

**COMMITTEE TO BRIDGE THE GAP
PHYSICIANS FOR SOCIAL RESPONSIBILITY-LOS ANGELES
ROCKETDYNE CLEANUP COALITION
SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS**

24 May 2010

Mary Ann Lutz, Chair
Madelyn Glickfeld, Vice Chair
Steve Blois
Fran Diamond
Maria Mehranian
Jeanette Lombardo
Los Angeles Regional Water Quality Control Board
320 W. Fourth Street, Suite 200
Los Angeles, CA 90013

Re: ***Proposed Boeing Company Settlement (Santa Susana Field Laboratory)***

Dear LA Regional Water Quality Control Board Members:

We write in opposition to several aspects of the proposed enforcement action regarding more than forty (40) violations by the Boeing Company of its NPDES discharge permit at its highly contaminated former nuclear reactor and rocket testing facility, the Santa Susana Field Laboratory (SSFL).

When the Board issued its press announcement that it was intending to impose a \$500,000 civil penalty against Boeing for its repeated violations of pollution laws, the public was somewhat heartened. Although \$500,000 is trivial in the context of a corporation that brought in *more than \$60 billion* in revenue last year – it is thus the equivalent of about a 40 cent fine for a family of average income – nonetheless there was some hope it indicated a new willingness on the part of the Water Board to enforce the water laws against this powerful polluter.

However, a reading of the fine print of the proposed enforcement action leads to despair, and a sense that the public's hopes were misplaced. The proposal actually would *suspend* \$300,000 of that fine and permit Boeing to use that money instead to fund a project aimed at

assisting it in lobbying the Board to dramatically weaken its permit and markedly *increase* the pollution it is permitted to release.

Under the terms of the proposed settlement, Boeing would be permitted to use \$300,000 that was supposed to go for payment of the fine instead to fund a project to help come up with a “design basis storm.” Boeing has long lobbied the Board to modify the Boeing permit to incorporate a compliance design basis storm, which would exempt Boeing from the pollution discharge laws for all storms of greater precipitation than that assumed design basis storm. Boeing has in the past proposed a design basis storm that would in fact occur on average once or more each year. And it is, of course, the larger storms that generally produce the larger releases of contamination. Boeing has repeatedly asked for a “get out of jail free card” for pollution releases in storms greater than the design basis storm.

To date, the Regional Board has resisted that lobbying by Boeing. In 2009, the Board denied Boeing’s request for a compliance design basis storm in part on the basis that further work was needed on regional design basis storm modeling. (See 4/22/09 Response to Comments, p. 5-7.)

Boeing now proposes—and the Board staff has acquiesced to the request – that instead of paying \$300,000 in fines Boeing be permitted to fund the additional work on regional design basis storm modeling that would be helpful to it in its lobbying campaign to get its permit weakened. This is completely inappropriate. A fine is supposed to be a disincentive to continued violations; not be diverted to fund an effort to allow it to discharge even larger amounts of pollutants.

Under State Board policy, part of a fine can be directed to a Supplemental Environmental Project (SEP). These are generally projects identified by the Board itself as ones that would help *improve* the environment as a whole. They are not supposed to go for projects that can benefit the polluter who would otherwise be paying a fine. They are supposed to help the environment, not help increase the amount of pollution put into the environment. Examples would be SEPs currently on the Board’s approved SEP list such as a kelp restoration project conducted by Santa Monica Baykeeper and a watershed restoration for the Compton Creek watershed by Heal the Bay. It is altogether appropriate that penalties from polluters from violating their permits be allowed to go to genuine Supplemental Environmental Projects like these that truly improve the environment and do not benefit the polluter.

Under narrow circumstances, the discharger that has violated its permit and faces fines can propose a SEP and have part of the fine go to that SEP. But such a SEP is supposed to still be a fully valid SEP—one that helps the environment, not hurts it; and doesn’t benefit the discharger, particularly that doesn’t help it get its permit weakened and allow it to increase the amount of pollution it releases.

However, Boeing has proposed funding a SEP of its own creation, not one that restores the environment but one that provides it with the modeling that the Board has said would be needed for Boeing to lobby for relaxing its permit and allowing it to release larger quantities of contaminants into the environment. It proposes that \$300,000 of the fine be diverted to fund a

project to do modeling of regional design basis storms and other aspects of a study to help it push for a waiver of its permit for violations that occur during such storms. There is no general benefit to the environment from such a SEP; it is designed to provide a specific benefit to Boeing, the polluter, by helping it lobby for the right to discharge larger amounts of pollution. The environment would suffer, Boeing would benefit. This is just the opposite of what fines or SEPs are supposed to do.

We thus urge rejection of letting a portion of the penalty go to this Boeing-initiated SEP. The money should all go to fines, or to a SEP on the Board-approved current list of acceptable SEPs not including this Boeing one.

We also note that state SEP policy bars more than 50% of a penalty being allowed to go instead to a SEP. The overall penalty is \$500,000; \$300,000 for the SEP is obviously more than 50%. We understand the Board staff may try to argue it can fail to comply with this requirement by characterizing the penalty as part of a settlement and not bound by the SEP policy, but this would create the further appearance that the Board is attempting to evade its own policies.

Finally, we are troubled by the parts of the proposed action that would, to use the terms of the agreement itself, “constrain” the Board for the next four years to not issue fines in excess of the mandatory minimums for certain violations. For Group 1 violations, the Board would be agreeing to not issue more than the minimum fine for the first 5 violations; for the next five violations, only \$300 more than the minimum; for the next 5, no more than \$1000 above the minimum; and so on. Why, if Boeing has violated its permit dozens of times in the past, would the Board possibly want to agree to handcuff itself, preventing it from using enforcement remedies given it by law?

Sincerely,

/s/

Daniel Hirsch
Committee to Bridge the Gap

/s/

Denise Duffield
Physicians for Social Responsibility
Los Angeles Chapter

/s/

Marie Mason
Rocketdyne Cleanup Coalition

/s/

Sheldon C. Plotkin, Ph.D., P.E.
S. California Federation of Scientists

cc: Senator Fran Pavley
Assemblymember Julia Brownley
Ventura County Supervisor Linda Parks
LARWQCB Acting Executive Officer Sam Unger
Russ Colby, LARWQCB