March 27, 2025

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Transmitted via email to SSFL_DOE_SEIS@emcbc.doe.gov

Re: Scoping Comments on Proposed SSFL Supplemental Environmental Impact Statement

Dear Dr. Mengers:

Thank you for the opportunity to comment on the Department of Energy (DOE) Notice of Intent (NOI) to Prepare a Supplemental Environmental Impact Statement (SEIS) for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory (SSFL).[1] We oppose the preparation of this SEIS for many of the same reasons we objected to DOE's Draft Environmental Impact Statement (Draft EIS) in 2017:[2]

- DOE has no authority to choose an alternative to compliance with the legally binding 2010 Administrative Order on Consent (AOC), which requires cleanup to background.
- The alternatives proposed for the SEIS are similar to those considered in the Draft EIS which would violate the AOC and leave vast quantities of contaminated soil not cleaned up; in many cases the new proposed alternatives would pose even greater risk to public health and the environment.
- The decision to perform an SEIS will further delay an already far-too-long delayed cleanup. The AOC required the cleanup to background to be completed by 2017. But the AOC cleanup hasn't even begun. Now it is predicting the Final SEIS won't even occur until summer 2027, if it doesn't slip further.
- The reasons provided for undertaking an SEIS – supposed new information – do not withstand scrutiny.

[1] The NOI was published in the Federal Register on December 27, 2024. 89 FR 105555. The NOI set a comment deadline of February 25, 2025. The deadline was extended to March 25; see January 30, 2024, email from Melissa Simon, ETEC Project Manager, "DOE Scoping Meetings Rescheduled, and revised deadline at https://www.ssflareaiveis.com/seis/ ." At the two rescheduled March scoping meetings, DOE representatives said the comment period was extended to March 25. DOE does not appear to have published a FR notice with the new deadline, and indeed the FR portal for submitting comments indicates the comment period closed on February 25 and that comments are no longer being accepted. We are commenting now based on the notices of extension in the Simon email, the DOE SSFL website, and the statements by DOE officials at the scoping meetings.

[2] See *Comments on Draft Environmental Impact Statement for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory*, by the City of Los Angeles, Natural Resources Defence Council, and Committee to Bridge the Gap, April 5, 2017.
https://www.committeetobridgethegap.org/wp-content/uploads/2020/08/CBGNRDC-Comments-on-DOE-DEIS.pdf

**DOE Concedes It Has No Significant New Information Calling Into Question the AOC-Required Cleanup to Background to Which It Is Legally Bound**

In the NOI, DOE asserts that significant new information has arisen from "DOE's ongoing environmental review and assessment of the site…."[3] These purported new discoveries are: "The provisional [Look up Table (LUT)] values developed to define background are not implementable. Backfill soils needed to restore the site are not available at the established cleanup standards. The provisional cleanup standards set for some contaminants are lower than laboratory detection capabilities. The pristine sites used to develop the provisional look-up-table values would not pass as clean."[4] Not only is each of these assertions false, but also none appear to be based on new information. When DOE was asked to provide copies of the new information it asserts as the basis for the above-mentioned claims, DOE admitted it had no such new information and referred the public instead to references in the Final EIS issued in 2018.

On January 22, 2025, four organizations wrote to DOE requesting it make available documentation of the purported new information on which the claims from the NOI quoted above were based.[5] Three weeks later, with still no response, an email was sent to DOE reiterating the request, saying, "DOE's failure to provide documentation to support its claims suggests that DOE's claims are not defensible under scrutiny, or perhaps that DOE didn't have such documentation when it made the claims in the NOI and is, after the fact, trying to produce such documentation."[6]

Finally, on February 25, a response was received from DOE. DOE was unable to identify any new information and referred the public instead to references in the seven-year-old Final EIS.[7] DOE indicated it was hopeful it would develop additional information in the future to support the claims. In essence, as discussed below, DOE is hoping to produce *post hoc* justifications for the assertions it has already made as the basis for doing an SEIS.[8]

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[3] 89 Fed. Reg. 105,555, 105,557.
[4] Id.
[5] Letter from Committee to Bridge the Gap (CBG), Public Employees for Environmental Responsibility (PEER), Physicians for Social Responsibility Los Angeles (PSR-LA), and Parents Against the Santa Susana Field Lab (PASSFL) sent Josh Mengers and Bill Ostrum of DOE via email (https://www.committeetobridgethegap.org/wp-content/uploads/2025/03/1.22.25-email-transmitting-joint-letter-to-DOE.pdf) on January 22, 2025, titled "Request for disclosure of documentation and extension of public comment period once released," https://www.committeetobridgethegap.org/wp-content/uploads/2025/01/Joint-letter-to-DOE-Jan-2025.pdf
[6] February 11, 2025, email from CBG to DOE's Mengers and Ostrom, https://www.committeetobridgethegap.org/wp-content/uploads/2025/03/2.11.25-followup-email-to-DOE.pdf
[7] On February 25, 2025, Josh Mengers responded to CBG via email, https://www.committeetobridgethegap.org/wp-content/uploads/2025/03/2.25.25-email-response-from-J.-Mengers-DOE.pdf
[8] In its public scoping meetings, DOE did raise some additional supposed justifications for preparing an SEIS, but all of these are largely irrelevant to the cleanup, and certainly do not raise to the level of requiring preparation of an SEIS.

**Claim About Backfill Soil**

The first "challenge" that DOE claims that it has identified in its ability to implement its AOC-mandated cleanup is that there purportedly isn't suitable backfill available to replace the soil that it will be excavating from its contaminated areas.[9] However, this claim has long been shown to be inaccurate, and DOE has provided no new information since its 2018 Final EIS to substantiate this claim. As our organizations and the City of Los Angeles wrote in our Joint Comments on the Draft EIS:

> [T]he data in the DEIS shows the Gillibrand fill meets all the requirements except with a minor exception for two constituents, which DOE itself says pose no risk, and where the measurements are identified as "J," meaning there is no confidence in the concentration estimated. But in any case, as DOE concedes, the AOC says if there is any difficulty getting replacement soil that meets the LUT, DTSC and DOE will discuss it and DTSC will decide on the best fill available (which would appear readily to be the Gillibrand soil.) So that is a non-issue that doesn't call into question the AOC, but in fact shows it has reasonable provisions that work.[10]

As set forth in the AOC, the backfill to be used in DOE's site remediation should be the backfill that is the best backfill available:

> If an onsite or offsite source of backfill soils that achieves all Look-up Table values cannot be reasonably found, then DTSC, DOE and USEPA shall enter a consultation process and DTSC shall determine the best available source of backfill.[11]

Boeing, DOE, and NASA are now engaged in a new backfill evaluation study.[12] The results of this study are not expected to be shared publicly until the spring of 2026.[13] In other words, DOE is now making claims about backfill as the basis for an SEIS to breach the AOC, even though the backfill study is a year away. And the study can't result in findings to breach the AOC, since the

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[9] 89 FR 105555, 105557
[10] Joint Comments of the City of LA, NRDC, CBG on the Draft EIS, pdf pp. 50.
[11] AOC with DOE, Attachment C, p. 4
[12] Final Implementation Plan for the Laboratory Method Reporting Limits and Backfill Source Studies, by Jacobs for DOE, NASA, and Boeing, August 2024, https://www.dtsc-ssfl.com/files/lib_bkflstdy_mrleval/DOE/Reports/70544_2024.08.17_Final_SSFL-MRL-Backfill_Implementation_Plan.pdf; DTSC Approval of the Final Implementation Plan for the Laboratory Method Reporting Limits and Backfill Source Studies, Santa Susana Field Laboratory, September 2024 https://www.dtsc-ssfl.com/files/lib_bkflstdy_mrleval/DOE/Correspondence/70538_2024.09.04_DTSC_Approval_of_Final_SSFL_MRL-Backfill_Study_Implementation_Plan.pdf
[13] DTSC Soil Smarts Workshop 3, March 12, 2025, video recording, at 6 minutes, 38 seconds, https://www.youtube.com/watch?v=DsFPLzNPhZ4

AOC merely allows the use of backfill that most closely fits the Lookup Table Values (LUTVs). Thus, this purported basis for an SEIS doesn't withstand scrutiny.

**Claim About Laboratory Method Reporting Levels (MRLs)**

The next DOE assertion as to why it should be allowed to breach the AOC is that the cleanup standards for some contaminants are supposedly lower than laboratory detection capabilities. This is not accurate.

The MRLs were already designed to account for laboratory capabilities. The existing MRLs were established in a rigorous, collaborative effort with the labs over a decade ago, specifically to ensure that the MRLs would be achievable by the labs. DTSC, in its *Final Chemical Soil Background Study Report*, described this process:

> Prior to implementing the analytical program, a **rigorous** laboratory evaluation was conducted to identify laboratories that could consistently produce high-quality, defensible analytical data with the lowest **achievable** reporting limits (RLs) within a commercial laboratory environment.[14]

DOE at the time described its efforts to help determine the MRLs:

> After consultation with the chemists from the Environmental Chemistry Laboratory (ECL) of the DTSC, the DOE chemistry team issued a request for information to a group of environmental chemistry laboratories in December 2011. This request for laboratory information was intended to elicit the **lowest**, **reasonably achievable** method reporting limits (MRLs) from production environmental laboratories.[15]

DOE admits it has no new information to call into question the MRLs,[16] but once again it is trying to generate *post hoc* support for the claim by indicating a study on the issue has recently begun but results will not be available until fall. Moreover, that new study is designed in a way that can't produce results that genuinely challenge the MRLs that DTSC had determined could be met by labs a decade ago. First, lab capabilities have only improved since. Second, the new

[14] Pdf p. 14, Final Results Report, Chemical Soil Background Study, Dec. 2012 (emphasis added) https://www.dtsc-ssfl.com/files/lib_cbs/results_report/csbs_report/65788_Final_Chemical_Soil_Background_Study_Report.pdf

[15] Pdf p. 65, Revised Draft Technical Memorandum Process to Establish Site-Specific Method Reporting Limits for The AOC Chemical Characterization and Cleanup Program, Attachment A, Summary of Laboratory Responses to DOE's Method Reporting Limit (MRL) Request for Information (emphasis added), Sept. 2012 https://www.dtsc-ssfl.com/files/lib_look-uptables/chemical/70672_Revised_Draft_DOE_MRL_Tech_Memo_to_DTSC_09282012.pdf

[16] Mengers Feb. 25, 2025, email, Op. Cit.

study seems designed to produce a pre-ordained outcome. The questions being posed to labs are not how low an MRL can they meet, nor even if they can meet the existing MRLs, but merely what is their standard MRL.[17] This is like walking into a dealership and asking for a car that has standard gas mileage, as opposed to asking for one that gets the best mileage. If DOE is seeking information on the most up-to-date lab capabilities, it should be asking the labs for their best capabilities.

DOE has no new information that existing MRLs it helped set up a decade ago can't be met; instead it is relying on a study not yet performed that is structured so as to give an answer it wants as an excuse to get out of cleanup obligations.

**Claim About "False Positives"**

In a single sentence in the NOI, DOE asserts that the AOC should be breached because the background locations purportedly wouldn't meet the AOC LUTVs. DOE here is misleadingly claiming a "false positive" problem. Upon closer examination, the assertion crumbles. Most of the false positives that are being claimed were in fact non-detects;[18] nothing in the AOC requires cleanup of non-detects.[19] Much of the rest of the purported false positives were pesticides and herbicides;[20] however, the purpose of the cleanup of DOE's contamination is remediation of radionuclides and toxic chemicals from DOE activities, not pesticides and herbicides. The true false positive rate, when the non-detects and herbicides/pesticides are not inappropriately included, is thus only about 8% in the background location.[21]

As we wrote in our Joint Comments on the 2017 Draft EIS:

[17] The Request for Information (RFI) document that Boeing, DOE and NASA will be sending to labs as part of the ongoing 2025 MRL evaluation study requests that labs "provide the laboratory's *standard* reporting limit (RL) that the laboratory can routinely meet using the standard conditions listed in the analytical method" (emphasis added), and states that "analytical methods should be performed as stated, with no modifications employed to enhance sensitivity" (pg. 2). Such language reveals that the responsible parties' true intent is for labs to report the highest MRLs possible, to give them cause to suggest weakening the MRL-based LUTVs. https://www.dtsc-ssfl.com/files/lib_bkflstdy_mrleval/DOE/Reports/70213_2023.10.26_SSFL_Lab_MRL_RFI_and_Laboratory_List.pdf

[18] DTSC Fact Sheet: When the Test is Wrong: False Positives in Background Soils Soil Smarts Fact Sheet #4, Nov. 2024, pdf p. 2, which says that there were 295 total samples considered, of which there were purported 158 false positives. Of these, 95 were described as actually being non-detects. https://dtsc.ca.gov/wp-content/uploads/sites/31/2024/11/SSFL-Fact-Sheet-4-When-the-Test-is-Wrong-FINAL.pdf.

[19] AOC with DOE, pdf p. 50-51.

[20] DTSC Fact Sheet, Op. Cit., pdf p. 2, asserting 63 samples with detects over LUT values; "Tabulated Final Chemical Dataset table from DTSC's 2012 Chemical background Study," https://www.dtsc-ssfl.com/files/lib_cbs/results_report/tables/65952_65293_Final_Chemical_Soil_Background_Study_Data_Posted04162012.pdf, showing 39 of those were herbicides and pesticides.

[21] Of the claimed 158 false positives, 95 were non-detects and 39 of the 63 detects were herbicides and pesticides; thus the remaining samples totaled 24 out of 295 total samples, or 8%.

> DOE asserts it may be difficult to demonstrate compliance with the LUT values because of the potential for some false readings as above background when they aren't. But DTSC, at EPA recommendation, set LUT values based on background that were very inflated, using a rare statistical test called Upper Simultaneous Limit (USL) that produces an extremely high confidence that a reading is indeed above background. It errs, unfortunately in many people's eyes, by guaranteeing soil that isn't above background isn't cleaned up, instead of erring by guaranteeing that soil that is contaminated is cleaned up.[22]

What should be driving decisions is the risk of false negatives – not cleaning up soil that in fact is contaminated. DOE's proposals in the NOI would dramatically increase that risk.

**DOE's "New" Alternatives To The Promised AOC Cleanup**

All three alternatives proposed would breach the AOC and leave vastly more contamination than allowed.

"Updated LUT Values Alternative"

The 2018 Final EIS included an alternative called "Revised LUT Values Alternative." The current NOI proposes a new alternative, called "updated LUT Values Alternative" based on numbers DOE says it has come up with, but refuses to disclose.[23] This refusal makes meaningful public comment impossible.

What we can say is that DOE has provided no reasoned explanation for proposing to breach the AOC and replacing the existing LUT Values established pursuant thereto. The AOC required DTSC to perform a background study, and upon its completion, to set the LUT Values, which it did in 2013. DOE's 2018 Final EIS proposed a "Revised LUT" Alternative that would have violated the AOC, without a defensible reason. We opposed the EIS at the time. DOE is now proposing a second revision, now called "Updated LUT" Alternative, again without good cause. DOE is candid that this alternative, and the other two it is also proposing, are *alternatives to* the AOC,[24] i.e., would violate it. We oppose any such breach.

[22] Pdf p. 51, *Comments on Draft Environmental Impact Statement for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory*, by the City of Los Angeles, NRDC, and CBG, April 5, 2017.
[23] PEER, PSR-LA, PASSFL, and CBG January 22, 2025 letter, Op. Cit. p. 2: Mengers Feb. 25, 2025, response email, Op. Cit.
[24] 89 Fed. Reg. 105,555, 105,557.

"Multiple Lines of Evidence (MLE) Alternative"

This alternative, which DOE likewise admits is an alternative to (i.e., would violate) the AOC,[25] has recently been presented by DTSC.[26] In essence, it would allow multiple ways of exceeding the AOC cleanup levels, resulting in much of those areas not being cleaned up. It would inflate background beyond the Background Threshold Values (BTVs) established in the background study.[27] It would inflate the Method Reporting Limits above the MRLs long accepted for the SSFL cleanup.[28] And the key changes are to substitute a purported risk-based screening level (RBSL) for the AOC-required background standard requirement.[29] The RBSLs put forward, however, were claimed to be Residential Screening Levels (RSLs), but are in fact orders of magnitude less protective than either background or a true residential screening level.[30] This is in part because, although it is claimed to be a standard based on unrestricted land use,[31] it actually assumes no backyard garden and no agricultural activity.[32] This results in a massive weakening of cleanup requirements, compared to either background or a true risk-based level.

Summary tables are included at the end of DTSC's Multiple Lines of Evidence Technical Memorandum[33] which provides the values for the LUT standards and the proposed alternative RSLs. Upon comparison, of the 105 chemical constituents for which both an LUTV and RSL are provided, 99 would have cleanup levels weakened, 1 would be strengthened, and 5 would remain the same. (Those 5 were exempted from revision; had they also been switched to the RSLs, their standards would have tightened.)

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[25] Id.

[26] DTSC Fact Sheet: When the Test is Wrong: Unearthing a Better Approach Soil Smarts Fact Sheet #5, Nov. 2024, https://dtsc.ca.gov/wp-content/uploads/sites/31/2025/01/SSFL-Fact-Sheet-5-Unearthing-a-Better-Approach-FINAL.pdf ; DTSC Background Cleanup Approach Proposal MLE Technical Memorandum, Feb. 2025, https://dtsc.ca.gov/wp-content/uploads/sites/31/2025/02/MLE-Background-Cleanup-Approach-Tech-memo-FINAL.pdf

[27] DTSC Background Cleanup Approach Proposal MLE Technical Memorandum, Feb. 2025, pdf pp. 6, 11, https://dtsc.ca.gov/wp-content/uploads/sites/31/2025/02/MLE-Background-Cleanup-Approach-Tech-memo-FINAL.pdf

[28] Technical Memorandum, id., pdf p. 9.

[29] Id., pdf pp. 6-9.

[30] Id., pdf pp. 11-12, fn. 4; compare purported Residential Screening Levels (RSL) values in Table 2 to the LUTVs set forth therein; and compare the RLSs in that Table to the Risk-Based Screening Levels for resident with garden, Appendix B, DTSC Final EIR, https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Fdeliverable_documents%2F1803715348%2FSSFL%20PEIR%20Appendix%20B_Preliminary%20Screening%20Levels%20%5BRevised%5D.pdf

[31] Technical Memorandum, id., pdf p. 5, fn. 2

[32] DTSC Health Risk Assessment Note 3, pdf. p. 7, Homegrown produce pathway is excluded, and thus may "significantly underestimate risk." https://dtsc.ca.gov/wp-content/uploads/sites/31/2022/02/HHRA-Note-3-June2020-Revised-May2022A.pdf ; Regional Screening Levels (RSLs) - Generic Tables, https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables .

[33] DTSC Background Cleanup Approach Proposal; MLE Technical Memorandum, Feb., 2025, pdf pp. 11-15, https://dtsc.ca.gov/wp-content/uploads/sites/31/2025/02/MLE-Background-Cleanup-Approach-Tech-memo-FINAL.pdf

*Thus 94% of these chemicals would have their cleanup standards weakened, and only 1% would be strengthened under this proposal*. Additionally, the magnitude of these weakenings would be in many cases immense. Allowable concentrations of 6 chemicals would be increased by factors of *millions*; 18 would be weakened by factors of hundreds of thousands compared to the AOC LUTVs.

The proposed MLE alternative to the AOC would breach the AOC and allow DOE to escape cleanup obligations for large portions of its contaminated site.

"Resident with Garden Risk-Based Alternative"

This alternative would be a cleanup purportedly based on risk, which directly violates the AOC requirement for a cleanup to background.[34] However, it is not even a true risk-based standard. Despite its title, this alternative is not an actual resident with garden risk-based cleanup, but instead would adopt the dramatically weakened cleanup standards that came out of the secret negotiations between Boeing and DTSC.[35] That secretly-reached deal, and thus this alternative, involves remediation levels far less protective than the resident-with-garden RBSLs that had long been in effect. The relaxation of remediation standards was in many cases immense. For example, cleanup levels for PCB Aroclors were increased about 2000-fold; dioxins were relaxed also by factors of 2000.[36]

Conclusion

The proposed SEIS is unjustifiable. DOE admits all alternatives proposed would violate the AOC. DOE admits it has no new information that calls into question the AOC. Everything DOE proposes would dramatically weaken the needed remediation, leaving large amounts of contamination not cleaned up, posing a perpetual risk to public health and the environment.

[34] AOC with DOE, Attachment B AIP, p. 1.
[35] Appendix A: Secret Negotiations Between CalEPA & Boeing to Breach Cleanup Obligations for the Santa Susana Field Laboratory by CBG, 2022, pdf pp. 11- 16, https://www.committeetobridgethegap.org/wp-content/uploads/2022/09/Secret-Negotiations-Appendix-A.pdf
[36] Id.

Furthermore, the proposed SEIS would further delay the promised cleanup for years. DOE should abandon its proposal for an SEIS and instead live up to the AOC it signed and committed to uphold.

Sincerely,

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