

US EPA ARCHIVE DOCUMENT



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

September 20, 2011

Mr. Thomas Leeman
San Joaquin Valley Division Chief
Endangered Species Program
US Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, California 94825-1846

Subject: Request for Formal Consultation Under Section 7 of the Endangered Species Act on TSCA Permit Application for Chemical Waste Management Kettleman Hills Facility.

Dear Mr. Leeman:

With this letter, the United States Environmental Protection Agency, Region 9 (EPA) requests initiation of formal consultation with the United States Fish and Wildlife Service (FWS) under Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. Section 1536(a)(2), on Chemical Waste Management's (CWM's) application for the renewal and modification of a permit under the Toxic Substances Control Act (TSCA), including the expansion of existing landfill Cell B-18, to manage and dispose of polychlorinated biphenyls (PCBs) at its Kettleman Hills, California facility (the "Facility").

EPA and CWM have been participating in informal consultation with FWS regarding the proposed action. EPA is initiating formal consultation because it has reviewed the attached Biological Assessment and other information and determined the proposed action may adversely affect the endangered San Joaquin Kit Fox and Blunt-nosed Leopard Lizard. EPA believes that, with incorporation of the proposed Conservation Measures described in the Biological Assessment, this action is not likely to jeopardize the continued existence of the two species. EPA has further determined that the proposed action will not affect other listed species or any designated critical habitat.

In accordance with Section 7(c) of the ESA, 16 U.S.C. Section 1536(c), and 50 C.F.R. Section 402.12, CWM submitted to EPA the attached Biological Assessment prepared by Berryman Ecological for the proposed project. The Biological Assessment provides the following information required under 50 C.F.R. Section 402.14(c) for initiation of formal consultation:

- A description of proposed action;
- A description of the area that may be affected by the proposed action;
- A current list of threatened and endangered species and designated critical habitat that

may be affected by the proposed action;

- A description of the manner in which the proposed action may affect any listed species or critical habitat, and an analysis of any cumulative effects;
- Conservation measures to be implemented as part of the proposed action; and
- Other relevant available information on the proposed action and the affected listed species and critical habitat.

In addition to the Biological Assessment, EPA is attaching another relevant report. As part of the TSCA permit process, EPA required CWM to perform sampling and analysis of soil, air and vegetation from the facility to measure concentrations of specific PCB congeners and to perform an ecological risk assessment using the results of the sampling ("Congener Study"). A copy of the Congener Study is attached. That sampling program identified levels of PCBs in soil and vegetation that result from CWM operations. EPA required CWM to prepare the ecological risk assessment to evaluate the potential adverse effects those concentrations may have on any threatened or endangered species or designated critical habitat. The ecological risk assessment demonstrated to EPA's satisfaction that the past and potential future release of PCBs to the environment from PCB disposal operations at the Facility will not adversely affect any threatened or endangered species or designated critical habitat.

We understand that CWM has also provided FWS with several other reports that support this request for initiation of formal consultation, including: Draft, Supplemental and Final Environmental Impact Reports; previous FWS Biological Opinions prepared for the Facility; a Mitigation and Monitoring Plan dated April 1991; a revised draft of that Mitigation and Monitoring Plan dated April, 2008; and periodic CWM monitoring reports.

With the submission of the Biological Assessment and other relevant reports, EPA believes it has provided FWS with the best scientific and commercial data available for purposes of this formal consultation consistent with Section 7(a)(2) of the ESA, 16 U.S.C. Section 1536(a)(2), and 50 C.F.R. Section 402.14(d).

We understand that FWS will provide EPA with its Biological Opinion (including any appropriate incidental take statement) within the Section 7 consultation time frame. We would appreciate the opportunity to review and provide comments on the draft Biological Opinion before the final document is prepared.

We look forward to working with you on this matter. Please contact Mr. John Beach at this address, beach.john@epa.gov, or 415-972-3347 if you need additional information or have any questions regarding this request.

Sincerely



Caleb Shaffer, Manager
RCRA Facilities Management Office

Enclosures: Final Dioxin-Like Polychlorinated Biphenyl (PCB) Congener Study Report

Cc: Shelley Buranek, FWS (via e-mail)
John Beach, EPA Region 9
Paul Turek, CWM (via e-mail)
Wayne Lorentzen, DTSC (via e-mail)