

COMMITTEE TO BRIDGE THE GAP

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Boeing Water Pollution Permit Appealed

Watchdog group Committee to Bridge the Gap (CBG) has appealed the issuance of a water pollution permit to the Boeing Company for its Santa Susana Field Laboratory (SSFL), a heavily contaminated nuclear and rocket testing facility at the Los Angeles/Ventura County boundary. The legal action – which could have important implications for efforts by polluters to weaken enforcement of water pollution rules statewide – contends that the permit improperly relaxes public health and environmental protections.

The appeal, filed Friday with the State Water Resources Board, challenges the July 1 issuance of a discharge permit by the Los Angeles Regional Water Quality Control Board. The new permit eliminates previous enforceable limits for sixteen toxic constituents in discharges from two outfalls at the site and nine toxic constituents from five other outfalls. Eleven new outfalls have been allowed to have no or few enforceable limits at all.

At a May hearing before the Regional Board, staff proposed elimination of many existing limits and to impose few other limits. After hearing extensive testimony about its long history of accidents and massive contamination, however, the Board found that the Boeing facility was a unique site, unlike any facility that had come before the Board previously, and directed its staff to try to find a way to restore the limits they had proposed to eliminate and to consider limiting all the toxic materials known to contaminate the site.

Nonetheless, in July, the staff came back to the Board and declined to do as asked, arguing that the Board was barred from including the previous limits, establishing the desired additional limits, or considering data about the extensive soil and groundwater contamination at the site. (The Board nevertheless reinstated one limit, for TCE, at 2 of the site's 18 outfalls, but, based on the staff claims, backed down on restoring any of the others.)

The staff argued that for new outfalls for which there are no effluent monitoring data yet, state policy bars setting of any enforceable limits, no matter how contaminated the site. For outfalls for which there are effluent data, they claimed enforceable limits can only be included for contaminants which the discharger already has a history of violating such limits. CBG argues that the failure to include enforceable limits for scores of toxic materials known to have contaminated a site would amount to a “get out of jail free pass” for polluters.

The appeal alleges that those assertions by staff were contrary to law, that the resulting permit places public health at risk, and that the permit should be remanded to the Regional Board with a direction to consider pollution limits for each outfall for all potential contaminants found at SSFL, using best professional judgment and all available information.

State policy expressly provides that Boards are to consider all available information in determining the need for enforceable limits, not just past violations of effluent limits. In the Boeing case, however, the Regional Board’s staff and counsel advised the Board that it was barred from using its judgment and available information such as soil and groundwater contamination data in setting limits, no matter how extraordinary the history of such pollution and accidents might be. This case challenges the outcome – a permit with few – and for some outfalls, no – enforceable pollutant limits, despite more than a hundred toxic chemicals having been found contaminating soil and groundwater at the site.

The Committee to Bridge the Gap has been a critic of the Santa Susana site for 25 years, since it exposed details of a partial meltdown that had occurred there in 1959. “If enforceable limits can’t be imposed on a site this contaminated, water pollution laws will have been rendered toothless and regulators handcuffed statewide from taking actions to protection water quality,” said CBG President Daniel Hirsch.

Whether the permit contains enforceable limits on toxics is important, because violations of limits now trigger mandatory fines. For years, polluters could violate pollution limits in their permits and rarely face fines. To cure this problem, the Legislature passed the “Migden bill” effective in 2000 to require mandatory minimum penalties. Hampering regulators from imposing enforceable limits – what is at issue in this case – would nullify the central premise of that law, permitting polluters to evade enforcement actions.

Attorney John Farrow, representing CBG in the case, said, “The Board clearly wanted to set limits – they just misunderstood the state policy. They were not only allowed, but required, to consider the contamination data when setting limits for this site.”

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The appeal brief and petition are available upon request.