cleanup from the Bayview Hunters Point PG&E 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 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)

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 acknowledging 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 was 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 .7 pounds of PCBs were sent from the PG&E Bayview site to Kettleman City (Kumeh, 2007).

The sending of the PCB material from Bayview to Kettleman was a point of contention not only because Kettleman and Bayview residents viewed the move as a shift from an environmental burden in one community to another, but also because it coincided with the birth defects cluster later found in Kettleman City. Despite the lack of evidence linking the birth defects cluster to the hazardous landfill[10], the government cannot be certain what went into the air from the landfill during that time. A 2008 email between two EPA employees points out that during April 2008, a time when the health studies were being carried out in Kettleman City, "DTSC granted a suspension of analyzing for pesticide and PCBs" (Poalinelli, 2010). This email, while not enough evidence to demonstrate a concrete link between the birth defects and landfill emissions, does show that at a time when the facility was supposedly under scrutiny and the most intense level of investigation, the government did not know what was going into the air.

Later in 2010, the EPA fined the Kettleman Hills Facility $300,000 for improper management of PCBs (Table 11). In an EPA news release dated November 2010, the EPA stated

[10] See chapter 5 for more information on the birth defects investigation.

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 addition $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 did find the violations, the coalition knew about the increase and was pushing via media outlets for the government to investigate the connection.

Table 11: Waste Management Fines (1983-2013)[11]

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	RCRA and 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 $80k for a fire at the landfill (Miller, 1992).	$80,000
1989	11 violations in operations and environmental regulation (Miller, 1992).	$363,000
2010	Allowing carcinogens to leach into soil (Wozniacka, 2010).	$300,000
2013	Failure to report 72 spills (Nidever, Mar 28 2013).	$311,000

The PG&E Bayview cleanup presents the current environmental justice paradox that to clean up neighborhoods of communities hosting these environmental hazards, they are being disposed of in other low-income communities of color (Szasz, 1994; Pellow, 2004). The problem of one community's environmental hazards is shifted to another location, which is also one goal of the environmental justice movement of seeking non-displacement goals (Roberts and Toffolon-Weiss, 2001; Benford, 2005). This environmental justice paradox is that to create a more environmentally sustainable country, the need for recycling facilities, hazardous landfills and waste disposal will continue to grow. As Pellow (2004) showed, the politics of siting and locating pollution, specifically landfills, in low-income communities of color become a war for where waste will be disposed. In this quest for sustainable waste management Pellow demonstrated the problem is not how to balance these facilities with the needs of the environment, but rather the problem is which communities will pay the costs for facilities (Pellow, 2004). The costs of the hosting these facilities are not limited to the actual financial costs for operations, management, and cleanup, but include financial costs of home value depreciation, as well as long-term health implications (Pastor et al, 2001).

[11] For a complete list of inspections, violations, and fines see CWM Facility DTSC compliance history (DTSC CWM Facility Compliance History, 2013).

Litigation & Legislation

A last resort strategy for strengthening the community's role has been the successful use of litigation and legislation. As the main law firm opposing the incinerator and the expansion proposals, CRLA has a mission of using litigation last. Luke Cole, founder of CRLA, believed in building community power first and that to build power, advocates must move beyond the "three great myths of white America: 1) the truth will set you free 2) government is on your side and 3) we need a lawyer." The first myth rests on the idea there is a right and wrong, but Cole saw environmental justice issues not about truth or right and wrong, but about power. The second myth is then based on this idea is power and an acknowledgment that the government has power and responds to power. The third myth is based on Cole's idea that lawyers are not the means for building community power (Brostrom and Nzegwu, 2010). Although Luke Cole and other environmental lawyers have considered litigation a last resort strategy, it has been useful in opposing environmental hazards and rectifying unjust public participation procedures.

In 1991 CRLA filed a lawsuit on behalf of El Pueblo alleging the EIR did not comply with CEQA because of the lack of translation of documents and that only the exec summary was translated of the 1000 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 violating CEQA regulations. 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). Since this lawsuit was won on the lack of translated documents, community residents thought the county government going forward would provide translated documents and most did provide 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 (Angel, 2015), DTSC's counsel believed the time to be equal because both Spanish speakers and English were given a total of five minutes (Interview, 2015). Although community organizing and litigation were successful in having documents translated, they were limited in winning equitable translations of comments at meetings.

The 1991 Incinerator Lawsuit Beyond Kettleman

The 1991 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 CA. The complaint states all of the toxic landfills in California 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, 1994). 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 ten accepted by the EPA and the first one ever in the Western US. In 2011, seventeen years after filing the Title VI complaint against the EP, the three community groups asked a judge to order the EPA to respond (Rodriguez, 2011). Filed in 1994, the complaint was in 2015 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 (Griswold, 2010). 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, November 23 2010).

Support for the WM and the Landfill Shifts

Another challenge that arose for expansion opponents was the seemingly increased support for WM. Between the incinerator proposal in 1988 and the expansion proposal in 2005, public support increased for both WM and the expansion project. This increased support for WM and the landfill can be attributed to shifts in support by local organizations, demographic changes in the Kettleman Community, and WM's use of their own corporate sponsored community organizer. 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, 1994). In 2009, WM workers and supporters filled the meeting by the thousands. News reports show the use of monitors and outdoor audio equipment were 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, Oct 6 2009). 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, Oct 5 2009). 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 organization 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 a trustworthy with citations of the economic benefits to the area.

Figure 3: The "Sea of Green" shirts

(Photo taken from video footage of the October 5, 2009 meeting (Plevin 2009))

In addition to increased support for WM support 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 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 Supports WM

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.

Community Changes 1990-2014

The community of Kettleman City bounded in 135 acres along highway 41 has in some ways changed since 1991, but in others it has remained the same. Looking at only data from 1990 and 2010, the Census years closest to the incinerator and expansion projects, the data show what should be an increased ability for the community to oppose government decisions through an increase in social capital. Between 1990 and 2010, U.S. Census data show Kettleman City experienced an increase in the population's overall education attainment, median household income, and a decrease in the percentage of foreign-born population or those who were not a citizen (Table 12). This is only looking at the two snap shots in time of 1990 and 2010, but including the 2000 Census data show a more nuanced picture of how the population changed between 1990 and 2000, and again from 2000 to 2010.

Table 12: Demographic Changes in Kettleman City from 1990-2014

Percent Change	1990-2000	1990-2010	1990-2014
Population Count	6%	2%	14%
Percent Pop Under Age 18	-10%	-3%	-2%
Percent Pop Over Age 64	33%	40%	33%
Percent No High School Diploma	-5%	-47%	-270%
Percent With High School Diploma	-14%	72%	80%
Percent Employed Ag industry	-19%	-2%	-2%
Percent Foreign Born	32%	-12%	-12%
Percent Not a Citizen	16%	-36%	-36%

(Data: U.S. Census 1990, 2000, 2010; American Community Survey 5-Year estimates 2010-2014)

An Aging Demographic

In 1990 there were 1,411 Kettleman residents, and in 2010 there were 1,439, a 2% increase (Table 12). This population was much older in 2010 than 1990, with the percent of residents under 18 declining by 3% in 2010, but increasing the age group over 65 by 40% (Table 13). Comparing the population age distribution from 1990 to 2000 reveals the shift in age structure (Figure 4). One Kettleman resident who participated opposing both the incinerator and expansion projects noted:

> Our older people that were in the fight, well, they are gone. They died. Those were our allies. There are a few people that we can muster up to go to meetings and do something. (Pamela, 78, Kettleman City resident and organizer)

With an aging population, fewer people who were involved with the incinerator could attend the expansion meetings. In addition to age contributing to the decline in meeting attendance, residents involved with the incinerator moved out of Kettleman City. Although Kettleman experienced a net growth in population from 1990 to 2010, it declined by 4% from 1990 to 2000. In the ten years after the incinerator proposal the population declined, and the population that was there experienced a decrease in both education attainment and median household income

(Table 12). In 2000, the percent of residents with a high school diploma decreased by 14%, and the median income fell 18%. One Kettleman organizer recalled that time after the incinerator proposal:

> "We saw that the supervisors that are supposed to be taking care of us. They weren't doing a good job, and people started moving out. They moved to Lemoore or other towns. We started getting old and losing the old timers. (One of the original EL Pueblo founders) moved out and I thought she would never move. Even she took a hit on her house. She couldn't sell it for what she wanted. They told her at the bank that you have a landfill near her house. She had to sell it cheaper." (Pamela, 78, Kettleman City resident and organizer)

After the incinerator, some people who were involved opposing the project, even founding organizers, moved out of Kettleman. Those who could afford it moved away from Kettleman, even taking a loss on their homes, and those who were left had lower incomes and lower education attainment. This movement out of the community, combined with the aging population, left fewer people who organized and participated in the incinerator to participate in the expansion project. Even though the two projects occurred in the same location, the population changed. When asked about the differences in the incinerator and expansion opposition, one longtime resident and organizer involved with both recalled:

> "People were angry and at that time there was real cohesion in the community. People saw it was unfair and they were willing to speak against it. It was a different time from now days. It has always been, in Kings County its conservative and there are very specific people in power and they certainly don't live in Kettleman City." (Virgil, 80)

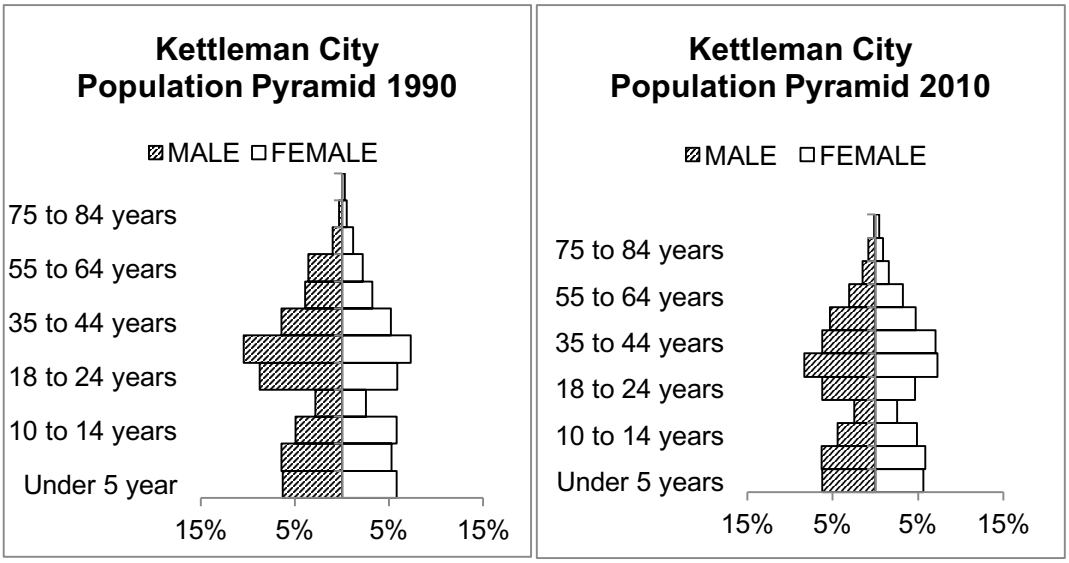
This "different time" in 2010 from 1990 refers to the demographic changes, but also the community in Kettleman. In 2010 the percent of people with a high school diploma increased from 1990 by 72%, there were fewer foreign born (-12%), and more of the foreign born were citizens (78%). While these social variables are aspects of social capital including increased education attainment being positively associated with challenging landfill siting (Pastor et al, 2001) or the percent foreign born negatively associated with opposition to incinerator siting (Davidson and Anderton, 2000; Hunter, 2000), alone they cannot explain the shift in support for WM.

Table 13: Percent Change in Age Group: 1990-2010

Age Group	1990-2000	2000-2010
Under 18	40.0%	36.4%
18-64	56.8%	59.4%
65 and over	3.3%	4.2%

(Data: U.S. Census 1990, 2000, 2010)

Figure 4: Kettleman City Population Pyramids (1990 & 2010)



WM Corporate Sponsored Organizer

One factor that helps explain the increased public support for WM and the expansion project in 2010 is WM's ability to generate community support through the use of a corporate sponsored community organizer. In 2011 Cecilio Barrera joined the Waste Management team as their "Community Relations Manager" (KHF, 2016). Although Barrera joined after the Kings County BOS approval of the permit in 2010, prior to joining WM, Barrera served as a member of the nearby Corcoran Planning Commission from 2009 to 2012 (Corcoran City Council Meeting Minutes, Feb 6 2012). This means there was one year when Barrera was both a member of the Corcoran Planning Commission, and a representative for WM.

The City of Corcoran, like many of the cities in Kings County is predominantly low-income area with the dominant industry being agriculture. With the main industry being agriculture, the area relies on the roads and transportation system to move around heavy trucking equipment, which is dependent on the county's general fund. In 2011, the Kings County Transportation Plan noted the hazardous waste fund of about $200,000 would be allocated to street and road improvements from WM funds (Kings County Association of Governments, 2010). This notation of the money coming from WM signifies the importance of the company to the county, and specific cities that rely on these funds to continue their most lucrative businesses. As a committee under the city council, planning commissioners have the responsibility to make recommendations to projects, such as road improvements. In this way, the local city councils, along with the county had a financial interest in WM continuing their operations at the KHF.

While still a member of the Corcoran Planning Commission, Barrera moved to Kettleman City in 2011 and began organizing for Waste Management. Barrera's role as community relations manager required him to be active in the Kettleman City community by hosting WM events for Kettleman City residents, and in 2013 he was re-elected to the Kettleman City Community Services District (KCCD) (Johnson, 2013), the organization that maintains the water

wells in Kettleman City and wrote letters of support for the expansion project. He has organized field trips of the hazardous landfill for Kettleman City Elementary students (Yamashita, 2012), and hosted WM sponsored events such as cohosting an Earth Day event with the elementary school (KHF, April 2012) or the "Operation Gobble" event handing out 800 turkeys for Thanksgiving (Botill, 2014). These events that provide social opportunities for the community have led to WM's positive image and residents seeing the need for the company's presence in their community.

Opponents to the landfill expansion see Barrera's work for WM influencing the community's opinion of the company. As some residents involved with the incinerator fight have moved or passed away, the people moving in to Kettleman City experience the benefits of having community sponsored events, free food and clothes, and water as the company has been paying for 30 gallons of bottled water for every household (KHF, 2016). One Kettleman resident believes the increased support for the expansion project is a mix of demographic changes and the WM organizer:

> "Like I tell you, half of the people have moved out and the other half is farmworkers that they don't even know what an incinerator is. They don't participate because they don't know what's going on. All they know is when Chem Waste does their big Cinco de Mayo festivals or 16th of September, they give out free t-shirts, free caps, food and we were the ones that used to do that before but they just took over. You can't fight the money they have. They have this worker that came to live in the town that started those festivals and giving away stuff and I guess it's to show that's it's OK to live here." (Marina, 42, Kettleman City resident and organizer)

Residents newer to Kettleman City participate in the WM corporate sponsored events where they receive food, clothes, and socializing. Opponents and organizers involved with the incinerator see Barrera as competing with them to organize the community and gain support, and they do not have the money to compete with the largest waste management company.

Since 2011, WM has adopted their own organizing strategies by hosting an organizer for events in Kettleman City, but their strategies are seen prior to 2011. A Kettleman resident and organizer noted:

> "They (WM) are so much smarter now about how they approach the community. Before they would say things like, if you speak Spanish go to the back of the room. They aren't that ignorant now. They are going to hire people who speak Spanish who will schmooze the community and make them like this is good for you, or play on the poverty by giving them stuff. Giving them food and throwing them parties. They are so much smarter about it now, but it's really the same thing. (Leo, 22, Kettleman City resident)

The community organizers have evolved their strategies to oppose to WM's expansion proposal, but WM has also evolved theirs to garner support. Kings County BOS might not be responsive to the community, but WM has a vested interest in having broad support, and they have the means to achieve this by supporting community grants and social events. Although WM started using a corporate organizer in 2011, they developed and successfully used this strategy in another

community similar to Kettleman. In a case study of community residents opposing the nation's largest landfill in 1978, here WM already began employing the use of a "corporate relations manager" (Alley et al, 1995). As the largest waste management company in the US, WM own the largest hazardous waste landfill located in rural Emelle, Alabama. WM purchased the originally 300-acrea site in 1978, one after they purchased the KFH and one year before the KHF became a hazardous landfill. Emelle was then, and is now, in one of the most impoverished regions of the US where over 90% of the residents near the landfill are black. When residents began protesting the facility, WM brought in a corporate relations manager to give tours of the facility and highlight the economic contributions to the poor community. Over time, these efforts were successful in showing the economic benefits of the company and producing a more positive image of WM. This strategy ultimately helped increase support for WM and the landfill expansion in Kettleman City, as different organizations and individuals speak of the benefits of having WM (Allet et al, 1995).

The WM KHF website states, "The Kettleman Hills facility: There's More Than You Know," and continues with "Safe and Essential for California's Environmental Stewardship" (KHF, 2016). Here the company notes the "essential" role they play in hazardous waste disposal, which recalls the tagline heard at meetings that, "it has to go somewhere." They state they are the most thoroughly analyzed waste facility in the US, siting the birth defects study and the result was "no linkage gas been found between the facility activities and any public health impacts in Kettleman City." They continue with comments to the lack of connection between the poor air and water quality and their facility, and then discuss the benefits to the community. They list paying the water debt, matching the $50,000 for bottled water supplied by CDPH, and providing up to $3 million over 30 years for the new water treatment plant. Paying the water debt, however, is a legal condition from the LAC when they received their permit from Kings County. Additional benefits to the community include the reduced diesel emissions (from what), another LAC condition, and the job opportunities. According to the WM site, the KHF provides 90 full time jobs, but the Kings County Housing 2011 Update showed only 37 full time jobs. WM also states they generate $17.5 million in "economic activity," and contribute $1-2 million annually to the county's general fund (KHF, 2016).

Some Kettleman residents believe WM is an asset to the community because of the revenue and jobs, but they also believe the facility is safe for them. While some residents view opponents of the landfill as trying to get money from the company, they also see the health conditions as individual concerns. As one Kettleman City business owner stated, "Don't believe everything you hear about the birth defects because those people are a lot of first and second generation from Mexico, and cleft palates are common down there" (Interview, 2013). When pressed on his view, he answered that they were just after money. These statements highlight the divisions in the community as some feel the landfill is safe and the company a benefit to them, and stark contrast to the unified community in 1990 opposing the incinerator.

Conclusion

Working with few resources to create procedural changes to public participation, Kettleman City landfill opponents utilized community-based strategies that resulted in changes to the public participation process. These procedural changes occurred because of opponent's

resilience to challenging the less inclusive process, and include community organizing, the use of media and technology, coalition building, and litigation and legislation success based on the lack of meaningful participation. What is surprising shouldn't be what a community with few resources was able to accomplish, the surprise should be what a community that was highly organized and involved with every opportunity wasn't able to accomplish. In some ways the strategies were effective by creating procedural change in the form of translations and meeting locations, but even when the strategies were unsuccessful in changing the process, the strategies were effective at increasing public involvement. Even when the meeting was not moved, organizing was able to inform people of a meeting and provide transportation there.

Despite the successful implementation of community-based strategies, some challenges remain, and new ones have evolved. In addition to procedural challenges, such as the use of police at public meeting, in 2009 opponents faced increase support for WM and the expansion project. Economic factors, such as the company providing financing for a much needed water filtration system and other financial contributions to the community have helped promote a positive company image, as well as the provision of social events, clothing, and food for low income residents. The demographic changes have supported this positive company image as newer Kettleman residents have experienced WM as a financial beneficiary for the community, and the corporate sponsored organizer has been successful in promoting this image by hosting social events. Older residents involved with the incinerator are leaving the community by either moving away if they can afford, or having passed away. Despite the community experiencing an increase of resources through higher median incomes, and higher education attainment in 2010 than 1990, the overall support for WM has made opposition for the expansion difficult. These challenges are in addition to those already facing residents with the barriers to accessing the already limited public participation opportunities available.

While community strategies have had some success challenging the barriers to meaningful public participation, they have been limited as less meaningful public participation procedures are found to be legal and more difficult to challenge. Kettleman City residents participating in public meetings in Kings County found the meetings not meaningful for them because they have not felt heard by the local government agencies, nor adequately represented by them. The lack of meaningful opportunities has not deterred the community groups from fighting to be included in these decisions, and their continued involvement demonstrates their determination to creating a more just process that meaningfully includes them in the procedures and outcomes. This determination is testament to their resilience, along with their ability to continually develop new strategies. What is surprising then is how with more strategies available to them and more government recognition of their challenges to being included in the permitting process, they were not successful opposing the expansion project. While community changes and the corporate sponsored organizer help explain part of why the strategies were limited in 2009 because of increased support for WM, they cannot explain why with increased knowledge of the health concerns in Kettleman City, environmental justice issues, and increased environmental justice policies at state and federal levels, the local, state, and federal government agencies permitted the project.

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Chapter 5: Institutional Challenges to Achieving Environmental Justice

"Current environmental decision-making operates at the junction of science, technology, economics, politics, special interest, and ethics, and mirrors the larger social milieu where discrimination is institutionalized."- Robert Bullard (Bullard, 1994, pp. 12)

Since 1993 when opponents of the incinerator project successfully stopped it from being built in Kettleman City, federal and state government agencies have created environmental justice committees, laws, working groups, and reports in direct recognition of environmental justice concerns. In 1993, Kettleman residents were successful with their lawsuit in a time of much less government acknowledgment and consideration for the disparate concentration of pollution in communities of color. Due to the environmental justice movement bringing increased public awareness of communities such as Warren County and Love Canal and the UCC report in 1987, the environmental justice movement was just gaining traction when the KHF incinerator was proposed in 1988. By 2005, when the expansion project was proposed, it would be expected that increased awareness and government action on environmental justice issues should be an advantage for Kettleman residents opposing the landfill expansion. Instead of being able to utilize the movement's prior success, in 2009 the state government permitted the expansion and the community opponents lost their court appeals.

In addition to broader acknowledgement of environmental justice issues, more was known about the environmental and health issues specifically facing Kettleman residents in 2009 than in 1993. Air and well water contamination, along with the birth defects cluster, are events that should have been evidence for not increasing air pollution in the community. With this knowledge of pollution and that the KHF would decrease the air quality, the question is not how were the residents of Kettleman City successful against the largest waste company in 1991, the question is why were Kettleman residents, with so much greater knowledge of the health concerns and broad government understanding of environmental justices issues after 1991, unsuccessful in stopping the state and county governments from approving the landfill expansion permits in 2009, 2010, and 2014. This lack of political change over time was not unique to Kettleman City. In 2007 the UCC released a new study 22 after their first report showing not only were pollution and toxic facilities still being located in predominantly communities of color, but the occurrences had increased with 80% of people of color living near hazardous waste sites in California- the state with the highest percentage (UCC, 2007). This report demonstrated the need to shift environmental justice research away from documenting these occurrences to questioning the underlying causes for the persistence of a pattern of environmental racism. Researchers have taken on this issue with much of their work looking at the decision-making process itself with power dynamics and issues of empowerment in the process (Arnstein, 1969; Sexton, 1999; Beirle, 1999; Beierle and Cayford, 2002; Simmons, 2008). While these studies do get at an important issue of power dynamics in the process for environmental decisions, they miss a larger process that is the institutions and their role in these decisions, and the disadvantages institutionalized within the permitting process.

To explain why the state and county agencies permitted a toxic facility's expansion in an already environmentally burdened community, despite the increased awareness of environmental

justice issues, documented health problems, and engaged opponents, the institutions involved and the limitations to challenging them must be examined. Here, the county and state permit approvals were based on reviewing WM's application for expanding the facility, but the decision was supported through citing the health and environmental justice reports. State officials have remarked that permitting the facility in Kettleman underwent the most thorough investigative process for considering health and environment, and with this thorough investigation, engaged community opponents, and documented environment and health concerns, the government permitted the project. One conclusion to be drawn from this permit approval decision is that the state investigated the facility thoroughly and found it safe to expand. Another way to interpret this decision, however, is that despite the thorough investigation and acknowledgment of health issues, the reliance on the county's permit approval process, the lack of a single cause for the health problems, and limitations with environmental justice policies, as well as within DTSC, led DTSC to move forward permitting the expansion of the facility. The permitting process of expanding a toxic facility is then a legal and political process in that the state's approval of a facility is supported through their interpretation of permitting, environmental, and environmental justice laws. These interpretations of the permitting process have created institutional barriers to challenging permitting decisions, but community opponents to these decisions have been successful in utilizing their own strategies to continue moving toward achieving environmental justice.

This chapter highlights the persistent challenges and limitations for meaningful involvement for opposing projects that will increase pollution in low income, communities of color by examining the institutions that create barriers for communities to successfully oppose these decisions. These limitations include the ability to be meaningfully involved in the permitting process but also the limitations of health and environmental reports to support community concerns, and the limitations for challenging state permitting decisions. Considering the challenges communities face then reveals why environmental racism persists, and helps explain why even with increased knowledge of environmental and health concerns, engaged opponents of a project are failing to stop projects that state and county government acknowledge will increase pollution in an already overburdened community. Despite these limitations, however, community opponents and organizers have implemented political strategies targeting both improving the public participation process and the lack of equity in the permitting process. These strategies have proven successful for addressing these issues, and can provide examples for what works and what is limited for generating political support to address institutional barriers in the permitting process.

Institutional barriers to using public participation in achieving environmental justice

The broader recognition of environmental justice is one of the many changes that have occurred within the EPA and DTSC from 1991 to 2009. In 2014, CalEPA released an update to their Environmental Justice Program that opened with a quote form Aristotle stating, "Equals should be treated equally and unequal's unequally." They use this quote to demonstrate the justification of equal treatment before the law exemplified in their definition of environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to development, adoption, implementation, and enforcement of environmental laws, regulations, and policies" (CalEPA, 2014, pg. 3). The US, however, is made up of a mixture of people from

different advantages and disadvantages, and they are not randomly distributed, but highly segregated by race, income, and subsequently place (Omi and Winnant, 1986; Massey and Denton, 1993; Frey and Myers, 2005; Wacquant, 2013). This segregation by race, income, and place means that people are not equal in that they are starting from different advantages and disadvantages. They are exposed to different environmental factors that produce health inequities that further deepen the social inequities among them, and assuming an equal playing field widens these gaps. It means that when people come to participate in a public meeting they arrive with different needs to be able to fully participate, to meaningfully participate, and even the best, most collaborative organization must recognize these needs as basic needs to participate fully, and not a special request or treatment. It is an unequal process that allows for an unequal treatment of some people by providing translations, more time to speak for translations, and accommodating location and time requests so that the people most impacted by the decision being determined can contribute fully and meaningfully in the process.

Institutional racism in the public participation process

Some of the challenges facing opponents to the landfill project are more than barriers to being meaningfully included in the permitting process, as they are examples of institutional racism within the public participation process. Institutional racism includes policies, practices, or procedures that disadvantage people based on race. Although it impacts individuals, its persistence does not require individual action. In this way, institutional racism exists within institutions without individuals intentionally perpetuating, but they do not have to because the system perpetuates it (Hamilton and Ture, 1967). Here institutional racism is evident with the permitting of the landfill expansion project through the use of unequal time for Spanish speakers to comment and challenges to the expectation of needing to comment in English. While the unequal time for Spanish and English speakers created a clear separate and unequal process for Spanish speakers, the expectation for English comments created subtler barriers to meaningful participation.

At the December 2009 Kings County BOS meeting, Spanish speakers were allotted half the time for public comments as English speakers. The rational given for this unequal treatment was English speakers would receive five minutes, therefore Spanish speakers would receive two and a half minutes for comment and two and a half minutes of translation, giving both groups a total of five minutes. This act, while not intending to discriminate against Spanish speakers, demonstrates institutional racism in the public participation process. No one person was singled out or carried out an action to intentionally discriminate, but the process itself benefited English speakers by allowing them five full minutes to state a concern. In response to the fact Spanish speakers were not allowed an equal time to comment, DTSC responded, “it is reviewing these comments as part of the formal proceeding on the landfill expansion, and so declined to comment” (Chinn et al, 2014, pp. 39) Ultimately, DTSC director Barbara Lee stated in 2014 at a closed meeting between DTSC and the CEJC coalition that DTSC’s lawyers disagree equal time was not given because both groups (English and Spanish speakers) were allowed a total of five minutes.

While Spanish translations of agendas and notices of meetings were made available for

some meetings, not all documents were translated for the expansion proposal. A Title VI complaint filed by CRPE and El Pueblo against the Kings County Board of Supervisors documented the issues with translation services facing opponents to the expansion project. This complaint alleged the BOS discriminated based on race and origin when permitting the KHF by forcing Kettleman residents to host a disproportionate share of environmental hazards located in Kings County, but by limiting their participation in the process. Here CRPE used evidence of the high percentage of Spanish speakers in Kettleman City and stated their requests for translated documented went unanswered (CRPE, 2011). Despite the evidence presented, the court did not sustain the complaint (Levy, 2012). This shows that although Spanish speakers were denied equal time in speaking and not all documents were translated so that all people regardless of language could participate, the process was found legally compliant. Although the 1991 lawsuit was found in favor of community opponents based on their lack of meaningful translation, 25 years later similar practices in the same process were found legal.

Even when translation services were available, the expectation of English comments was made clear by government employees. An employee of one government agency, the California Regional Water Quality Control Board (CRWQCB), an agency that regulates the Kettleman Hills Facility, sent public emails in 2013 stating his opposition to allowing Spanish translations. In one email dated October 25, 2013 sent from CRWQCB employee James Dowell to DTSC employee Wayne Lorentzen, Dowell expressed his aversion to allowing Spanish translations by stating:

> Let us also be honest. Isn't the official language of our country English. Then why don't all people in this country communicate in English? I've personally attended meetings where I know that those that communicate in Spanish in the public hearings/meetings can perfectly speak English! What is the point of this deception? Anyone who can speak English should be required by law to address the public in English! What do you think we live in? Mexico? I though thought this was the United States of America where English is the official language! (Dowell, email, 2013)

While Dowell did not appear to have any direct involvement with the KHF permitting, he requested to be present at a water board meeting held January 16, 2014 in Kettleman City. In this email request to be at the meeting, Dowell stated he worked for the state water board for 25 years, has more knowledge of the geology of the KHF than anyone in the state of California, and that "politics and political correctness has been used to delay the permitting process" (Dowell, email, 2014). These emails from a state employee reflect the sentiments toward even allowing Spanish comments, let alone equal time. While these comments from one person cannot be attributed to an entire state department, they do reflect the opinions of at least one employee who has worked with Kettleman City and within an agency regulating a hazardous facility there. While this perspective that everyone should speak English represents a challenge for Spanish speakers wishing to be engaged with the public participation process, other government institutions and agencies have presented their own set of barriers to challenging the permitting decisions.

Institutional barriers to challenging permitting decisions with DTSC

While opponents faced challenges to their meaningful participation in the permitting process, they also faced barriers to challenging DTSC's permit approval decision. DTSC provided multiple public participation opportunities for their role in permitting the KHF, and within this process are venues for challenging the decision. Despite opportunities for public participation and to challenge the permit decision, DTSC presented institutional barriers to being included in the process and to challenge their permit approval. These barriers included the use and reliance on the state health report, the adherence to environmental justice policies with colorblind language, the culture of DTSC, and the lack of constant permitting criteria. Together these barriers created challenged to opposing DTSC's permit approval that help show why even with increased environmental justice awareness and knowledge of health concerns in Kettleman City, DTSC approved a facility expansion that would knowingly increase pollution in an already impacted community.

Limitations of using health reports

Local and state governments rely heavily on technical and planning documents, such as an EIR, to review permit applications for hazardous facilities, but one important factor in generating support for the KHF expansion came from the interpretation of government reports the KHF was safe for the community (Sahagun, 2014). From 2009 to 2013, DTSC, CalEPA, CDPH, and other state agencies produced at least 11 health and environmental reports for Kettleman City and the KHF, with another 4 released between 1997 and 2008, inclusive of 2008[12]. These years 2009 to 2013 are notable because during this time Kings County and DTSC approved the permits for the landfill expansion. Of these 11 reports conducted between 2009 and 2013, the California Department of Public Health's birth defects investigation reports are notable. The birth defects investigation studies were heavily cited as part of the extensive and thorough review for the permit process, and both DTSC and WM have since used these studies as evidence for support to approve the permit noting the facility is safe for the community (DTSC, May 2014). Although DTSC, WM, and Kings County officials have interpreted these reports as the KHF is safe and therefore safe to expand, the reports themselves do not claim the facility is safe, instead the authors of these studies concluded there are health and environmental issues that they cannot attribute to a single cause (CDPH, 2010).

What is important to note is that although no study could identify a single cause of the health issues, Kings County Planning Commission did not have this knowledge when the Board

[12] (1997) California Regional Water Quality Control Board, CalEPA (2004) Environmental Justice Action Plan, DTSC (2008) Environmental Justice Policy, US EPA (2008) Congener Study, (2010) California Regional Water Quality Control Board,, OEHHA (2010) Community Exposure Assessment, USEPA Region IX (2010) Air Emissions Study on KHF ponds, CDPH (2010) Investigation of Birth Defects and Community Exposures in Kettleman City, CA, DTSC (2011) Health Risk Assessment of Kettleman City, US EPA (2011) Kettleman City Indoor Pesticide Study, CDPH (2011) Follow-Up to Kettleman City Investigation, DTSC (2012) Health Risk Assessment, DTSC (2013) Health Risk Assessment, EPA (2013) CalEnviroScreen Tool version 1.0, DTSC (2013) Initial study and addendum for the existing B-18 Landfill Expansion Project, DTSC (2013) Environmental Justice Review

of Supervisors approved the expansion in 2009. The information they had available was benzene and arsenic contaminated drinking water from unknown causes (LAFCo, 2007; CalEPA, July 2010; Kings County Board of Supervisors, 2013), high rates of asthma, cancers, and other illnesses (Kumeh, 2007), and information signaling a potential birth defects cluster (LAC Final Recommendations, 2009; Sahagun, 2009). Kings County permitted the facility in 2009 before the state agencies' research showed they could not determine a single cause for the birth defects, or the elevated levels in the drinking water were likely naturally occurring because again, they could not conclusively find the origin (CDPH, 2010). Kings County made their decision before the reports were finalized because they were basing their decision on whether WM met the legal requirements for their permit application, a different set of standards than being able to determine if the facility is safe to expand.

Community led Health Study

In 2007 as a reaction to the EPA's Draft Environmental Justice assessment, community residents and organizers conducted a door-to-door health study in Kettleman City (Interview, 2015). The 2007 EPA Draft Environmental Justice Assessment stated there was no negative impact from Kettleman hosting the hazardous facility or its expansion (CalEPA, 2007; Nidever, March 2007). This assessment angered residents and organizers because they lived with the negative impacts from the landfill, including the decreased air quality and home values, but they realized their experiences were not being documented. As one organizer and resident recalled:

> After that hearing (of the EPA Draft Environmental Justice Assessment) when we debriefed on our next step and people were talking about the asthma, the cancer, and none of it is documented. We decided to design a community health survey and made it as neutral as possible. (Charles, 46, community organizer)

> People were saying, "Oh. We know there's a lot of people in Kettleman City that are sick. There's a lot of people with asthma. There's a lot of people with cancer. We think it has to do with the dump." We said, "Well, why don't we do a health study? We go door-to-door and we'll ask people, then we could have actual members when we go to the meetings." We just went door-to-door, asked people. What we started finding was we found a lot of asthma. We found certain people with cancer. But what we started to find was that there were children with birth defects. (Marina, 42, Kettleman City resident and organizer)

Although the 2007 Draft Environmental Justice Assessment was the impetus for the community led study, the community documented more than they expected to find. While they were expecting to document asthma and cancer, they uncovered a previously unknown birth defects cluster. The same organizer stated:

> A few days in, one of our organizers called and said we found a couple of moms with babies born during the same time period with similar birth defects and the babies died. A couple of days later we found more, and we found originally 5 born with cleft pallet and they had other complications and 3 of the 5 died. We heard rumors, but there was a pattern in a certain time period. We took that to the government, to the press, and it

> started getting a lot of attention. As we continued, more people came forward. Instead of 5 it was 11 then 14, all during a 14-month period, which coincided with the shipments, the massive 400-fold increase of PCBs to the landfill there. (Charles, 46, community organizer)

Community residents and organizers began going public with their findings, and the media began writing and questioning what was happening in Kettleman City (Sahagun, 2009). The community used the media to push for a larger study to document and investigate the birth defects. Despite the difficulties of coming forward to speak out, mothers who had children born with birth defects or who had lost babies due to birth defects attended public meetings to request the county not expand the landfill, and that they conduct an investigation. Although the Kings County Health Department denied the request stating an investigation was not needed or warranted (Sahagun, March 2010), the issue caught the attention of California Senators Barbar Boxer and Diane Feinstein who released statements saying the KHF should not be allowed to expand until the state of California investigates the birth defects (Sahagun, February 2010). In 2010, then California Governor Schwarzenegger directed the California Department of Public Health to lead a full investigation into Kettleman City (CDPH, 2010). Schwarzenegger's direction for the study was a win for Kettleman residents and organizers seeking answers, and it would not have happened, nor would the birth defects cluster have been known, if the community was not organized and led their own initial study.

CDPH/Government led health studies

There were multiple reports on birth defects in Kettleman City conducted in 2009 and 2010, with the final study titled, "Investigation of Birth Defects and Community Exposures in Kettleman City, CA" released in December 2010. The investigation began, however, in 2009 with the purpose being to study the number of infants born with birth defects in Kettleman City in 2007 (CDPH and CBDMP, 2010). To conduct their analysis, the California Department of Public Health (CDPH) and California Birth Defects Monitoring Program (CBDMP) used aggregate year estimates to analyze the number of cases of babies born with birth defects from 1987 to March 2010, and the birth defects cluster was shown from 2007 to 2010 with 11 babies born in those 3 years (Table 14). This is a clear spike from the 6 born in the previous 20-year period. What this report concealed even with the 3-year estimate is that 8 were born in 2007 alone (Table 15). These initial findings led to further government led investigations with Kettleman City.

Table 14: Birth Defects Count, Kettleman City 1987-2010 (aggregate years)

Birth Year	Number Cases of BD	Number Births (+fetal deaths)
1987-1991 (5-yr)	5	264
1992-2006 (15-yr)	1	648
2007-March 2010 (4-yr)	11	148

(Data: CDPH and CBDMP, 2010)

Table 15: Two-year rates of birth defects for live and fetal deaths (per 100 births), 1987-201

Year	Kettleman City	Avenal	Kings County	Five Counties
1987	2.2	2.44	0.89	0.89
1988-1989	2.00	0.36	1.00	1.02
1990-1991	1.68	0.56	0.85	0.92
1992-1993	0	0.29	0.80	0.90
1994-1995	0	1.36	0.89	0.98
1996-1997	0	0.53	0.96	0.87
1998-1999	0	1.53	0.98	0.95
2000-2001	1.19	1.07	0.91	0.90
2002-2003	0	1.07	1.19	0.86
2004-2005	0	0.50	1.01	1.02
2006-2007	1.39	0.86	1.01	1.02
2008-2009	8.51	2.31	1.53	1.05
2010-2011	1.79	1.10	0.71	0.54

(Data: CDPH and CBDMP, 2010)

While the initial study established rates and incidences of birth defects in Kettleman City, an additional CDPH study interviewed mothers who experienced a child with a birth defect and analyzed the surrounding environment for potential air, water, or land exposures (CDPH, 2010). Of the total potential cases identified with the initial study, CDPH concluded 11 were eligible for inclusion in the investigation, and of the 11, six moms were interviewed, with three declining and two unable to be reached. Although the community led health study identified five others, CDPH considered them ineligible because they were required to have lived in Kettleman City for at least seven days during the three months before they became pregnant (CDPH, 2010). These interviews were then analyzed with the environmental samples taken in Kettleman City to attempt to determine a cause for the birth defects.

In the spring of 2010, CalEPA and the California Air Resources Board (CARB) took air samples from three locations in Kettleman City, as well as Bakersfield, CA and Fresno, CA to use as comparisons. While ARB collected the air samples and analyzed them, the Office of Environmental Health Hazards (OEHHA) interpreted the results. The OEHHA report showed they did not find any hazardous materials in the community that posed a threat to human health, but they noted the potential gaps in their data. These gaps with the samples include the representativeness of the samples, the potential for cumulative impacts, and the risk variation. The representativeness of the samples is a limitation because samples were only taken at three locations and could vary based on location. The cumulative impacts, or the combined presence of chemicals or multiple chemical exposures, can impact communities in unknown ways, which were not tested for in this investigation. For example, the air and water qualities were tested individually, but it is unknown how both poor water and air quality impact Kettleman residents. The third limitation, the risk variation is the difference, such as age, sex, and occupation could create different risk factors and levels of tolerance, (CDPH, 2010). While the investigation did include the testing for air quality, the limitations in their analysis make conclusive findings difficult.

In addition to these limitations noted by the researchers, Daniel Wartenberg, an epidemiologist involved with the CDPH study, published an article in 1990 (Wartenberg and Greenberg, 1990) on the ability of statistics to detect disease clusters. Their findings show the two most common methods for assessing disease clusters have "low power" for the small numbers typically seen with disease clusters. This low power means small numbers and low statistical power make the probability of false negative really high. This shows that even if there were a relationship between the KHF and the increased rates of birth defects, the lack of statistical power due to the relatively small number of cases, would make it impossible to detect that connection.

In 2010, CDPH held a public meeting in Kettleman City to announce their findings, but instead of receiving answers, the community was told they were unsure why it happened, they could not determine an underlying cause, and the "types of birth defects in Kettleman City did not appear different from birth defects seen by CDPH elsewhere" (CDPH, 2010; Sahagun, November 2010; Yamashita, November 2010). This left residents, especially the mothers of the children, more confused than before the investigation because they were hearing the most thorough investigation could not explain what happened, and that it was expected because of where they lived (Interview, 2015). While this investigation was needed to determine the cause of the birth defects cluster, the lack of clear findings left mothers, residents, and organizers distraught with the idea that even the state with their most extensive studies could not find a cause. When asked about their involvement with the CDPH study, one organizer recalled:

> With the EPA and the birth defect monitoring program, people have a lot of hope around when a state study happens or a government agency becomes involved. There is some hope there will finally be some answers and some accountability. I think the attitude is always of hope. As the study was happening, my perspective and those of some others, was quite nervous because people put so much stock in having an independent agency come in, but when you look at the results of the history of these types of studies in California, and probably nationwide, there has virtually never been a finding that satisfied the community…All you have is a loss of hope, a loss of answers, and it was their only hope for answers or change in policy or protection from the hazardous waste facility. (Ana, 34, Community advocate)

Here the study unable to point to a single cause or explanation left those who had experienced birth defects, or just seeking answers without hope for finding a cause. For the mothers who had babies born with birth defects, they had the difficulty of not knowing what happened, but then some had to face public meetings where they were ridiculed and harassed. In an interview with one of the mothers who lost a child due to birth defects complications and was one of the six DCPH interviewed, she remembered:

> It was a big disillusion. They were listening but it was a big disillusion. They just went and heard, but didn't do anything. (Dana, 29, Kettleman City resident)

She also attended the Board of Supervisors meeting to approve the expansion permit in 2009 and recalled her experience:

> It was a really bad experience starting with not having the same time as English speakers, but also hearing the people from the company (WM) talking about the children with birth defects, making fun of them. They said how was it their fault (WM), how were they responsible their kids were born like monsters. They thought my husband didn't speak English, but he could understand everything they were saying. (Dana, 29, Kettleman City resident)

The lack of explanation, coupled with WM employee's negative statements about the birth defects cluster left people disillusioned with the process, as well as hope for answers. In approving the permits, however, DTSC called this process the most extensive. This shows that even the most extensive studies, when having to rely on small sample sizes, cannot always reveal explanations for what people are experiencing. The issue then is the reliance on studies with small sample sizes to permit a facility as safe. In this way, health reports can be used against a small community with health issues and environmental concerns, if the lack of a cause for a documented health issue is used to interpret an environmental hazard as safe.

Colorblind environmental justice policies

In addition to limitations with using the health reports as evidence for denying the expansion permit, the environmental justice reports were used to show the KHF had no significant impact on the community. These two environmental justice reports, published in 2007 and 2013 became contentious for community opponents of the landfill expansion. Opponents to the landfill expansion questioned the 2007 assessment showing the KHF had no impact on the community (Nidever, March 2007b), and DTSC cited their 2013 review as part of the extensive review process in their decision to approve the facility's expansion permit (DTSC May 2014). The 2007 assessment is no longer available from the EPA as their website states: "Because certain information and conclusions in the Draft 2007 Assessment are out of date and should not be cited, EPA has removed the Assessment from the website" (https://www3.epa.gov/region9/kettleman/), and the 2007 assessment has been replaced with the 2013 Environmental justice review. While this report acknowledges the multiple environmental hazards and negative impacts in Kettleman City (DTSC, June 2013) it also reveals a main limitation to challenging issues of environmental justice. This limitation is the race neutral or colorblind language of environmental justice definitions that make challenges to environmental justice issues difficult with both government agencies and Title VI lawsuits.

DTSC's environmental justice

In 2013 DTSC conducted an Environmental Justice Review to identify and address environmental justice concerns related to the KHF, as well as assess potential harmful offsite impacts and existing environmental burdens for the residents of Kettleman City (DTSC, June 2013). The report opens by defining environmental justice as, "The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws and policies" (DTSC, June 2013, pp. 5). They add that

DTSC defines environmental justice as "equal application of environmental protection for all communities and citizens without regard to race, national origin or income. (Their emphasis) (DTSC, June 2013, pp. 5).

This definition of environmental justice is race neutral or with colorblind language in that the definition does not include the consideration of race. Colorblind language is then policies, practices, or processes that operate under an assumption that the best pathway for countering individual racism is to invoke actions that do not consider race (Carr, 1997; Gallagher, 2003; Bonilla-Silva, 2006). While the best intentions may be within these colorblind policies, critical race theorists have demonstrated this approach will not be able to counter the systemic institutional forms of racism that persist within the U.S.' social, political, and economic structures (Bell, 1995; Crenshaw, 1995; Delgado and Stefancic, 2012). While a requirement to end individual level racism, colorblind policies cannot move toward ending institutional racism. What is needed to counter the institutional level racism found in environmental racism is to be able to consider race in environmental decisions that will have a disparate impact on communities of color. By not including race in these decisions, the current environmental justice policies reproduce the existing structures that concentrate pollution in low-income communities of color, but considering race would allow for government agencies to make environmental decisions moving toward achieving environmental justice.

This use of colorblind language in environmental justice definitions is not only a limitation for government definitions, but a limitation of the movement as well. As the framing of a movement is important to identifying problems, it is also important for identifying solutions based on these problems (Taylor, 2000; Brulle and Pellow, 2006). Although the environmental justice movement began with the recognition of environmental racism (UCC, 1983), the word racism was replaced with justice (Bryant, 1995; Pellow, 2004). The difference between these two frames is the difference between targeting racism or justice, as combatting different types of racism require different strategies, so does injustice. While acknowledged the environmental racism frame was limited in garnering broad support (Brulle and Pellow, 2005, the environmental justice frame has been interpreted as justice through equality of process or procedural equality. While the movement under the justice frame was able to generate support from a broader coalition of groups, the omission of race leaves the causes more abstract and therefore more difficult to target (Pellow and Brulle, 2005). In addition to omitting race from the movement, the lack of nuanced understanding of forms of racism, individual, institutional, and structural, leaves government agencies defaulting to Title VI language, which was designed for addressing individual level racism requiring intent. The use of colorblind policies that claim to not see or consider race are having a negative impact on people of color as they create a system of equal treatment that widens existing inequities (Brown et al, 2003; Gallagher, 2003). When planners invoke colorblind language in planning practices, they are making people of color invisible in the planning process, and when environmental justice policies use colorblind language they make it difficult to achieve environmental justice.

Limitations using Title VI

DTSC's definition of environmental justice is drawn from Civil Rights language originally designed to combat individual racism by prohibiting the consideration of race in policies, practices, and decisions. What this has meant today is using Title VI from the Civil Rights Act of 1964 to challenge a decision that will have a disparate impact on communities of color is difficult. This difficulty stems from the requirement to show intent or intentional racism (Mattheisen, 2003). A 2001 court case, Alexander v. Sandoval resulted in a decision stating the Civil Rights of 1964 only applies to intentional discrimination, "as it reaches no further than the Fourteenth Amendment's equal protection clause or the Fifth Amendment's due process clause" (Mattheisen, 2003). This reliance on intentional discrimination presents a barrier to using Title VI with more institutional forms of racism as intention does not exist, but its the discriminatory outcome that persists.

In addition to the requirement for showing intent, Title VI is also limited by its focus on procedures or process. Although Title VI has been used to challenge decisions that communities believe target them or increase already numerous environmental burdens in communities of color (Ramo, 2013), a core issue with using Title VI is the interpretation of defining environmental justice. Government definitions of environmental justice include language of fair treatment and meaningful involvement, but communities dealing with environmental justice issues define it as the right to a healthy environment (Brulle and Pellow, 2006). The difference here is the government's focus on the procedural aspects of environmental and planning decisions, whereas community residents focus on the outcomes of these decisions. The problem then is the government's definition, the legal definition, is decided on equal treatment, but what is needed for achieving environmental justice is a focus on equitable outcomes. This difference in definitions highlights the difference in methods for achieving environmental justice and combatting different forms of racism. It is the difference between equality where everyone receives the same treatment and equity where some people require different treatment to achieve a fair outcome (Morgan and Sawyer, 1979). It is these clarifications in definitions, the focus on process versus outcomes, and the difference in equality and equity that impact environmental decisions and explains why even with the proliferation of environmental justice reports, staff, committees, and working groups dedicated to creating healthier places, the statistics showing air, land, and water pollution disproportionally burdening communities of color has remained the same and in some cases worsened (UCC, 2007).

Even when Title VI has been used to challenge environmental decisions, the lack of movement on these claims makes the EPA another barrier to achieving environmental justice. In 2015 The Center for Public Integrity published a report showing in a 22-year history of processing complaints, the EPA's Civil Rights Office has never once made a formal finding of a Title VI violation (Lombardi, 2015). The Center for Public Integrity's report used the 265 Title VI complaints filed between 1996 and 2013 to show a majority of these claims (9 out of 10) were rejected or dismissed. Of the total number of complaints, 162 (64%) were rejected without investigation, 52 (21%) were dismissed upon investigation, 14 (5.5%) were referred to other agencies, such as the Department of Justice (DOJ), 12 (5%) were resolved voluntarily with an informal agreement, and 13 (5%) were accepted for investigation that are still open, the oldest that is still open being from 1996. The majority of those dismissed (95) were due to the target not receiving federal funding, 62 were submitted after the 180-day time frame and considered "too

late for action," and 52 were dismissed for "insufficient claims." Once a claim is filed the EPA must decide whether to investigate within twenty days, but 9 in 17 years took 254 days to respond. This led to the dismissal of at least one claim because it surpassed the 180-day limitation deeming the complaint "too late for action." This research shows the barriers facing community opponents attempting to challenge EPA's permitting decisions with Title VI, but these difficulties run deep within these institutions (Lombardi, 2015).

In 1994 CRPE filed a Title VI claim with the EPA for their permitting of the only three hazardous waste landfills in California in low-income communities of color (Cole, 1994). It took the EPA 18 years to respond to the 1994 complaint, and although the EPA ultimately rejected the claim in 2012, they did assert there were "shortcomings in DTSC's public outreach" (Chinn et al, 2014, pp. 36). Again, in 2010, CPRE filed another Title VI claim against Kings County based on the permitting process for the expansion that was ultimately deferred on the grounds that Kings County did not meet jurisdictional requirements as the Board of Supervisors was not a recipient of federal money (Levy, 2012). While the Title VI claims were not accepted, they paved the way for improved public participation opportunities by DTSC (CalEPA and DTSC, May 2013). This improved public participation plan resulted in more than just an increase of opportunities, but the access to DTSC staff, including high-up staff, such as the director. Despite the increased access to DTSC staff and improvements to public participation, DTSC approved the expansion permit. DTSC's approval of the permit was based on their rigorous review of the application, but there are many challenges with DTSC as an institution, as well as barriers to challenging DTSC.

Culture of DTSC

As the main regulating agency for hazardous waste in California, DTSC oversees 117 hazardous waste management facilities and 900 hazardous waste transporters in California. In this mission of overseeing facilities, DTSC has faced challenges with their own culture that includes levying fines, enforcing laws, issues with DTSC staff having seemingly or real conflicts of interests, and a thread of racist emails between DTSC employees. These challenges within DTSC represent issues with the culture of the agency to fulfill their goal to protect environment and people from hazardous waste, but also act as barriers to challenging permitting decisions.

One 2013 report, Golden Wasteland, provides evidence showing where DTSC is failing to protect people and the environment, and cites their business friendly culture as a main culprit (Tucker, 2014). Using data from the Toxic Release Inventory (TRI), toxic releases increased in 2011, and although pollution in the air declined in 2011, releases into the water and soil increased by 10% (Tucker, 2014). According the Golden Wasteland authors, the issue is not the current laws, which are some of the strictest in the US, but the lack of enforcement. Even within the organization enforcing the environmental laws, DTSC collects fewer fines than other agencies, such as the Air Resources Board (ARB). It is this lack of enforcement on fines that led the Golden Wasteland researchers to conclude DTSC is failing in their mission to protect human health of all Californians, but they reveal DTSC's shortcomings in their mission are deeper, and more institutionalized than fines (Tucker, 2014).

Golden Wasteland researchers interviewed DTSC employees, all of whom expressed they believe DTSC "puts vulnerable communities last" (Tucker, 2014, pp. 6). They show DTSC does

this by not levying maximum fines for polluters and violators and allowing companies to operate on expired permits. This lack of enforcement within DTSC, however, is not due to the organization's ability to enforce. DTSC is a powerful organization, the only one under CalEPA with an office of criminal investigation and the ability to gather documents, environmental samples, sanction companies, and revoke or deny permits. DTSC rarely uses this power, and instead DTSC regulators expressed concerns that companies like the KHF will leave California if they are not allowed to expand. One DTSC employee stated, "There is a culture here and it's to be user friendly. It makes the world go around if you get along with business." (Tucker, 2014 pp. 15) This user friendly mentality is "business friendly", and when the businesses you are regulating are toxic and polluting industries, business friendly equates to polluter friendly, not even close to DTSC's mission for protecting human health.

This business forward approach leads to questioning who has power in DTSC, and while many would assume the DTSC director is the most powerful, the Golden Wasteland authors say the power lies with then chief deputy director Odette Madriago. Madriago served as the chief deputy director at DTSC for 28 years from 1985 to 2013, and she resigned in 2013 one week after the Fair Practices Commission (FPPC) launched an investigation into her stock holdings. The FPPC investigation revealed Madriago held stock in companies regulated by DTSC, and at the time of the investigation she had $100,000 invested into Chevron, and over $1 million in PG&E (Nguyen et al, May 2013). In 2013, while Madriago held Chevron stock, the Richmond Chevron refinery had a fire where DTSC decided not to issue any fines (Nguyen et al, April 2013). When DTSC was later investigated for their lack of action on the Chevron fire, the agency claimed it was not their responsibility, but was a local air pollution issue. DTSC claimed the lead agency for the fire was Contra Costa Health Services and the Bay Area Quality Management District (Chinn et al, 2013), despite holding a permit from DTSC. Additionally, they noted the California Health and Safety code explicitly exclude petroleum products from the definition of hazardous waste (Chinn et al, 2013). What is misleading about this statement is DTSC permits the facility, and the most recent 2006 draft permit for comment included in the title, "Draft Hazardous Waste Permit Renewal for Chevron's Richmond Refinery" (DTSC, April 2006). In the document DTSC describes the facility as a "petroleum refinery that produces a broad range of petroleum products…" (DTSC, April 2006, pp. 1). If DTSC is responsible for approving a hazardous waste permit for the facility, it should be able to levy fines against the company. They stated they did not pursue these fines because other agencies were taking action, such as CalOSHA levying "its largest fine ever" of $963,000 (Chinn et al, 2013, pp. 15). Commendable as the largest fine ever is, according to Chevron's 2009 Annual report, Chevron had US earnings of $7.1 billion in 2008 (Chevron, 2009). While the motive for DTSC's decision not to fine Chevron cannot be ascertained, the organization's public announcement was they lacked the authority to fine the company (Chinn et al, 2013), despite the agency permitting the facility and being the largest regulator of hazardous waste.

The issue of DTSC staff being involved with the companies they regulate is not confined to this one office. Peter Weiner, a former DTSC employee served as the former special assistant to Governor Jerry Brown for DTSC (Weiner, 2016). Weiner participated in drafting over 25 California state environmental laws, including the Superfund Law and is a current member of numerous DTSC committees. In 2009 Weiner joined legal counsel for Boeing, a company heavily regulated by DTSC and became involved with a current superfund cleanup with the

Santa Susana field in Southern California (EnviroReporter, 2012). While there is no evidence Weiner attempted to use his former DTSC position to influence policy, another former state employee, Winston Hickox, did attempt to use his previous EPA employment connections to further the interest of private corporation, CE2 Carbon Capital. Hickox was the state secretary of the CalEPA from 1999 to 2003, and is now a registered lobbyist with California Strategies LLC (McGreevy, 2013). According to the SOOO report and a 2013 Sacramento Bee article titled, "FPPC fines Kinney, Areias, and Hickox for Covert Lobbying," the FPPC fined Hickox $12,000 for "crossing the line between policy consulting and lobbying" (Rosenhall, 2013). He crossed this line by "trying to influence administrative actions before the Air Resources Board (ARB)," the agency the SOOO regards as having more responsibility and power than DTSC (Rosenhall, 2013). Although DTSC did not respond directly to Hickox being investigated and fined, in the SOOO report DTSC did state former employees have a right to gainful, legal employment (Chinn et al, 2014). This employment of former state agency officials now representing the private industries they once regulated creates an appearance of conflict of interests. In some cases it can create institutional challenges for communities to challenge these permitting decisions if those writing the laws to protect human health are defending the companies creating the pollution.

Not everyone views DTSC as having failed in their mission. A 2014 report conducted in direct response to Consumer Watchdog's Golden Wasteland report attempts to refute many of their claims and evidence (Chinn et al, 2014). Golden Wasteland caught the attention of three California Senators who requested the Senate of Office of Oversight and Outcomes (SOOO) review Consumer Watchdog's claims. The SOOO found some of the Golden Wasteland claims to be true and others to be incorrect or misleading, but a review of their report, "Fact Check: Despite Failures by State's Toxics Regulator, Many Recent Criticisms Unfounded" showed the SOOO merely has different interpretation of the reports evidence. Regarding the increase of TRIs, the SOOO acknowledges the increase of chemicals, but they state:

> DTSC does have some responsibility for trying to reduce overall toxic releases by, for instance, encouraging "greener" products and processes. But to a large extent, the department has little direct influence over many toxic releases, which may reflect economic trends or practices in a particular industrial sector (Chinn et al, 2014, pp. 4).

So while SOO will agree the toxic release increased, they do not believe this evidence DTSC has failed in its mission because they do not believe DTSC is responsible for this oversight. They note that DTSC regulates management of hazardous waste, but not the creation, although this is an interpretation of their role in managing hazardous waste (Chinn et al, 2014). While they may not legally oversee the creation of hazardous waste, they are responsible for ensuring it's handled in a safe manner, which includes disposal and management. Whether DTSC is responsible for regulating the management or creation of hazardous waste their unwillingness to engage with the discussion on hazardous waste facilities increasing pollution appears to the public as if they are passing off an important topic away from their agency and simply saying it's not their job.

In response to DTSC collecting fewer or lesser amounts in fines than ARB, the SOOO argues the ARB has "far greater responsibilities" than DTSC as evidenced by the amount of money each agency spent employing workers showing ARB outspent DTSC by 64% in the

2012-2013 fiscal year. Later in the report, one DTSC employee (Racy Leclerc, assistant deputy director of environmental restoration) stated the very reason they haven't pursued more investigations into the 194 cases listed as inactive, or those not being actively pursued, is due to their limited staff. It is important to note these inactive cases are not pursued due to staffing limitations, and not because they are not important, a potential threat to health, or DTSC's responsibility. The SOOO then claims DTSC collects fewer fines because they have less responsibility as evidenced by their smaller staff than ARB, but then also claim they cannot pursue all of the corrective actions listed on Envirostor website because of their limited staff. This circular argument then again passes the responsibility of enforcement and investigation to other unknown agencies (Chinn et al, 2014).

The document engages directly with the claims against the permitting of KHF expansion due to the lack of public participation, the inadequate birth defects study, and the permitting of a serial violator facility. Here the SOOO attempts to show all of these claims unfounded. While they provide evidence for a different interpretation of the events or definitions, the SOOO does not provide sufficient evidence to refute the Golden Wasteland claims. For example, SOOO states DTSC does not define the KHF as a serial violator, which according to DTSC's Fact Sheet on the approval of the KHF, because "there have been long stretched of time without violation." Serial violator then is not based on the severity of the violations, but how frequently these violations occur. This definition makes it difficult to define any facility as a serial violator because inspections are not frequent, and as DTSC has already stated, they lack the staff to follow up on all corrections (Chinn et al, 2014).

Together DTSC's lack of taking responsibility for hazardous waste issues along with staff entangled in business with the companies they are regulating creates barriers to challenging their permitting decisions. If it is unclear from the beginning of the process who is making these decisions and how, then community residents, even when fully engaged in the process cannot be expected to know where to go to oppose the decision. While permitting the KHF, DTSC followed the legal requirements for replying to public comments and even held additional meetings to discuss concerns with residents, but ultimately they decided to approve the permit siting the state health studies and their own environmental justice report.

More recently, a thread of racist emails sent between two DTSC employees has called into question the culture of DTSC. In late 2015, Consumer Watchdog discovered a series of racist emails between two DTSC employees, a toxicologist and senior geologist, in a batch of documents they received under a records request (Ortiz, 2015). Consumer Watchdog then released the emails on their website and called for the employees' resignation. The emails contain racist jokes and comments that make fun of people living in the sites these two government officials were meant to be overseeing. Although the actions were condemned by DTSC director Barbara Lee (McGreevy, 2015) the employees were allowed to keep their positions with DTSC and many people in communities requiring DTSC regulation then saw this as confirmation of what they only speculated at the agency (Aguilera, 2015). One member from the Center for Community Action and Environmental Justice stated in an interview that these emails demonstrate the disturbing culture at DTSC (Bogado, 2015). The interviewee continued:

> There is a very deep problem in the department (DTSC); its been allowed to fester and create a culture that doesn't take seriously the health of people living near these sites. If you had people doing their jobs who felt those people were important and deserved protection, the conclusions would be very different. We want a full investigation that can restore faith that the department will do what its supposed to do at every level (Bogado, 2015, pp. 1).

Together, these DTSC employee actions reflect a culture of DTSC that has appeared to not fully support the communities they are charged to protect. The lack of enforcement and levying fines, the seemingly conflicts of interests between staff and the industries they regulate as well as staff who now work for these industries, and the recent surfacing of racism in emails demonstrate a culture within an government agency that needs to be more supportive of the communities they protect. From an outsider's perspective, DTSC can appear to protect the industries they regulate, and not communities. These issues within DTSC are known throughout communities in California, but with government agencies as well. As one government official stated:

> The entire DTSC system is broken by accepting bad studies, never deny permits, and approving permits with old data. Their staff is limited by time and money, and they have marketing backgrounds. DTSC is worse than other agencies because of their organizational dysfunction. They have issues that have nothing to do with permitting; they need organizational change. (Ryan, 56, state government official)

This government official's perspective on DTSC's organizational issues demonstrates what many community residents also believe to be a problem. The problem with this image of DTSC's culture is beyond the permitting issues in that some employee have acted in a way causing communities and other government employees to lose trust in the agency. This culture of DTSC that appears to protect the industries they regulate over communities is detrimental to achieving environmental justice, has led people to question DTSC's motives, and has created barriers for these communities to challenge DTSC's decisions.

DTSC's lack of permitting criteria

In 2013, DTSC hired Cooperative Personnel Services (CPD) to conduct a review and analysis of their permitting process. CPS' findings showed DTSC had unclear standards for denying and revoking permits, the need for improving their public participation, as well as a lack of standardization in permitting procedures (CPS HR Consulting, 2013). The report cited the "significant dissatisfaction" with the permitting office and the need to create clear criteria for denying permits and violations from stakeholders, and the need to address the perception DTSC does not deny or revoke permits (CPS HR Consulting, 2013, pp. 4). This sentiment that due to DTSC's lack of criteria for permitting they do not deny or revoke permits is seen with multiple community organizations in their critique of DTSC (Greenaction for Health and Environmental Justice, June 2014; CRPE, March 2016). This lack of permitting criteria looks to those outside the agency that DTSC is approving permits without clear criteria. In a petition for review written on behalf of the KHF expansion permit, Greenaction drew on DTSC's formal acknowledgment of lacking permitting criteria, but they were approving the permit anyway (Greenaction for Health and Environmental Justice, June 2014). In 2013, the year before DTSC approved the

permit for the KHF expansion, then DTSC director, Debbie Raphael, stated in an interview, "We have a permitting system that is in need of some improvement" and "I would suggest and agree our permitting program is not operating as it should be" (Nguyen et al, 2013,pp.1). Raphael's comments would then lend evidence to not only improve the process, but also not approve permits during the review. The action to permit facilities during a review of the permitting process did not appear favorably to the public. While this review was necessary for improving the process and restoring trust in the agency, their decision to approve permits during a permit review appeared to not have the impacted community, Kettleman City, in mind.

From the CPS review and findings, DTSC then developed a two-year permitting enhancement. This plan encompassed 86 action items under 10 goals that included defining the process, establishing metrics, standardizing reviews, informing the public, enforcement enhancements, and identifying environmental justice concerns early (DTSC, November 2014). As of April 2015, DTSC stated they have "made significant progress" based on recognition from the Governor's Office of Business and Economic Development, drafting role and responsibilities documents, and finalized agreement to begin modernizing their public participation process, among others (DTSC, April 2015). Despite their statements of an improved process, the new permitting criteria have yet to be tested with environmental justice communities. Also, many of the current environmental hazardous and toxic facilities that already exist were permitted under the old system, which lacked criteria for denying permits. This lack of criteria has been a challenge for communities seeking environmental justice, and it remains to be seen if the new permitting plan can better support these communities with clearer standards and procedures.

Community actions to overcoming limitations with public participation and challenging DTSC

While there have been barriers to using public participation for achieving environmental justice and challenging DTSC's permitting decision, community organizations and coalitions have been successful in creating political change that is a step closer to achieving environmental justice. These actions have targeted both improving the public participation process at the state level and targeting equity in the permitting process. Together organizations and coalitions have engendered legislation that has led to DTSC reviewing their public participation process, giving equal time for Spanish speakers at public meetings, and DTSC's permitting process. This legislation led by community groups is clear evidence for the success of these organizations in reforming different aspects of the hazardous facility permitting process. Although this legislation does not address all of the barriers to meaningful public participation or issues with DTSC, it supports communities in their fight for achieving environmental justice.

Targeting improving public participation

Two different coalition groups in California adopted campaigns to reform DTSC (CEJC, 2014; CEJA, 2015), with one specifically focusing on DTSC's public participation process. The

California Environmental Justice Coalition (CEJC) formed in July 2014 and held their inaugural meeting in Kettleman City with 55 grassroots organizations in attendance (cejcoaltion.org). At this meeting, the coalition voted to adopt a campaign to reform DTSC with a focus on their public participation process.[13] At the December 2014 quarterly meeting, DTSC unveiled their plan for reviewing and updating their public participation process at a meeting in Sacramento (Marxen, 2014). At this meeting, DTSC presented recommendations for their permitting enhancement work plan, along with the need for developing new public engagement strategies that would start earlier and better reflect community input in findings with the goal of "building better trust with communities." The presenters also stated DTSC's public participation tools were out of date, for example the use of newspapers instead of Internet based communications. While during this meeting DTSC did not state their reasons for this review in the meeting, a government official stated:

> It was a long time coming. There have been a lot of observations that communities have changed, that the public has changed. We have a lot of old statutes that were created around environmental programs in the 80s, but that was a different time. We weren't discussing environmental justice. We were still with a very 1960s and 70s environmental focus and what the community-government relationship looked like. It served its purpose for a time (those relationship structures) but the structure was not flexible. (Mark, 46, state government official)

This recognition for the need to reform the public participation process occurred through the acknowledgment that the current methods were not serving communities, but also from the CPS report on the permitting process (CPS HR Consulting, 2013). This report demonstrated the need for improved public outreach and engagement, and the same government employee continued that, "Basically, the community found that the old ways were not working for them anymore." This finding for improving the public participation process was then brought about through community interviews and recommendations.

In 2014, DTSC contracted with UC Davis to address these concerns for an improved public participation process. UC Davis researchers began their outreach to stakeholders, impacted community members, and department staff. In total 25 individuals were interviewed between July and August of 2015 for this review. These interviews confirmed many of permit review finding in that there is a general distrust of the decision making process, a lack of meaningful public participation opportunities, lack of confidence with state employees. From their finding Davis researchers assembled a list of potential actions for DTSC to improve their public participation process that included early outreach and enhancing relationships (UC Davis Extension, 2016). While the recommendations listed do not seem very different from those made by DTSC at their December 2014 meeting, they are also only recommendations. DTSC can decide which to implement or integrate into the new public participation plan, which as of July 2016, they have not released.

[13] See chapter 4 for more information on CEJC and their inaugural meeting.

Targeting equity in the permitting process

In addition to focusing on reform within the public participation process, community groups have supported legislation that targets equity in the permitting process. This legislation included bills addressing the lack of equal time in the public participation process for Spanish speakers, the lack of permitting criteria for denying permits, and increasing representation on regulating boards.

SB 965 & AB 1330

In 2012, California Senator Wright authored legislation that would allow Spanish speakers equitable time to speak at public meetings (Wright, 2012). This bill, SB 965 (Wright), was in direct recognition that requiring Spanish comments only half the time as English speakers is part of an unfair process, and to achieve an equal process an unequal amount of time must be allowed. The main limitation of this bill, however, is that is only applies to one agency, the California State Water Board. To attempt to capture the momentum on this issue, the following year assembly member Perez authored AB 1330, a bill that would extend these policies to the wider state of California AB 1330 went through many versions and readings, but ultimately it did not pass through the Senate committee (Perez, 2014).

The People's Senate, SB 812 & SB 673

In 2014 CRPE took an active stance against pushing back against the disparate siting of hazardous facilities by bringing together affected communities throughout California. By bringing people together, CRPE worked with communities to help them define the issues within their communities, find commonalities among their issues, and determine how to best address them. From these meetings with community members came a report that was meant to give a voice to those most impacted by DTSC's regulations in reforming DTSC. This collaborative group of community members became known as the People's Senate, and their report has been used as evidence in reforming DTSC (CRPE, 2014). In the same year the People's Senate was formed, California Senator de Leon authored SB 812, a bill focused on reforming DTSC that included parts of the People's Senate report (CRPE, September 2014). Specifically, SB 812 would require DTSC to adopt criteria for permitting, as well as set deadlines for processing facility applications (Senate Rules Committee, 2014). While the bill passed through the Senate and Assembly, Governor Jerry Brown vetoed the bill by not signing it. In his veto message Brown acknowledged DTSC needs more oversight, but stated the bill needs different language (Barboza, 2014). A year later the group worked with legislatures to edit the bill and in 2015 Senator Lara introduced new language under SB 673. Jerry Brown signed this bill that now requires DTSC to consider permitting criteria for denying or revoking permits that includes the impacted communities' vulnerability (Lara, October 2015). Although the KHF expansion was approved before SB 673 was signed, the site will be subject to this new legislation in 2023 when their permits come up for review.

AB 1075 & AB 1288

In 2015, two other bills passed that will affect communities like Kettleman City who host hazardous facilities or are low-income communities of color. AB 1075 (Alejo) requires DTSC to revoke the permit of a hazardous waste facility after three violations within a five-year period. These violations have to be serious enough to pose a threat to public health, which not all violations are considered a threat to human health. AB 1288 (Atkins) requires an addition two environmental justice representative on the California Air Resources Board (CARB). These two representatives must be from impacted communities or work with low-income communities of color. This victory for adding environmental justice representatives on an air monitoring board has potential for improved representation of impacted communities with environmental and permitting decisions (CRPE, 2015).

These bills are legal wins for environmental justice communities, especially those near hazardous waste sites. These legislative changes are examples of how community groups have successfully used the law in their favor to support working toward achieving environmental justice, but a lot is up to how CalEPA and DTSC will interpret and implement these laws. The interpretation and implementation is crucial because despite the plethora of environmental justice laws, practices, and committees before, the concentration of pollution in communities of color has worsened (UCC, 2007). Although the use of legislation to achieve environmental justice is not new for community organizations, Pulido et al showed one of the reasons for slow traction toward environmental justice is the reliance on the state. There the authors argued the movement has stalled because it is no longer fighting the state, but attempting to work with it and in doing so the movement has been co-opted. They see the answer forward being "refusing to participating in the regulator charades" (Pulido et al, 2016, pp. 27), but many community groups are still hopeful this new legislation will have a positive impact on their communities.

Conclusion

Despite increased awareness of environmental justice and health issues in Kettleman City, DTSC approved the permit to expand the Kettleman Hills Facility. While their decision to approve the expansion permit rest on the review of WM's application, they cite the 2010 CDPH birth defects investigation, as well as their own 2013 Environmental Justice report as evidence the facility is safe to expand. Instead of evidence to support the community's objections to the expansion, these reports that show a birth defects cluster and numerous health and environmental concerns were unable to establish a single cause and both WM and DTSC used them as support for the expansion of the landfill. This points to the need for further examining the barriers within the permitting process and state institutions for community members seeking environmental justice.

Kettleman City is a community of engaged individuals who fought to be included in the local and state permitting processes, but experienced challenges to their meaningful inclusion. In addition to barriers to their meaningful inclusion at the local government level, opponents to the expansion project faced barriers with state institutions. These institutional barriers included the limitations of using public participation to achieving environmental justice and challenging

DTSC's permitting decisions. The limitations of using public participation for achieving environmental justice were demonstrated with institutional racism within the public participation process through the use of unequal comment time for Spanish speakers. Additionally, DTSC presented barriers to challenging the permitting decisions through their reliance on the health study with low statistical power, colorblind environmental policies unable to combat institutional racism in the permitting process, the culture within DTSC of staff members with seemingly conflicts of interest, and DTSC's lack of permitting criteria.

In facing these barriers to achieving environmental justice, community groups developed campaigns to reform DTSC and worked toward passing legislation that would target improving public participation and equity in the permitting process. While many of the bills were successful in eventually becoming laws, their impact has yet to be determined. Although the use of legislation has been viewed by some as a limited resource for the movement, with the right government implementation, these laws could improve both the process and outcomes. SB 695 is limited to one government agency, but if successful there could be replicated at a larger scale, and SB 673 established permitting criteria of considering community vulnerability, which should lead to improved outcomes for permitting in communities of color. While no one bill or group can solve the problems facing environmental justice communities, the continued resilience of community groups demonstrates both the success and the work needed to achieve environmental justice.

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Chapter 6: Conclusions, Policy Recommendations, and Future Research

The movement for environmental justice has evolved since the Warren County protests in 1982 expanding the definitions of environment and environmental health, and developing the strategies used for achieving environmental justice. Although the movement has grown in scope and momentum with the acknowledgement of environmental justice issues, the creation of policies, laws and committees, challenges remain with their implementation and interpretation. The federal and California state requirements for public participation in approving facility permits through engagement with CEQA and the Tanner Act were two such laws designed to incorporate public opinion, and ideally address concerns through mitigation environmental impact. While these laws have set legal standards for engaging the public, these minimum requirements have not been sufficient for meaningfully involving the public. The case of Kettleman City shows the ineffective public participation processes with CEQA and LAC, as well as the institutional challenges that remain for effectively implementing environmental justice laws and practices.

Chapter 3 showed the limitations using legally mandated public participation within CEQA and the LAC for meaningful engagement of facility permitting. Here, the case of Kettleman showed the limited government accountability within CEQA's public participation because not only are lead agencies able to ignore verbal comments at meetings, they can dismiss written concerns to the EIR on pollution or health concerns by stating those are outside their agency's jurisdiction. The government must take responsibility for allowing the pollution to increase in low income communities of color because they are the ones continuing to permit these industries and they have the final discretion over which projects are built, which are expanded, and which are finally stopped.

Chapter 4 examined the continued effort of Kettleman City residents to oppose the permitting of WM projects, despite the limitations with public participation. Residents opposing these projects attempted to be engaged with both projects and have their voices and concerns heard, but institutional challenges with the LAC committees, translations requirements and services, and physical access to meetings made their meaningful participation difficult. Despite the challenges, these residents utilized community-based strategies for engagement that included community organizing and organizing strategies, such as coalition building, media, and litigation. While these strategies were effective at enabling them to physically participate in the permitting process by providing transportation to meetings, information on the projects, fighting for translation services, having LAC meetings moved to Kettleman City, and stopping the incinerator, they were not successful at swaying the outcome to permit the facilities expansion. Here the community opposing the incinerator was able to defeat the project in 1991, but in 2009 despite the increased knowledge of health concerns including the polluted air, water, and birth defects cluster, and the increased laws and government practices acknowledging environmental justice, the government approved the expansion knowingly increasing the air pollution in an already overburdened community. While the increased support for WM can be partially explained by their successful campaign to portray a positive image, as well as the demographic changes meaning community turnover and a less united community to challenge the facility, there continue to be larger structural challenges to using an environmental justice framework to opposing polluting facilities.

Chapter 5 considered these larger cultural and institutional challenges to achieving environmental justice. This chapter explains how with increased health concerns and reports, environmental justice legislation, and community strategies to be included in the permitting process the government approved the facility expansion. Although there are multiple health reports for Kettleman City documenting the health issues, this reports was used as evidence to approve, and not deny, the facility's permit. WM and government agencies consider this and other environmental reports conducted there to be the most extensive studies, and while they documented the health concerns, DTSC used them as evidence to approve the expansion permit. This chapter also examines the institutional barriers to achieving environmental justice by demonstrating institutional racism within the public participation practices, and the barriers to challenging DTSC's permitting decisions. These barriers within DTSC included their reliance on low statistical power health studies, their use of colorblind environmental justice language, the culture of DTSC, and the lack of permitting criteria. Despite these barriers, community groups organized to support campaigns reforming DTSC and legislation for improving public participation and equity in the permitting process.

Remaining Issues & Policy Recommendations

Considering the challenges for an effective environmental justice approach beyond public participation include issues of framing and the omission of race or racism. The goal of an environmental justice framework can no longer be to "make environmental protection more democratic" (Bullard, 1994) because this assumes an equal playing field. If the environmental justice movement's success is measured for its ability to make the process more democratic, then in some ways it has succeeded, but in others it has failed. If its success is measured by the ability to address outcomes that create or increase the disparate impact, then this framework has also failed because the concentration of pollution in low-income communities of color is worse today than in 1987 (UCC, 2007). Although, these measurements conflate the movement's success with the government's inability to implement and enforce environmental and environmental justice policies, and instead of viewing these limitations as those of the movement, they are really the failure of the state and federal programs to interpret and implement these policies in a way that supports and benefits the communities that pushed for these policy changes. What is needed then to work toward government decisions that do not continue to concentrate pollution in low income communities of color is a return to the environmental racism framework, and the ability to litigate based on impact, and not intent.

Addressing Institutional Racism

Currently there is a lack of laws, practices, policies that can address environmental racism. This lack of addressing racism is partially because of the movement's adoption of justice language over racism, but partially because the government cannot address institutional or structural forms of racism. While racism is individual thoughts of inherent differences based on race that leads to unequal treatment based on race, institutional racism is patterned racism operating at a larger level or within institutions, such as government agencies. The difference

between racism and institutional racism is that individuals perpetuate racism, and institutions perpetuate institutional, but institutional doesn't need to be operating under racist assumptions. Once institutional practices are codified into the culture, norms, or policies, they begin to replace themselves. At another level, structural racism is a form of racism that also operates beyond individuals, and without individual intent in macro level systems. In structural racism, institutions and processes interact to create and reinforce racial inequities (Powell, 2007). As this form of racism does not require individuals or individual intent to function, the elimination of all individual discrimination would still result in racial inequities due to the persistence of structural racism. Therefore, addressing individual forms of racism in government decision-making requires policies and practices that do not allow the inclusion of race, but to target institutional racism requires the adoption of policies that focus on equity.

In 1994 Robert Bullard put forth five principles of environmental justice that would address racism in environmental decision-making by promoting procedural, geographic, and social equity. These five principles for environmental justice include: 1) Guaranteeing the right to environmental protection 2) Preventing harm before it occurs 3) Shifting the burden of proof to polluters 4) Obviating proof of intent to discriminate and 5) Redressing existing inequities. While the principles are most about achieving environmental justice, the focus on equity is key for addressing institutional and structural forms of racism and applying these five principles to government definitions of environmental justice could help government agencies achieve environmental justice (Bullard, 1994).

The case of Kettleman City highlights two different areas where institutional racism needs to be addressed: in the public participation process and with the state's environmental justice policies. To address institutional racism in the public participation process, the government agencies involved with permitting decisions should adopt policies that focus on procedural, social, and geographic equity. Policies targeting procedural and social equity would work toward closing the gap in meaningful participation by enacting practices allowing all residents to fully and meaningfully engage with the process, while geographic equity would be addressed in the decision itself. In the case of Kettleman City residents were systematically excluded from the participation process, although the government was legally compliant in hosting their meetings. Hosting meetings at incontinent times and in another city that is not well served by public transit creates inherent barriers to participating. Additionally, having selective translation services of documents, and unequal time to give Spanish comments discriminates against Spanish speakers from their full and meaningful participation. While the government is only legally compelled to host the meeting and provide the opportunity for participation, the process should be more reflective of the challenges community members face to participating. This would mean policy changes requiring translation services of all documents, meetings held in locations close to the community most impacted by the project, and more time for Spanish speakers comments since they require translations for government officials. Even with these changes, the power to approve the permit lies solely with the county and state governments, and currently the approval is at their discretion. This means the government agencies decide if the legal procedural requirements have been met without criteria for distributive or geographic equity. Including an element of geographic equity, or the consideration of existing environmental hazards or pollution, would help provide evidence and support for not siting the increase of pollution in already vulnerable or burdened communities.

Even when communities are able to utilize their own community strategies to participate in permitting decisions and are able to bring forward evidence the project would increase the environmental burdens in their community, the state laws are unable to support them. The current environmental justice laws include colorblind or race neutral language, but as an approach to combatting racism, colorblind policies only address individual acts of racism. That is, colorblind policies operate effectively on an individual level, with overt forms, and only where there is not a history or legacy of discriminations. The US experience is one of individual, institutional, and structural forms of racism all operating in different, sometime unassuming ways. Because of these different forms, the Civil Rights Act of 1964 could only really address limiting the legalized form of racism, but it cannot reach past legal or individual acts into the structural forms. To address institutional or structural forms of racism, policies much take a different approach beyond colorblind practices to target the underlying structures, cultures, and assumption that subtly shore up systems that reproduce and create racial disparities.

Environmental Racism Frame

A return to the original environmental racism frame would help support policies that can address the institutional racism in public participation, permitting, and state policies. Returning to an environmental racism frame would enable the government to focus on the root causes of environment injustice and better enable opportunities for addressing these causes that exist within government planning and permitting decisions. Planners and government agents could include and environmental racism framework within the existing permitting policies that would include taking an equitable lens for permitting decisions over an equality one. This would look like interpreting legal requirements for public participation by considering what everyone needs to meaningfully participate in the process instead of the minimum legal requirements. Planners could also utilize the resources they have available to them to better support community residents by engaging with them in a way that shares power in the process. This model would draw on existing knowledge of which participation methods work best for sharing power, as well as engage residents to incorporate their concerns, and not simply be present for them to speak. These changes would work toward an improved participation model, that wouldn't require legal changes, only a wider interpretation and implementation of the existing requirements to meaningfully include the public.

Place as a Civil Rights Issue

Ultimately, planners and government agents should reconceive place beyond a geographical consideration and see it as a civil aright issue. Civil Rights are attributed with a specific population and what is considered an undeniable right, such as equal protection under the law, place can be considered a civil right when people are systematically segregated by race and denied equal environmental protection. Currently many city planning issues have already come to be seen as civil rights issues because of the segregation or health inequities they perpetuate through housing (Morris, 1986; Williams and Collins, 2001), transportation (Badger,

2015), and development practices (Pritchett, 2003). While many government agencies have civil rights offices, planners viewing their work through a civil rights lens would mean considering the impact of their decisions on communities of color.

Place matters to a host of social, political, and economic outcomes, but people are not randomly nor equally distributed (Small and Newman, 2001), nor are environmental burdens or resources (Pearce and Merletti, 2006). When these differences in outcomes are stratified by race, they can be viewed as place-based inequities because it is place that explains them and not income or race. Viewing these places as whole entities, and not pieces of housing, transportation, development, or the environment would allow planners to evaluate how these fields interact and impact one another.

The field of planning directly engages with how space is used, how places are created, environmental consideration through land use and general plans, and planners work with policies that direct who lives where based on income and race, and therefore planning should be seen as a civil rights issue. Taking this approach could mean considering race in planning decisions in a way that evaluates who, based on race, will host environmental burdens. It would look like considering cumulative impacts of land use and could lead to decisions that would not place segregated communities of color at higher health risks with concentrated pollution based on their race or income.

Future Research

This research on the permitting process in Kettleman City has identified numerous future research areas for assessing policies and their implementation. SB695's potential for moving towards environmental justice by considering community vulnerability will be limited or enabled based on the state agencies implementation. As a lead permitting agency, DTSC will be defining and operationalizing "vulnerability" as well as implementing the criteria into their permitting decisions. After its implementation, research will be able to measure its success or failure in reducing pollution in communities of color already burdened by environmental and health hazards. Here community groups can push to be involved with the defining and implementation to ensure the government works in a manner that best supports their communities.

In addition to measuring the impact of SB 673, communities will want to know the impact from both CalEnviroScreen and the community-based model of IVAN. As part of the implementation of SB 535, CalEnviroScreen identifies disadvantaged and vulnerable communities within California as 10% of funds collected through SB 535 from the Greenhouse Gas Reduction Fund are to be directed toward these communities, but there is little research showing the impact from this plan on impacted communities. Although the EPA and DTSC are already using the findings from CalEnviroScreen, less is known on how they are using these findings, and what impact the tool is ultimately having on these communities. Similarly, the community generated IVAN model has been active bringing together community members from disadvantaged communities with state agents, but there is little research on the impact of this model. The IVAN model has spread throughout the state to six different places, but the impact should be known for advocating for resources to expand further.

Conclusion

The case of Kettleman City that even when a community is highly organized to oppose a project, has utilized various strategies to be included in the process, and experienced previous political success, their opposition and inclusion in the process is not enough to sway the decision in their favor. This shows planners that encouraging community participation is not enough, building community capacity or social capital is not enough, and even empowering residents to be included in the process is not enough to achieve environmental justice as both residents and planners play a role.

The environmental justice movement has come a long way since 1987 with now state and federal recognition of EJ issues, laws, policies, appointments, and committees dedicated to achieving environmental justice. With every political win against a polluting industry though, come new challenges. While communities have demonstrated resilience by learning and creating successful strategies for opposing the siting of pollution in their neighborhoods, industries too have learned how to make challenging them more difficult. These industries wouldn't be successful though, just as community groups wouldn't be successful in their opposition, without the support of the regulating government agencies. The responsibility to protect human health has always been with the government, not profit-driven private corporations. While the government must decide how to best implement laws and policies to protect health and achieve environmental justice, they cannot and they will not do it alone. The environmental justice movement began with concerned community residents turned organizers and activists and supported by lawyers and politicians. Despite the legal wins and political gains made over the past thirty years, it will be the community organizing and community strategies that will continue to propel the movement forward by continuing to propel the government in the right direction.

Chapter 6 References

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