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5 Southern California Federation of Scientists,  
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6 Responsibility, Rocketdyne Cleanup Coalition, and  
Committee to Bridge the Gap  
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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

10  
11 THE BOEING COMPANY,

12 Plaintiff,

13 v.

14 MAZIAR MOVASSAGHI, in his official  
capacity as the Acting Director of the California  
15 Department of Toxic Substances Control,

16 Defendant.

Case No. 09-cv-03165-GEB-KJN

**MOTION OF SOUTHERN CALIFORNIA  
FEDERATION OF SCIENTISTS, *ET AL* FOR  
LEAVE TO FILE AN AMICUS CURIAE  
BRIEF IN SUPPORT OF DEFENDANT'S  
OPPOSITION TO THE BOEING  
COMPANY'S MOTION FOR SUMMARY  
JUDGMENT**

1 Applicants the Southern California Federation of Scientists (“Scientists”), the Los Angeles  
2 Chapter of Physicians for Social Responsibility (“Physicians”), the Rocketdyne Cleanup Coalition  
3 (“Coalition”), and the Committee to Bridge the Gap (“Committee”) respectfully move this Court for  
4 leave to file the accompanying brief as amici curiae in support of the Defendant, Maziar Movassaghi,  
5 Acting Director of the California Department of Toxic Substances Control (“Defendant”).

6 **I. THE MOVANTS’ INTEREST**

7 All four moving parties have long histories of involvement with the Santa Susana Field  
8 Laboratory ("SSFL"), the site in question. They also were instrumental in the passage of SB 990, which  
9 Boeing's complaint alleges is preempted by federal law.

10 (1) The Southern California Federation of Scientists: Scientists was organized in the early  
11 1950s as the Los Angeles chapter of the Federation of American Scientists (originally the Federation of  
12 Atomic Scientists). The latter was an organization of the former Manhattan Project and other scientists  
13 concerned with the nuclear threat. Scientists is an interdisciplinary organization of scientists, engineers,  
14 technicians, scholars, and concerned citizens dedicated to providing independent scientific and technical  
15 analyses and expertise on issues affecting science, society and public policy. It has a special focus on  
16 matters related to nuclear safety, waste, and contamination.

17 Scientists has been involved in matters related to the SSFL since 1979, when it provided  
18 technical assistance related to disclosures of the partial nuclear meltdown that had occurred in 1959 at  
19 SSFL. A decade later, Scientists intervened in the relicensing proceeding for the “Hot Lab” at SSFL.  
20 Since that time, it has been involved in providing technical assistance to the communities near the site  
21 on matters related to SSFL cleanup. Executive Board member Dr. Sheldon C. Plotkin has served for  
22 approximately two decades as a community representative on the SSFL Inter-Agency Work Group  
23 overseeing the cleanup of the site and on the SSFL Advisory Panel that oversees health studies of the  
24 affected workers and neighboring communities. Scientists supported SB 990, the legislation that Boeing  
25 seeks to overturn.

26 (2) Physicians for Social Responsibility-Los Angeles: Physicians is the Los Angeles chapter  
27 of the international physicians organization that won the Nobel Peace Prize in 1985 for its work on the  
28 nuclear threat. Physicians represents over 4,000 physicians, health professionals, and concerned

1 residents in Southern California, a number of whom live within five miles of SSFL. Physicians works to  
2 reduce public health threats, with a special focus on nuclear matters and environmental toxins.

3 Physicians has been involved with the SSFL matter since at least 1979, when it intervened in the  
4 administrative proceeding for the relicensing of the SSFL “Hot Lab.” It has continued its involvement  
5 ever since, pushing for effective cleanup of the site. Physicians supported SB 990, the legislation that  
6 Boeing seeks to overturn.

7 (3) The Rocketdyne Cleanup Coalition: The Coalition is an organization of individuals  
8 who reside in the communities near SSFL, many within a few miles of it, and who are concerned about  
9 its potential risks to their health. The Coalition was formed in 1989 after revelations of widespread  
10 contamination at SSFL. Members of the Coalition intervened in the license renewal proceeding for the  
11 SSFL “Hot Lab.” The Coalition has been active ever since, attempting to protect its members by  
12 working for effective cleanup of the contamination at the nearby SSFL. It supported SB 990, the  
13 legislation that Boeing seeks to overturn.

14 (4) The Committee to Bridge the Gap: The Committee is a forty-year-old organization that  
15 focuses on reducing risks from nuclear technology. In 1979 it helped bring to public attention  
16 documents about the partial meltdown of a nuclear reactor at SSFL that occurred twenty years earlier.  
17 The Committee has been involved in efforts to get effective cleanup at SSFL ever since, in part on  
18 behalf of members who reside within five miles of the site. The Committee’s President has served on  
19 the SSFL InterAgency Work Group and the SSFL Advisory Panel since their inception.

20 The Committee supported SB 990, the legislation Boeing seeks to overturn. The Committee is a  
21 Plaintiff, along with the City of Los Angeles and the Natural Resources Defense Council, in the  
22 litigation against the Department of Energy over the cleanup of its contamination at SSFL entitled  
23 *Natural Resources Defense Council v. Dept. of Energy*, Case No. C-04-04448 SC. This litigation  
24 resulted in an order directing the Department of Energy to prepare an Environmental Impact Statement.  
25 U.S. District Judge Samuel Conti has retained jurisdiction over this case.

26 Scientists, Physicians, and the Committee are non-profit corporations.

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1 **II. ARGUMENT**

2 SSFL is a heavily contaminated nuclear and rocket testing facility located on the Ventura/Los  
3 Angeles County boundary, site of numerous spills, releases, and accidents, including a famous partial  
4 nuclear meltdown, with half a million people now living within ten miles.<sup>1</sup> Plaintiff The Boeing  
5 Company asks this Court to relieve Boeing of its obligations under SB 990 to clean up the radioactive  
6 and chemical contamination for which it is responsible at the site.

7 Amici provide an important, unique perspective to this case. They represent in part the people  
8 who would be most affected by its outcome—the nearby residents.

9 Amici also have a unique perspective in that they all worked diligently to pass SB 990, the law  
10 Boeing attempts to overturn. And one of the Amici is a party to the lawsuit in the U.S. District Court for  
11 the Northern District of California dealing with the Department of Energy’s obligations for cleaning up  
12 its contamination at SSFL, a key proceeding affecting the Boeing litigation here.

13 Amici submit that, given their history of involvement, they are well-suited to provide additional,  
14 pertinent information to the Court. In particular, Amici propose to make four arguments:

15 (1) While Boeing asserts a claim of preemption, California's authority over the SSFL turns  
16 on two factors: (1) the delegation to the state under the Atomic Energy Act, and (2) Boeing's ownership  
17 and control of the great majority of the SSFL site, with the Department of Energy owning none and  
18 controlling only 3%. With their extensive familiarity with the SSFL site and its past, Amici will  
19 demonstrate the long history of state regulation there. They will also show that Boeing has long  
20 recognized the State's authority over Boeing and the cleanup of the site.

21 Additionally, Amici will show that the matters licensed and regulated by the state were not, as  
22 Boeing claims, trivial quantities or activities such as smoke detectors. Instead, the state regulated large  
23 quantities of highly radioactive materials such as irradiated nuclear fuel, amounts of radioactivity ten  
24 trillion times more radioactive than a smoke detector.

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27 <sup>1</sup> Supporting citations are found in the attached amicus brief.  
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1 (2) The cleanup of the small area leased by DOE is the subject of the litigation entitled  
2 *Natural Resources Defense Council, Inc. v. Dept. of Energy, supra*. One of the Amici, the Committee  
3 To Bridge the Gap, is a plaintiff in that action, and the Court's ruling and continued jurisdiction over the  
4 matter bears directly on the present case. Amici propose to demonstrate that DOE is preparing an  
5 Environmental Impact Statement on its cleanup pursuant to the ruling in that case, and that it is therein  
6 actively considering complying with SB 990. Until DOE makes that decision, any action by Boeing  
7 raises significant ripeness and standing issues.

8 (3) Third, Amici propose to show that, as to the large quantity of chemical (i.e., non-  
9 radioactive waste) on the property, Boeing's preemption claim fails as a matter of law. The federal  
10 Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, not the Atomic Energy  
11 Act, governs the cleanup of these chemicals. Unquestionably, the State has authority under RCRA to  
12 supervise the cleanup of chemicals, and SB 990 is in part directed toward that chemical cleanup.

13 (4) Finally, Boeing claims that SB 990 sets "unprecedented" cleanup standards. Because  
14 Amici were heavily involved in the drafting of SB 990, they are well-suited to show that this is simply  
15 not the case. Instead, the law calls for the use of standards long employed by the federal Environmental  
16 Protection Agency in the cleanup of hazardous and radioactively contaminated sites. Amici provide  
17 specific detail not found in the Defendant's Opposition brief demonstrating that SB 990 follows standard  
18 federal cleanup practice.

19 Each of the foregoing issues is relevant to the disposition in this case.

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1 **III. CONCLUSION**

2 Amici have a direct interest in the outcome of this case. Accordingly, they respectfully move  
3 this Court to grant this application for leave to file the accompanying amicus curiae brief addressing the  
4 issues set out above.

5  
6 DATED: March 1, 2010

Respectfully submitted,

7 SHUTE, MIHALY & WEINBERGER LLP

8  
9 By: /s/ DANIEL P. SELMI  
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