Comments
by the
Committee to Bridge the Gap

On the Proposed
Waste Discharge Requirements
Monitoring and Reporting Program
Cease and Desist Order
and
Fact Sheet

for the
Boeing Company
Santa Susana Field Laboratory

15 April 2009

Introduction

The Santa Susana Field Laboratory (SSFL) is a heavily contaminated nuclear reactor and rocket and missile testing facility located on the boundary between Los Angeles and Ventura Counties. The site of one of the only reactor meltdowns in the world, SSFL was home to approximately ten nuclear reactors, a plutonium fuel fabrication facility, a "hot lab" for cutting up irradiated nuclear fuel, munitions development, testing of "Star Wars" laser systems, and approximately thirty thousand rocket tests.

A history of disregard for environmental rules and procedures led to widespread pollution of surface water, groundwater, and soil, and releases to the air. Hazardous and radioactive wastes were routinely burned in open-air pits; toxic materials were discharged directly into the soil; there were spills, accidents, and a whole host of other releases. The facility sits on a plateau in the Santa Susana mountains, overlooking Simi Valley to the north and the western San Fernando Valley to the east.

Surface water leaving the site is contaminated with numerous pollutants. Boeing has been cited for hundreds of violations of its NPDES discharge permit, and has failed to come into compliance. Violations continue to this time unabated.

A rich and powerful company, Boeing has acted the scofflaw. It apparently has had the perception – reinforced, alas, by the Regional Board's failure to take vigorous steps to enforce the law – that it is far cheaper for it to violate the law than to comply. It has judged, correctly it seems, that persistent and numerous violations of the laws meant to protect the environment and public health will result in mere slaps of the wrist, if any response occurs at all.

The affected community, meanwhile, has increasingly despaired of any serious efforts by the Regional Board to protect their health. Over and over again, the Board has declined to impose enforceable limits on Boeing, instead granting its request for non-enforceable "benchmarks," exceedance of which produces no enforcement action. Were there are enforceable limits, deadlines for compliance are continually waived or extended in a never-ending shifting far off into the future the dates for eventually stopping the violations. The Board has declined to impose limits of any sort on many constituents of concern found at the site; for those for which limits or benchmarks are imposed, monitoring for many is limited to one sample per year, woefully insufficient to detect a problem if it occurs.

The lack of transparency and balance in the process has contributed to the community despair. Boeing submits to Board staff proposals for weakening standards. There are closed-door meetings and/or conference calls between the polluter and regulator. The Board staff then issues "tentative" orders. (There is no comparable process for the public, those affected by the releases, to propose in this order-drafting stage, to have its suggestions for *strengthening* the permit taken into account.) The public comment opportunity is essentially after the fact—after the polluter and regulator have secretly negotiated an agreement. The comment process is largely *pro forma*; the staff has already decided, in its meetings with Boeing, and has issued its recommended orders, and after-the-fact public comments are just a procedural nuisance one has to go through which virtually never produces much substantive change. Staff merely "responds" to the comments—which are, after all, by the nature of this process a criticism of the document staff has already prepared—by defending what it has done.

Then the whole package, several inches thick, is presented to the Board itself for assent. The written public comments are generally buried in the package; instead the Board receives a "summary" of the comments prepared by the staff and its response to them, saying why, with a few exceptions, staff rejected the central public comments. The Board then may try, in response to frustrated public testimony at the hearing, to correct one or maybe two of the most aspects of the staff proposal, letting the rest go through. Boeing goes home, having gotten most of what it wanted. And the public then goes home even more disillusioned than before. There must be a better way of doing the public's business, and of carrying out the responsibility of protective public health and the environment.

<u>Background to The Current Situation</u>

The last time the SSFL issue came before the Regional Board for a vote, on remand from the State Board, staff proposed relaxing Boeing's requirements far beyond the limited matters directed in the state remand, and the Board assented, to the dismay of the community.

The Board waived enforcement of the permit's numeric limits for various periods. For Outfalls 8 and 9, a Cease and Desist Order was issued which gave Boeing until

12 June 2009 to come in compliance with the numeric limits, waiving enforcement until then. The State Board had directed that the shortest possible compliance time be provided; the Board determined for Outfalls 8 and 9 that would be until mid-2009. (This fact will be important in the discussion that follows on the new CDO and WDRs.)

Boeing proposed to not use traditional Best Management Practices (BMPs) at those outfalls but instead Engineered Natural Treatment Systems (ENTS), and on that basis, the Board gave Boeing more time to come into compliance at those Outfalls. (It asserted that with BMPs at the other outfalls and ENTSs at 8 and 9, it would come into compliance). Boeing hired what it called its "expert panel," supposedly to design the ENTS. However, in a "White Paper" presented by the panel to the Board at a workshop on 5 June 2008, the panel strayed far from its mandate and urged a series of steps to convert enforceable numeric limits into unenforceable "benchmarks," and related measures to bar the Board from taking enforcement steps when Boeing violated limits. The community expressed its concern about these Boeing recommendations at the Workshop, and in a follow-up letter of 17 July 2008, incorporated here by reference. The fundamental concern held by the public was the repeated effort by Boeing to get the Board to convert enforceable limits into non-enforceable benchmarks, an issue important as we discuss the current proposals.

In part because of concerns expressed that the Boeing panel had conceded that the ENTS they proposed would not succeed in bring Boeing into compliance at Outfalls 8 and 9, the Board's Executive Officer issued in December 2008 an order directing Boeing to engage in interim source removal (excavating contaminated soil that was the source for pollution leaving the site in surface runoff). Our comments on Boeing's plan for responding to the interim source removal order are attached hereto. Those comments address matters relevant to the current proposals, including the draft new CDO.

In June 2008, the Board issued a Notice of Violation for 24 violations going back to late 2006. Most of those violations are at outfalls that have BMPs in place (i.e., outfalls other than 8 and 9) —**proving the installed BMPs are not working.** Yet no enforcement action has been taken; indeed, Boeing has not even been asked to respond to the NOV yet.

The Current Proposals Before the Board

1. The New CDO ("Revised Tentative")

Staff proposes to override the Board's determination in issuing the prior CDO that Boeing should come into compliance with enforceable limits at Outfalls 8 and 9 by 10 June 2009. The Board had taken that action in 2007 in compliance with the State Board order of 2006 directing the issuance of a compliance schedule that was a short as practical. Staff now proposes a new CDO that would extend allowable non-compliance through 26 June 2012 – more than three years from now. A report on work done is to be

filed by 12 August 2012, and if the work has been insufficient, modifications to it would have to be undertaken over subsequent years—far into the future.

Source removal and ENTS construction would not be required to be completed until 2012, and if insufficient, modified over the years to come. During that time, the draft CDO states, the enforceable limits that currently take effect in June of this year would instead be converted into non-enforceable benchmarks.

The illogic in this is demonstrated in item 2 on page 8 of the draft CDO: "Exceedance of benchmarks triggers an evaluation of the BMPs in place with the potential for upgrading or replacing the BMPs (See Section II.C.7 of Order 2009-00xx)." But there are no BMPs in place at these outfalls. That is the whole point. Boeing has proposed not installing BMPs but instead constructing ENTSs there—and hasn't done so. This order would not require them to be constructed until 2012. So exceedances before that time can't result in evaluation of and improvements to BMPs; there aren't any and won't be any.

Section 42 of the revised tentative CDO (p. 8) has added a list of activities to be done to comply with the Interim Source Removal Order and concludes, "Based on the number of activities and the complexities of these activities, Regional Board concludes that a three year compliance schedule is the shortest time practicable."

This is outrageous. The Board in its 2007 CDO concluded that the shortest time practicable is by June 2009. Boeing has had years and years to come into compliance with the limits, going back well before 2007. It has known for years it was obligated to come into compliance. It has simply refused to obey. And now that it has completely failed to comply with the 2007 CDO – it hasn't even begun construction of the promised ENTSs – Board staff propose to once again excuse Boeing failure to obey prior orders by having the Board issue a new order simply extending the waiver of compliance another three years. Is there any reason to doubt why the community despairs so?

Boeing's Report of Waste Discharge attempts to claim that it hasn't done what it promised to – get the ENTS up and running before the fall rainy season so as to comply with the existing CDO – by saying that approvals are needed from the County of Ventura. HOWEVER, the County hasn't acted on Boeing's application because months ago it deemed the application incomplete – and *Boeing has taken no steps to supply the missing information*. Boeing's failure to do what is required of it should not be used as a basis for excusing it from its existing obligations.

The existing CDO requires compliance by 10 June 2009 – in effect, by the first rains of fall. Boeing has sat on its hands and done nothing to comply. It has neither built the promised ENTSs nor done source removal – which it could have done at any time, not having to wait for an order to do so. It knew it was under an order to comply by June 2009, and it simply refused to do so, presuming that the Board would back done and once again extend the waiver of the enforceable limits.

RECOMMENDATION: The Board should decline to issue the new CDO. It should simply keep in place its existing CDO. If Boeing violates it, the Board should enforce it. At minimum, that would create some incentive for Boeing to finally come into compliance

2. Waste Discharge Requirements ("WDR", Revised Tentative)

After releasing the tentative new CDO, with its 3+ years of compliance waiver, staff apparently realized that such a period violated the Statewide Implementation Plan (SIP). The SIP bars compliance periods extending beyond 17 May 2010. To get around that difficulty, staff revised the tentative WDR to make the effluent limits for Outfalls 8 and 9 into mere "benchmarks" through 17 May 2010 (p. 44, bottom), and then threw in a reopener provision permitting the Board to revise the deadline if Boeing fails to comply with it! In other words, the 2010 deadline in the revised tentative WDR is put in with a wink and a nod, to get around the SIP requirement, and a mechanism put in place to extend it through to 2012.

Indeed, the CDO says 2012, not 2010. And by putting in a long list of things that must be done, and a finding that compliance before 2012 is not practicable, staff places the Board in a potentially untenable legal position. If it enforces the 2010 date in the WDR, Boeing can claim that the Board in the CDO set the deadline as 2012 and found that no earlier date was practicable. The contradiction between the CDO and the WDR is an eruption waiting to happen.

We urge removal from the WDR of any conversion of requirements for Outfalls 8 and 9 being made into benchmarks, for any period.

A number of other outfalls are treated via benchmarks rather than enforceable limits. We oppose this generally. (We note that this is done far beyond the limited direction from the State Board regarding two outfalls it viewed—erroneously we believe--- as potentially redundant.)

And even for outfalls where there are some enforceable limits for some constituents of concern, a great many other contaminants have no enforceable limits at those same outfalls. We object to this as well.

The order gives to Boeing the power to do the "Reasonable Potential Analysis" (RPA). We object. The polluter, with a vested self-interest in the outcome, should not do the RPA.

Even with the benchmark leeway, the order lets Boeing exceed the benchmarks without evaluating how to improve the failing BMPs unless the same constituent exceeds the benchmark at the same outfall for two consecutive sampling events. We object to this as well.

All pollutants potentially found at SSFL should have enforceable limits. There should be no use of unenforceable benchmarks.

The description of the facility appears to have been written by Boeing; all references to the serious accidents and spills and releases are excised out. No mention is even made of the meltdown. It appears designed to underplay the serious nature of the contamination.

On page 40, fn 1, requires no more than one sample per week during extended rainfall and that a storm must be preceded by at least 72 hours of dry weather. We object. This permits violations for many days counting as a single violation, and exempts different rain storms if they are less than three days apart. Violations, and penalties, should be for each day of a violation, and all storms should be included.

The 50 pCi/l limitation for gross beta radioactivity is contradicted by the Monitoring and Reporting Program which sets the limit as 15 pCi/l after K-40 is subtracted. Further, the latter expressly assumes all K-40 is natural. SSFL used sodium-potassium (NaK) coolant in its reactors and K-40 may well have been generated by the reactor operations.

Outfalls 3-10 have far fewer enforceable limits than Outfalls 11, 18 and 19, which in turn exclude too many constituents. The full set of potential contaminants at the site should have enforceable limits at all outfalls. And even for outfalls 3-10, a number of the constituents are excluded from enforcement at all but outfall 8, and of course, outfall 8 is proposed to be waived from enforcement altogether.

The EPA priority pollutants required to be monitored for are at the same time excluded from enforcement, with the exception of some specifically named.

We object to the limits for Outfalls 12, 13, and 14 being converted to benchmarks. Even so, the list of constituents that will have benchmarks is very short compared to what should be addressed. (Note for example, no radioactivity benchmarks, despite evidence of radioactive use and contamination potential outside Area IV.)

The conversion of enforceable limits for Outfalls 8, 9, 12, 13, and 14 constitute impermissible backsliding.

The order indicates an RPA was conducted and concluded that no additional pollutants should be included in any of the limits. The RPA has not been made public, despite my request; it is impossible for the public thus to ascertain whether it has been done appropriately.

We continue to object to the Board's refusal to employ Best Professional Judgment (BPJ), as permitted under the SIP, to include pollutants known or likely to be at the site.

We object to item 6 on p. 46, which provides another loophole from enforcement.

We object to the methods for determining monthly averages, for example the median value when one or more sample results are reported as ND.

We object to the benchmark response description on p. 54. Since the BMPs clearly aren't even working now – violations of enforceable limits at outfalls with BMPs installed – the reliance on BMPs without enforcement of limits is ill-conceived. We object in item a also to setting a BMP compliance report due date as 60 days after the second reported exceedance of a benchmark. This is bad enough for monitoring done on a per discharge basis (requiring two consecutive exceedances before reporting or undertaking analysis makes no sense), but some sampling is only annual, so the second exceedance would be a year later, before any reporting.

We object to 8 on p. 55, whereby once they have reported a double exceedance of benchmarks, they need not take any further action when there are further exceedances.

We object to many of the reopeners. We object to the entire concept of design storms for compliance purposes (item D). We object to further weakening the remaining enforceable limits by consideration of dilution credits or a mixing zone (item F). We strongly object to waiving enforcement and limits while DTSC revises corrective action requirements of permits. If Boeing violates effluent limits, the Board should enforce those limits, not add more and more ways to avoid enforcement. We particularly object to item J, which seems to set up a mechanism to encourage Boeing to fail to comply with the source removal order, the result of which would be potentially to extend its period of exemption from enforcement.

3. Monitoring and Reporting Program

As indicated above, we object to the sampling protocols for long storms or storms that occur less than 72 hours from a prior storm (fn 1, T-6).

We note that the WDR states, as does the current WDR, that "Sampling shall be during the first hour of discharge or at the first safe opportunity." This is to get the first flush, and not take a sample late in the rain event where the level may be diluted. Boeing has consistently violated this requirement. As a matter of practice, it never takes samples during the first hour of discharge; this was revealed at a meeting of the so-called expert panel. The Board has failed to enforce the requirement. We are very troubled this.

We object to all of the frequency of analysis set at annually. The chance of catching contamination with one sample per year is ridiculously small.

Footnote 5 on T-8, as indicated earlier, contradicts the WDR by setting the gross beta limit at 15 pCi/L after subtracting K-40; and assuming all K-40 is natural. We object also to the part of the footnote setting the limits as annual average. The WDR sets

these as daily or monthly averages. Permitting averaging over a year is inappropriate, allowing some high readings to go without enforcement or even response to benchmarks. The sentence also makes no sense, as it says the frequency of sampling is increased to once per discharge, but the table already sets the frequency of sampling as once per discharge event.

We object on p. T-9 to having some of the constituents only monitored at Outfall 8. We object to requiring only semiannual monitoring for perchlorate at all outfalls other than 8 (fn 7). We object also to the short list of constituents for Outfalls 3-10 to be monitored for. All outfalls should be monitored for all pollutants potentially present at SSFL, and on a once per discharge basis.

Item D on T-10 requires monitoring only during engine test operations. Boeing stated in the ROWD that engine testing has stopped. Staff states in the Fact Sheet that monitoring is to continue at Outfalls 12-14 even though engine testing has stopped because of all the contamination; however item D says the opposite.

On T-11, we object to the requirement to monitor only once a year for acute toxicity and the remaining USEPAS priority pollutants. fn 11—asbestos would be monitored for all outfalls, not just 8 and 9.

In addition, the monitoring requirements are silent on two key matters. For years and years the community has been concerned about Boeing's practice of filtering water samples before monitoring them. The monitoring requirements should be clear that filtering is forbidden; or if filtering is done, the concentration in the filtered water and on the filter itself should both be measured, and added together.

Secondly, Boeing has been taking its samples at the pipe outlet from its filter banks in the BMPs. This artificially lowers the result. They are taking the sample from the absolute cleanest place possible. Sampling should occur further downstream and in places where effluent may bypass the BMP.

4. Fact Sheet

The Fact Sheet is very unfactual. The troubled history of the site, the meltdown, the other reactor accidents, the illegal burning of hazardous materials, the felony convictions for environmental crimes, the extensive contamination – all are slid over.

On p. 41, the requirement to exceed a benchmark two times consecutively at the same location before triggering even an evaluation of the BMPs is frankly outrageous. It is bad enough to convert enforceable limits to non-enforceable benchmarks, but then to define a benchmark as requiring the same constituent to be exceeded twice at the same outfall in consecutive measurements is hard to reconcile with a duty to protect against releases.

P. 44 states that a reasonable potential analysis was completed. It does not say by whom – Boeing or the Board staff. It gives no detail whatsoever, just two general sentences. And the RPA has been hidden from public review; my request to be provided it was declined.

5. Boeing's ROWD

The ROWD as posted on the Board's website is incomplete, making review impossible. Pages 9 and 11-12 are missing, for example; pages V-2 to V-5 for Outfall 1 also appear to be missing. And one can't tell from the document whether the attachments cited to the late January 2009 letter correcting various tables have been used to replace the tables in the document or not; they are missing as attachments to the letter. One can't really review the ROWD in this state.

Conclusion

The proposed WRD, CDO, and Monitoring Requirements are very weak, in large measure a surrender to a power polluter who for years has refused to comply with the Board's requirements. Protection of the communities near this site and the environment more generally requires something much better.