



BRIDGING THE GAP BETWEEN
NUCLEAR DANGERS & A SAFE,
SUSTAINABLE FUTURE

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Allen Elliott
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by email to: msfc-ssfl-eis@mail.nasa.gov

Re: Supplemental Comments on Draft EIS for Cleanup of NASA Property at the Santa Susana Field Laboratory

Dear Mr. Elliott:

These comments supplement the oral testimony and associated written statement by the Committee to Bridge the Gap (CBG) presented at the 28 August 2013 NASA hearing on the Draft Environmental Impact Statement (EIS) for the cleanup of the contamination at NASA's property at the Santa Susana Field Laboratory (SSFL).

In December 2010, NASA executed a binding Administrative Order on Consent for Remedial Action (AOC) with the California Department of Toxic Substances Control (DTSC), in which NASA committed to cleaning up all detectible contamination to background levels. The contamination by and cleanup of the hazardous materials at SSFL is regulated under the federal Resource Conservation and Recovery Act (RCRA). The authority to implement and enforce in California RCRA has been delegated by the United States Environmental Protection Agency (EPA) to DTSC. NASA is subject to RCRA and thus to DTSC's regulatory authority over the cleanup of the toxic contamination at NASA's SSFL property.

Under RCRA and its delegation of authority to California, it is DTSC that determines the cleanup standards to be applied by a regulated entity such as NASA. In short, the polluter does not get to decide how much of the pollution it created it wishes to clean up; the regulator decides how much pollution the polluter must clean up. NASA thus has no discretion in the matter. It is a regulated entity and must comply with the directives of the regulator or face enforcement action.

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Pursuant to that enforcement authority, DTSC entered into an Agreement on Consent for Remedial Action with NASA in 2010, requiring NASA to cleanup its site to background. The AOC has a provision which indicates that NASA will conduct an Environmental Impact Statement on *how to implement the cleanup to background requirements of the AOC*. In other words, NASA has no discretion not to clean up to background, but it does have some discretion as to how to meet that requirement—for example, via *in situ* treatment for some constituents of concern versus disposal of contaminated soil. The EIS is supposed to address those discretionary matters of how to comply with the cleanup to background, not whether to. To repeat: the choice of cleanup standard is not within NASA's discretion, only the means of achieving it. And enforcement actions, like the AOC, are not subject to NEPA.

The National Environmental Policy Act (NEPA) requires Environmental Impact Statements for *discretionary* actions of federal agencies that can significantly impact the environment. As the Council on Environmental Quality correctly directed, and as the AOC requires, the present NASA EIS must be about *how* to implement the cleanup to background requirement of the AOC, not whether to comply.

What is troubling is that NASA seems to have trouble complying with such direction and its own promises to comply. Despite having committed to not include alternatives that would violate the AOC, it nonetheless has done so. And it has not merely mentioned the alternatives as ones not considered further, it has gone ahead and included the very analysis that was supposed to be avoided, trying to hype the number of trucks that could be eliminated if NASA could get out of the commitments it made in the AOC.

But even were there no AOC, NASA would not have the discretion to choose any of those less protective options anyway. Under RCRA, and California's longstanding implementing statutes and regulations, the cleanup standard is picked by the regulator, not the polluter, and is based on potential prospective land use. That in turn is to be based largely on current zoning and general plan permitted uses. NASA's SSFL property is zoned agricultural; the use of the land before NASA took it over was agricultural; and the County General plan designation allows agricultural uses. Indeed, land near the NASA property is used for such purposes.

So, NASA has no discretion to not clean up to background. The AOC requires it. The decision is in the hands of the regulator, not NASA, and DTSC made clear in the discussions that led up to the enforcement consent order that it would require cleanup to the agricultural exposure scenario. And RCRA and implementing statutes and regulations require it, because of current zoning. In the DTSC analyses of comments about the proposed AOC, DTSC pointed out that because of elevated background values of contaminants at SSFL, cleanup to background and cleanup to the agricultural scenario would be comparable. And one needs to be clear: this is all based on RCRA and longstanding California law and regulation unrelated to SB990, the SSFL site-specific statute. The cleanup to background/agricultural levels is required because of local zoning by statute, regulation and guidance completely apart from SB990.

The NASA EIS thus is restricted to that which NASA has the discretion to implement, and it cannot choose to clean up to a lesser standard than background. The inclusion of non-compliant alternatives it cannot in fact choose, after promising not to, is improper and should be withdrawn.

Furthermore, the discussion of potential impacts from the legally impermissible alternatives is conclusory, without any technical basis provided, and clearly erroneous. The Draft EIS throws in soil volumes and truck trips for what it describes as residential, industrial, or recreational cleanup standards. But no basis is provided for the estimates, no source given, just an 'air grab,' pulling numbers out of the air. And the very estimates demonstrate a fundamental lack of understanding of cleanup standards.

There is no such thing as a “residential standard,” an “industrial standard,” or a “recreational standard.” These are exposure scenarios, not standards, and the actual cleanup standard for those scenarios varies by at least a factor of one hundred for each scenario, and depending on the input values employed for the calculation, by considerably more than that. This fundamental technical error raises serious questions about the competence or veracity of the preparer of the estimates. (And who in fact did? Did by any chance Boeing, which is lobbying against the cleanup, have a hand in these numbers? We don’t know, because all one sees is the out-of-the-blue figures, with no basis or source provided.)

The cleanup standard for any exposure scenario is in fact a range. The standard risk range required under RCRA is to aim for a one in a million risk and fall back to no more than one in ten thousand if one can demonstrate to a regulatory some over-riding reason why one can’t readily make the one in a million level. So, if the exposure scenario were, say, residential, the cleanup standard can’t be known today. The regulator would have to decide whether to insist on a one in a million risk, or allow say three in a million, or 2 in 100,000 etc.

Did whoever came up with those air grab estimates base them on a one in a million risk, as generally required. Or did s/he in fact assume that NASA could get out of the basic requirement for one in a million risk and get an exception to a hundred times higher? One cannot tell. There can be no basis for assuming one would be allowed anything other than the one in a million level.

But the story doesn’t even end there. Which residential exposure scenario is assumed? Under EPA guidance, there are two such basic scenarios, the suburban residential and the rural residential, the same as the agricultural. Which is meant here? I would bet that one is using suburban residential, despite the rural residential nature of the area and the zoning. The former is orders of magnitude less protective than the latter.

But again the story doesn’t end there. Even within a specified exposure scenario, the resulting cleanup numbers are dependent upon the inputs. For example, EPA’s standard assumption for suburban residential use is someone has a backyard garden that produces 25% of one’s fruits and vegetables. Did that assumption get employed, or did one ignore it and assume no backyard garden at all. Such an assumption dramatically relaxes cleanup standards, inappropriately. Were standard inputs employed, or did the person who came up with the numbers weaken the inputs from what is generally used so as to relax the cited “cleanup standards” further and thus decrease further the estimated soil that would be remediated?

The brief discussion of these numbers refers to “lookup table” values for residential, industrial, or recreational standards. There is no such thing as a lookup table for them, unless the phrase is being misused.

But at the end of the day, the inclusion in the EIS is grossly improper. These are not alternatives; they would violate the AOC, as well as RCRA and the state enabling statutes and regulations; and NASA doesn’t have the discretion to pick its own cleanup requirements in the first place. If the polluter could do that, it would always opt for a restricted presumed future use that would permit it to avoid most of its cleanup obligations. The entire section should be removed.

A few additional points:

The EIS should make clear that the County of Ventura, the City of Los Angeles, and the City of Simi Valley have all gone on record supporting the AOC. Those within NASA trying to sabotage the AOC

may wish to point to a couple of tiny “neighborhood councils” that Boeing has been working through to oppose the cleanup. But they are not legal representatives; the Los Angeles City Council, which has passed resolutions supporting the AOC, is the legal representative. Neighborhood councils are tiny advisory groups with no formal power or authority; there are dozens of them in LA.

US EPA has submitted comments that suggest it has not fully understood the situation at hand. EPA says it is “imperative” that the radioactivity at SSFL be cleaned up to background, but then suggests that in other situations one might leave uncleaned up two-thirds of the chemical contamination rather than cleaning it up to background. There is of course no technical rationale for cleanup to background for radioactivity to be imperative, but not so for the chemicals. The only reason given by EPA is that it understands that DTSC has put forward a policy of reducing by 50% the amount of hazardous waste sent for disposal in California, and to do that one might need to back up the contamination at polluted sites rather than clean them up. But the DTSC idea was a proposal, not a policy, and it was part of a bill put forward late in the most recent legislative session that failed and was withdrawn. There is no such policy and thus no reason to consider forcing contaminated sites to not get cleaned up. And in any case, it would violate the AOC.

If NASA were to prepare an EIS on a proposed action to strip the native vegetation of SSFL when it was in its pre-NASA pristine state, grade much of the site for construction of test stands and other buildings, and then pour a million gallons of TCE into the soil and groundwater, dump tons of perchlorate on the soil, spread large amounts of dioxins, PCBs, heavy metals, etc. in soil, groundwater, released to the air, and into surface water, NASA would have to conclude that such a proposed action would have significant negative environmental impacts. But here, the beneficial impacts of remedying that environmental damage are essentially ignored, and the negative impacts of the No Action alternative, refusing to clean up, are also not addressed in any serious fashion.

In conclusion, NASA has committed to cleanup to background. It should live up to its word. NASA damaged the environment grievously with all that toxic contamination. It acted irresponsibly in the past. It finally assumed responsibility when it signed the AOC. It should at responsibly now and fully carry out its obligations under the AOC.

Some additional comments tied to particular sections of the EIS are attached.

Sincerely,

/s/
Daniel Hirsch
President