

COMMITTEE TO BRIDGE THE GAP

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Chair Susan Cloke & Members
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013

RE: Tentative Cease and Desist Order, Boeing Company, Santa Susana Field Laboratory
OPPOSE

Dear Chair Cloke and Members of the Board:

We strongly urge you to *oppose* staff's recommendation to – in the face of repeated violations of the pollution discharge limits in Boeing's NPDES permit for its highly contaminated Santa Susana Field Laboratory (SSFL) site – waive rather than enforce those limits.

Faced with forty-nine violations of its NPDES permit in a six-month period, following on dozens of violations of its previous permit in the prior several years, staff has issued a Tentative Cease and Desist Order (CDO). The lay public can be forgiven for assuming that the Order is a directive to Boeing to Cease and Desist from violating the pollution discharge limits in its permit. They would be wrong. In fact, what staff proposes is that the *Board* cease and desist from enforcing the permit limits and that Boeing be permitted to *continue and persist* in violating those pollution limits, for almost the entire remaining years of the permit.

Responding to dozens of violations of pollution limits found in Boeing's permit issued by this Board, the staff proposes to create "interim limits" that would greatly relax the limits in the existing permit. Rather than bring Boeing's performance into compliance with the permit limits, staff proposes bring the limits into concordance with Boeing's polluting behavior.

Perchlorate, for example, is limited via the NPDES permit approved by this Board to 6 ppb, the state's public health goal. Staff now proposes interim limits – for essentially the remaining three years of the permit – of up to 150 ppb! We attach here a table comparing the proposed interim limits against the current permit limits (and the proposed revised permit).¹ Staff recommends relaxing pollution limits by as much as a factor of 29,000.

Pollution rules are established to be obeyed. They are not designed just for small, powerless permittees; the big as well as the little are to comply. The Board is being urged by staff to turn a blind eye to Boeing's repeated violations and instead gives this huge polluter a free pass to pollute at levels far in excess of that allowed in its permit. We respectfully urge the

¹ In a separate proposal from staff, the existing permit is reopened to include enforceable limits for constituents that staff had previously argued be excluded from the permit but which now must be added because of dozens of exceedances in the last fifteen months. But what staff giveth with one hand it taketh away with the other: this CDO proposes to relax via interim limits the very pollution limits it proposes separately to add to the permit.

Board to carry out its mission of enforcing pollution discharge rules. Vote NO on staff's recommendation to allow the polluter to violate those rules as it wishes.

Background²

Half a century of spills, releases, and accidents at the SSFL nuclear and rocket testing facility have resulted in widespread chemical and radioactive contamination at the site. This has been exacerbated by many years of violations of environmental regulations and laws. For example, in the mid-1990s, the SSFL operator pled guilty to three environmental felonies involving illegal disposal of hazardous materials.

Boeing has consistently violated its NPDES permit, and the Board's staff has just as consistently failed to take effective action to enforce the permit limits. During the pendency of the previous NPDES permit, between August 1998 and 3 May 2003, for example, there were at least sixty-two (62) exceedances of NPDES discharge limits. Rather than take strong enforcement action to bring about compliance, however, RWQCB staff "negotiated" with the discharger over the violations, choosing to issue fines on only 13 of the violations, and imposing only the absolute minimum fine required by law, \$3000 each, for a total of a mere \$39,000. The fine was so trivial in the context of a multi-billion-dollar international corporation that, as expected, it had no effect on future violations but was seen as a license to continue to pollute.

Indeed, after issuance of the renewed permit in mid-2004, Boeing racked up an additional forty-nine (49) violations in a mere six month period (17 October 2004 to 28 April 2005). Thus, the slap on the wrist previously given Boeing resulted if anything in a far greater rate of violations than before (8 violations per month now as opposed to ~1 per month before). In addition, there were at least 85 exceedances during the recent period for constituents for which the staff had declined to include enforceable limits in the current permit.

Fifteen months have passed since the first violation under the new permit. Yet there has been no enforcement action taken, no fines issued.

On 30 November 2005, after two hearings before the Board in which the public expressed concern about the failure to take any enforcement action, staff did issue a weak Cleanup and Abatement Order (still without any fines). However, on 19 December, in the subject Tentative Cease and Desist Order (p. 10), staff has proposed rescinding even the Cleanup and Abatement Order.

Instead of enforcing the existing permit, staff proposes establishing interim limits that would override the final limits in the existing permit for a period of three years, until February 2009 – for all intents and purposes, the remaining duration of Boeing's NPDES permit. In essence, staff is saying that when a powerful corporation like Boeing violates its permit repeatedly, consistently, and flagrantly, the Board should cave and just allow the violations. We respectfully suggest an alternative approach – just say No! Say no to the violations, and no to the staff proposal to fail to enforce the permit.

The Staff Proposal

Staff has provided no adequate basis for its recommendations that interim limits be granted at all. It merely says it appears Boeing can't comply, and gives as evidence the fact that Boeing isn't complying; therefore the rules should be waived. Under such a rationale, a serial

² To avoid excessive repetition, we incorporate by reference herein our 28 December 2005 comments and the documents incorporated therein, including our 6 October 2005 letter to the Board and the data table attached thereto, and the DTSC RFI data tables we submitted to the Board at its 1 July 2004 hearing.

murderer would be declared incapable of complying with laws against murder; therefore, rather than enforce the law, we should waive it.

The staff make vague reference to the recent fires. But the 49 violations at issue all predate the fire. The fires can form no basis for turning a blind eye to the consistent history of violations.

Boeing requested interim limits in a 15 July 2005 letter. Staff responded in a 15 November letter, rejecting every argument made by Boeing for interim limits but then, inexplicably, saying it would grant the request.³ Indeed, apparently in the Christmas spirit, a few days before that holiday, Board staff issued the proposed interim limits, giving Boeing relaxed limits for some constituents that Boeing hadn't even asked for.

Nor has staff provided any basis for its determination of the specific interim limits proposed. A footnote is inserted for some interim limits saying they were based on a calculation using a method in an EPA Technical Support Document. However, the calculation is not provided, the TSD method gives to the analyst significant discretion as to inputs, and the public not given any rationale for the proposed numbers or an opportunity to comment on their determination.⁴ No rationale is provided for why using the TSD method is appropriate in overriding the final limits in the existing permit. Staff simply present the Board and the public with a black box labeled "TSD Calc."

³ In particular, staff's November 15, 2005 letter rejected Boeing's arguments that it should be given time to develop site-specific metals translators; that numeric limits are inappropriate for storm water-only outfalls; that discharges that traverse contaminated areas of the site *are* only storm water; that Boeing is somehow not responsible for exceedances because, or even if, they are naturally occurring; that Boeing has not had sufficient time to develop BMPs to meet more stringent limits; and that there was insufficient data to justify limits.

⁴ The draft CDO entirely fails to explain why use of the TSD method is appropriate for interim limits. The draft CDO does not relate or compare the "TSD Calc" method to either the method suggested by Boeing for calculating interim limits or the method set out in section 1.4 of the SIP. We can only guess that the TSD method was employed because it allowed staff to relax the limits substantially.

Calculation of limits under the TSD's statistical methodology is based on a number of factors, many of which are at the discretion of the permit writer: a Waste Load Allocation ("WLA"), which may be derived in numerous ways; the required Long Term Average ("LTA"); the variability of the discharge, expressed as a coefficient of variation ("CV"), the selected probability of exceedences, e.g., 5% or 1%; and the number of samples per month ("n"). See TSD, Chapters 4 and 5. Because the permit writer has so much discretion, the TSD requires that "[t]he fact sheet and supporting documentation accompanying the permit must clearly explain the basis and the rationale for the limits. When the permit is in the draft stage, *the supporting documentation will serve to explain the rationale and assumptions used in deriving the limits to the permittee and the general public in order to allow public comment on the draft permit.*" TSD, p. 110. The TSD also points out that 40 CFR Part 124.56 requires a fact sheet to disclose "[a]ny calculations or other necessary explanations of the derivation of specific effluent limitations.' Accordingly, the WLAs along with the required LTA and CV used and the calculations deriving them must be included or referenced in the fact sheet. The permit limit derivation method used must also be disclosed in the permit documentation." *Id.*

None of this information has been provided by staff. However, as the TSD states, this information is essential to allow public comment. At minimum, staff should have explained how its use of the TSD methodology resulted in increased limits, and why staff varied the values of relevant factors from the values used in calculating limits under the SIP. Without such an explanation, the public cannot escape the suspicion that the interim limits were derived in an *ad hoc*, results-oriented manner rather than through application of any meaningful principles or analysis.

In other cases, staff states that the maximum effluent concentration (MEC) detected has been used as the basis of the interim limit. There is no health and safety rationale whatsoever for using such a limit. If perchlorate has been released at 150 ppb and the public health goal and current permit limit are 6 ppb, why should Boeing be allowed to release perchlorate at 25 times higher level? Nor is any rationale provided as to when staff uses a TSD calculation and when it uses MEC; it appears that staff gives Boeing whichever number is more relaxed.

Staff proposes using the interim limits for three years. No sensible basis exists for that at all, nor has staff even suggested one. To the extent the fire is a factor, the maximum that could possibly be justified would be interim limits for the rest of this rainy season. Vegetation has already resprouted in the fire areas, based on our inspection of the nearby Dayton Canyon, and the few BMPs damaged by the fire (essentially straw bales) can be rapidly replaced. A three-year free pass at continuing violations is not justified in any way.⁵

Vague reference is made to Best Management Practices (BMP). Staff required Boeing to submit a Technical Report identifying the new BMPs it would put in place to come into compliance. Boeing essentially refused; in its Technical Report submitted 16 December 2005, Boeing declined to identify BMPs it will employ, essentially saying give us interim limits now, then trust that we will submit, over time, various ideas for BMPs, test one or more in a pilot way years from now, and not actually put in place comprehensive BMPs until 2011 or thereafter. It is clear Boeing thinks the Board will back down; as the staff has done. The proposed CDO adopts the same program of study and delay with no specific commitments as to effective BMPs.

Boeing's Technical Report cannot have been the basis of staff's recommendation for the proposed CDO. The Technical Report was submitted on the 16th; the CDO issued the 19th; no reference to it is in the CDO, except to say that it had been requested; and Ms. Owens had informed CBG long before receipt of the Technical Report that she had drafted the CDO and was preparing the interim limits. Furthermore, Boeing's Technical Report was offered in support of an entirely different proposal with different interim limits and rationales, most of which staff rejected. Obviously, concrete plans to implement specific BMPs are not a basis for the CDO since none are disclosed. Obviously in the real world, Boeing is going to do nothing to come into compliance; the CDO is instead a grant to Boeing to keep violating its permit limits.

Conclusion

Boeing has violated its NPDES permits repeatedly for years and years. RWQCB staff has consistently failed to take effective enforcement action, sending a signal to Boeing that it is free to keep violating its pollution limits. Staff here proposes to take no enforcement steps to get Boeing to comply; instead, staff proposes that the Board cave in to Boeing and allow it to keep on violating its NPDES permit limits for years to come. We strenuously urge the Board to vote NO on the staff proposal.

⁵ Boeing's claim that the exceedances are due to naturally occurring contaminants has already been rejected by staff, saying it is unsupported, but even if true, Boeing has an obligation to keep toxic materials in surface water discharges below acceptable levels. But the claim itself is ridiculous. Boeing spilled large quantities of these toxic materials into soil and water; their presence from these spills is well documented. For example, mercury releases from a northern NPDES discharge point exceeded permissible levels; upon investigation, high mercury contamination was found in soil nearby, from a mercury-cooled engine that had been taken outside and cut open and the mercury allowed to drain into the soil. If the contaminants were due to nature, all of the Board's permittees would be exceeding their permits for these constituents, as regularly as Boeing. Yet Boeing is clearly violating at rates essentially unprecedented.

Instead, direct that the maximum enforcement actions possible be taken so that it is costlier for Boeing to violate the pollution rules than to comply. Right now, staff's failure to take enforcement action has resulted in a clear calculation by the discharger that it is cheaper to pollute than to obey the rules. Heavy fines should be imposed so that Boeing has a real incentive to observe its permit and cease violating it, and all other arrows in the Board's enforcement quiver should be employed, now.

Years ago, when hospitals had unacceptably poor sanitary practices, Florence Nightingale said something to the effect that she wasn't sure precisely what a hospital was for, but she was certain it was not for the spread of disease. Equally one must say today, one may not be sure precisely what the Regional Water Quality Control Board is for, but it is certain it should not be for the spread of pollution. The Board's purpose is to enforce its pollution limits, not waive them. We urge you to vote NO on the staff's proposal to allow years more of continuing violations of Boeing's pollution discharge permit; vote YES to direct strict enforcement of the permit limits, with sanctions significant enough as to finally bring about compliance and protect the public and the environment.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel Hirsch". The signature is written in a cursive style with a large, looping initial "D".

Daniel Hirsch
President

attachment: Table of Proposed Relaxation of
Boeing Pollution Limits

WEAKENING OF BOEING POLLUTION DISCHARGE LIMITS

Outfalls	Constituent	Current Limit microgram/L	New Limit microgram/L	Factor by Which Limit Has Been Relaxed
001;002;011;018	Copper	14	21	1.5
	Lead	5.2	25	4.8
	Mercury	0.1	0.44	4.4
	TCDD	2.80E-08	1.50E-05	536
	Chromium	16.3	190	11.7
	Manganese	50	4855	97.1
	Iron	0.3	303	1010
	Perchlorate	6	15.3	2.6
003 thru 010	Antimony	6	44	7.3
	Cadmium	4	2.1	0.5
	Copper	14	68	4.9
	Iron		260	
	Lead	5.2	785	151
	Mercury	0.13	0.53	4.1
	Perchlorate	6	18	3
	TCDD	2.80E-08	8.00E-04	28571
015 thru 017	Thalium	2	4.3	2.2
	Cadmium	4	97	24.3
	Chromium III	50	650	13
	Copper	13.5	32	2.4
	Mercury	0.1	0.3	3
	Nickel	86	830	9.7
	Perchlorate	6	150	25
012 thru 014	TCDD	2.80E-08	1.20E-05	428.6
	Copper	13.5	147	10.9
	1,4-Dioxane		5.2	
	Ethylene dibromide		0.31	
	Lead	5.2	6	1.2
	Mercury	0.11	1.58	14.4
	Naphthalene		144	
	TCDD	4.20E-08	2.13E-07	5.1
Total petroleum hydrocarbons		4,100		
Tertiary butyl alcohol		18		

Note: "Current Limits" for Outfalls 001-2, 003-011,18 from current NPDES permit approved in 2004.
 "Current limits" for Outfalls 012 thru 017 are from the proposed revisions to the NPDES permit
 to be approved 1/19/06, as the 2004 permit has no limits for these constituents.