Comments
by the Committee to Bridge the Gap
to the Los Angeles Regional Water Quality Control Board
Regarding Tentative Waste Discharge Requirements Amending Order No. R4-2004-0111,
Fact Sheet and Monitoring & Reporting Program
for the Santa Susana Field Laboratory
30 December 2005

Background

The Santa Susana Field Laboratory (SSFL) was established as a remote field laboratory on the Ventura/Los Angeles County boundary in the late 1940s to conduct rocket and nuclear reactor testing and development work too dangerous to perform in more populated areas. However, in the subsequent half-century or so, the neighboring population has increased dramatically. Approximately thirty thousand rocket tests have been conducted. About a dozen reactors operated at the site, along with a plutonium fuel fabrication facility and a "hot lab" for cutting apart irradiated nuclear fuel. At least three reactors had serious accidents – a partial meltdown in 1959 in the SRE, damage to 80% of the reactor fuel in the SNAP8ER in 1964, and damage to a third of the fuel in the SNAP8DR in 1969. None of these reactors had modern "containment" structures to prevent radioactive release to the environment.

In 1989, widespread chemical and radioactive contamination of soil, groundwater, and surface water at the 2850 acre site was revealed. These findings have been expanded upon in subsequent years, showing a wide array of contaminants.[1] Additionally, offsite migration of contaminants has been discovered.[2]

In the mid-1990s, federal environmental charges were brought against Rocketdyne by the U.S. Attorney over an explosion that resulted in worker deaths. The company initially denied to regulators that hazardous material was being disposed of by burning, claiming instead legitimate research was being conducted. The FBI raided the site, carting away documents, and indictments were issued against Rocketdyne. The company eventually conceded that what it had initially told regulators was not true and pled guilty to three felony environmental crimes involving illegal disposal of hazardous material and paid what was described as the largest environmental fine in California history.

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[1] See, e.g., the contaminant data tables from the RCRA Facility Investigation prepared by the Department of Toxic Substances Control (DTSC) and previously submitted by CBG to the Board at its 1 July 2004 hearing on this NPDES permit, incorporated herein by reference.

[2] As discussed below, the Board has repeatedly cited Rocketdyne for violations of its NPDES permit, by which contaminants have left the property via surface water releases. Additionally, radioactive and/or chemical contamination from SSFL has been found in soil and groundwater at the nearby Brandeis Camp Institute; Sage Ranch; the proposed housing development at Runkle Ranch; and the proposed housing development in Dayton Canyon.

Rocketdyne has consistently violated its NPDES permit issued by this Board. During the pendency of the previous NPDES permit, between 31 August 1998 and 3 May 2003, sixty-two (62) exceedances were identified in Rocketdyne's self-monitoring reports.[3] Enforcement action, however, by Board staff cannot even charitably be described as a slap on the wrist, and was completely ineffective at preventing continuing violations. A mere $39,000 fine was imposed; as has often been said, the cost to Boeing (which bought Rocketdyne from Rockwell International in the 1990s and now continues to own SSFL) of violating the permit was miniscule compared to the cost of compliance and trivial in the context of Boeing's revenues. The Board staff, which is widely perceived in the community as consistently caving in to Boeing, either has declined to take enforcement action at all, or when it has taken some action, the penalties are so miniscule that Boeing simply continues violating the permit.

And that is what has happened here. After issuance of a renewed permit in mid-2004, Boeing racked up 49 additional violations in a mere six month period (17 October 2004 to 28 April 2005).[4] As of this writing, no fines whatsoever have been issued for those new exceedances, even though more than a year has passed for some of them.

Exceedances for Constituents for Which No Limits Were Imposed

When LARWQCB staff proposed text for the renewal of the NPDES permit in 2003, it proposed to eliminate enforceable limits for a series of constituents that had enforceable limits in the previous permit. It also proposed including new outfalls in the permit, but excluding enforceable limits for most constituents for those outfalls as well. These proposals triggered a storm of public concern, as well as expressions of concern by the Board itself.

Because of the long and repetitive history of violations of various limits in the 1998 permit, and the extensive contamination throughout the SSFL site, many members of the community argued that there clearly was reasonable potential for exceedances of the contaminants for which staff proposed to exclude enforceable limits in the new permit. The Board expressed a desire to incorporate enforceable limits for these constituents, but the staff asserted – grossly in error we believe – that the State Implementation Plan barred the imposition of limits where there are no monitoring data for particular outfalls, as in the case of the new outfalls.[5] It also argued that the Board couldn't retain limits for older outfalls when there hadn't been an exceedance of those limits during the term of the previous permit.

None of this made any sense. If there is no reasonable potential that a limit will be violated, then the discharger cannot possibly be prejudiced by inclusion of an enforceable limit, as the discharger has no potential to violate it. If there is, however, a reasonable potential that a limit will be violated, irrespective of whether monitoring data yet exist, refusal to include such a limit that can be enforced means the discharger will be free to violate it and the Board would

[3] see pp. 12-14 of Fact Sheet.
[4] See Fact Sheet pp. 15-16
[5] In fact, the SIP expressly *requires* the use of best professional judgment and consideration of all available information when there are no monitoring data available, i.e. requires so called Tier 3 analysis.

have prevented itself from having the key enforcement tools necessary to prevent recurrences. The staff proposal to eliminate limits for many constituents that were limited in the prior permit and to not include limits for new outfalls amounted to a "get out of jail free" pass for Boeing.

Despite initials statements by the Board that it wanted to include enforceable limits, it backed down (with one exception, TCE), in the face of staff opposition. This was very disappointing to the community, which frankly thought staff should carry out Board wishes, not the other way around.

As a compromise, the Board directed that Boeing be required to fax to LARWQCB staff within 24 hours of receipt of any detections of constituents for which enforceable limits had not been included in the new permit, issued in mid-2005. Staff was supposed to promptly review those 24-hour notifications and "staff is under an obligation to bring that to the Board as a reopener within 90 days."[6] This requirement was built into the permit as paragraph III.A.

The purpose of this provision, which the Board directed to be included in the permit, was to avoid repeated exceedances with no penalties for those constituents without enforceable limits while waiting for the annual Reasonable Potential Analysis (RPA) review - with a reopener potentially not coming before the Board for a year or more. The Board wanted to avoid giving Boeing *carte blanche* for months and months of exceedances without the permit being reopened, enforceable limits imposed, and enforcement action taken for violations that would otherwise go on for extended periods of time.

Some community members, while deeply disappointed in the Board retreating on imposing enforceable limits, were slightly mollified by this insertion regarding 24-hour notifications and 90-day reopeners, but CBG warned them not to get their hopes up. We expected staff to simply ignore Board direction and the permit requirement in this regard.

And sure enough, more than a year after the permit provision requiring 24-hour notices and 90-day reopeners was imposed, we discovered a score or so of faxes in which hundreds of detects and dozens of exceedances had been reported to LARWQCB staff without them conducting a single RPA or bringing a single 90-day reopener to the Board. Staff simply ignored the provision, and reviewed the 24-hour notifications only as part of its annual RPA review, which is what is now being brought to the Board in January, *a year and a half and dozens of exceedances after adoption of the permit*. We and other groups brought to Board attention the staff failure to conduct reviews of and bring reopeners due to the 24 hour notices.[7] Once again, however, it appeared that the Board was acquiescing in the Staff refusal to comply with Board direction, as embodied in the permit condition imposed by the Board.

CBG presented to the Board our own review of the 24-hour notices, the review staff had failed to conduct. ***We found at least 85 exceedances: 9 for lead, 19 for mercury, 41 for TCDD, 3 for copper, 6 for iron, 2 for perchlorate, and one each for nickel, zinc, cadmium, and total***

[6] Transcript of 1 July 2003 hearing, p. 166.

[7] See letter of 6 October 2005 to the Board, and the data table attached thereto, incorporated herewith by reference.

***settleable solids*.** Yet despite these repeat exceedances, not a single notice of violation was issued for them– because staff had insisted on there being no enforceable limits for them – and no reopener had come forward to create enforceable limits for future exceedances. Indeed, one of the exceedances – for lead – is for a constituent that staff had removed from the permit, and now needs to reinsert, a completely illogical approach to protecting public health and the environment.

In the context of its annual RPA review (the matter is actually coming to the Board approximately *a year and a half* after the issuance of the permit), staff finally proposes a reopener and solicits public comments. In addition to the general comments provided above, specific comments are included below.

1. **In addition to ignoring the 24-hour notification/90-day reopener provision in the permit, staff now proposes to eliminate the requirement that it conduct an annual review/RPA. We oppose both the ignoring of the rapid-response requirement and the elimination of the annual staff review/RPA/reopener.**

Section IV.A. of the Waste Discharge Requirements (WDRs) strikes the following sentence: "Regional Board staff will conduct yearly reviews of the data to determine if reasonable potential exists." (The provision in section III.A. requiring 24 hour notice of exceedances of detection limits for constituents without limits and a reopener within 90 days remains in the proposed permit, but the staff appears intent on continuing to ignore it.) Thus, not only will staff now not review the 24 hour notices, it will no longer conduct yearly reviews. In its place, completely vague language is suggested that gives the staff complete freedom when, or if, any reasonable potential analysis shall be conducted. Given its history with regards this polluter, one must presume that the elimination of the annual review and the ignoring of the 24-hour notices will result in no RPAs conducted or reopeners brought, or if performed, done years too late.

2. In addition to striking the requirement that the staff conduct an annual data review and RPA, a new provision is added to the Monitoring and Reporting Program (MRP) transferring to the polluter the duty and power to perform the reasonable potential analysis for its own exceeedances. This is an astonishing handing over of regulatory responsibility to the discharer, exacerbating public perception of the polluter having excessive power over the regulatory staff.

Section I. D. of the MRP says that Boeing shall include in its quarterly report a section titled "Reasonable Potential Analysis" which "discusses whether or not reasonable potential was triggered for pollutants which do not have a final effluent limitation in the NPDES permit." The public is already deeply cynical about a Board process which gives over to the polluter – in this case, a convicted environmental felon – the power to monitor its own releases to determine compliance with enforceable limits. The community is also deeply distrustful of agency staff who appear far too close to the discharger and far too willing to let violations go unenforced. But this is really too much – giving to Boeing the responsibility to do the analysis, formerly done by Board staff, to determine whether their effluent data indicate enforceable limits should be

imposed.[8] The RPA analysis is not simply a mechanical process. For example, Tier 3 analysis requires exercise of judgment and discretion to identify relevant information and apply best professional judgment. And even if the RPA were purely mechanical, there is simply no reason to delegate the task to the regulated entity and to invite both real and perceived conflicts of interest.

3. By removing limits for lead, asserting "no reasonable potential" that it could be released, now finding it exceeded, and having to reimpose lead limits in the permit, staff is in essence conceding that the elimination of the other constituents that had been taken out from the prior permit was unreasonable. We believe all removed limits, not just that for lead, should be reimposed. The exceedance for lead indicates reasonable potential for the others.

The limits for metals at outfalls 003-007 in the 1998 permit which were deleted and the limits for VOCs at oufalls 001-002 should be reimposed**.**

4. The monitoring frequency is too low to catch problems in time to do RPA and bring reopeners in a way that protects the environment and public health.

For example, the metals which do not have enforceable limits are to be monitored only once a year. Catching the exceedances under such circumstances sufficient to do RPA and bring a reopener is unlikely, and poses significant risk of months or years of exceedances going by without detection, action, imposition of enforceable limits, and enforcement.

5. The revised permit would appear to allow Rocketdyne to continue to filter samples before measurement and throw away the filtered fraction rather than include it in the reported values.

We remain deeply concerned about the methodology to be employed, one that can artificially lower measured values. The LARWQCB staff agreement with Rocketdyne to let it do some tests of the effect of filtering is troubling, given Rocketdyne's history and its conflict of interest with regards the potential results. Furthermore, Rocketdyne already did such a test, in 1989, that produced markedly lower values when filtered (this was when they decided to filter to force the reported radioactivity values down); there is no need for further tests, and they will not be credible. Indeed, the protocols for this test agreed to by Board staff – with no opportunity for public input, we must add – are deeply flawed and cannot provide reliable results. Furthermore, staff have now apparently agreed to let Rocketdyne do other potentially skewed tests on the issue of calculating total recoverable v. dissolved species, again letting the polluter do the tests that will permit higher levels of pollution. Give its convictions on federal environmental charges, this seems unwise at best.

[8] Having Boeing do the initial RPA with some cursory review by LARWQCB staff is no substitute for independent RPA. One must also remember that in this case the discharger is a convicted environmental felon.

6. The entire episode – limits removed and others refused to be incorporated, only to find, a year and a half later, more than 85 exceedances and no enforcement action and the need now to reopen – demonstrates that all constituents of concern at this contaminated site need to have enforceable limits, for all outfalls.

As evidenced in the DTSC RFI data submitted to the Board by CBG (referenced in fn 1), dozens of constituents of concern contaminate SSFL and are available for surface water to carry them offsite at excessive levels. The history of violations and exceedances demonstrates that there is reasonable potential for release of all of these constituents of concern. There should be enforceable limits for all of them, NOW, rather than giving the discharger years of free excessive releases before enforcement can be taken.