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# California Legislature

October 2, 2009

**VIA E-MAIL**  
RBrusch@dtsc.ca.gov

Mr. Rick Brusch, SSFL Project Director  
Department of Toxic Substances Control  
PO Box 806  
Sacramento, CA 95812-0806

Dear Mr. Brusch:

As current and former elected officials, we are writing to comment on the draft consent order concerning the Santa Susana Field Laboratory, a proposed order between DTSC and two federal agencies, the Department of Energy and the National Aeronautics and Space Administration.

As a preliminary matter, we want to commend DTSC and Cal-EPA for making this document, and a subsequent document (Version 2.0), available to the public. Progress at SSFL has been tedious at best, but the progress that has occurred is due in no small part to the dedication of the affected community, passage of SB 990 (Kuehl) that contains stringent cleanup standards, and the leadership of a handful of key employees at DTSC and Cal-EPA, yourself included, who opened the process to invite public review and comment.

The proposed consent order is a welcome signal from the two federal agencies that they are prepared to enter into a consent order without the involvement of The Boeing Corporation.

However, the proposed consent order does not fulfill its potential promise in that regard. Indeed, the central purpose of this letter is to document the fact that many provisions of the draft order would result in violations of SB 990. As you know, SB 990 generally requires that the cleanup at SSFL meet "rural residential" or "suburban residential" standards, whichever is the most protective, and it prohibits the transfer of lands at SSFL until the DTSC director certifies that the cleanup has been completed. As you know, SB 990 requires the cleanup of SSFL to the most protective standards. However, the proposed consent order would violate that requirement and allow cleanup to the least protective standards.

A current consent order requires these parties, including Boeing, to comply with "all applicable law" and it was our belief that the negotiations for a new consent order would expressly bind all the parties fully to comply with SB 990 and that the provisions of a new consent order would be enforceable.

The comments below are to the proposed consent order that DTSC has noticed for public comment. Any comment on the subsequent draft that is labeled "Version 2.0" will be specifically noted.

## Substantive Objections to Proposed Consent Order.

At the outset, we want to emphasize that these comments are not an exhaustive list of our concerns. Rather, they are key examples of problems that need to be resolved before we believe that a new consent order would be acceptable to us, the public, or would be consistent with SB 990.

1. Sec. 1.3.2. While the caption correctly identifies the consent order as suggesting compliance with Health and Safety Code Section 25359.20, (codifying SB 990), this section omits any reference to this law. This is an important omission since this section identifies the statutes that govern the consent order.
2. Sec. 1.3.3. This section, rather than committing the parties to comply with SB 990, states that they will commit to complying with the draft order. In version 2.0, the parties have deleted the reference to complying with the order, and instead said that they will keep DTSC informed.
3. Sec. 1.6 In several instances, including in this section, the respondent federal agencies specifically reserve what they view as their right to challenge the constitutionality, legality, enforceability, or validity of SB 990. This section specifically reserves to the federal agencies their “right” to challenge the constitutionality and legality of SB 990, and to question whether SB 990 is enforceable and valid. This provision, had it become effective, would have completely eviscerated SB 990.
4. Sec. 2.11. This proposed finding of fact—that there is currently no known intent to use the SSFL site to raise plants or animals in the future—directly subverts the need to cleanup the site to rural residential levels. We assume that language is intended to avoid SB 990 compliance.
5. Sec. 3.2.2. This section would omit responsibility for radioactive materials found elsewhere on the site.
6. Sec. 3.2.5. This section declares that various sections of the proposed consent order are consistent with SB 990. This is simply not the case.
7. Sec. 3.2.5.1. This section would adopt EPA Guidance documents for risk assessments instead of using the cleanup standards embodied in SB 990.
8. Sec. 3.2.5.2 . This section weakens the cleanup standards contrary to the standards required in SB 990.
9. Sec. 3.2.5.4. This section would impermissibly allow less protective suburban residential standards to be used in violation of SB 990.
10. Sec. 3.2.5.6. This section would impermissibly allow modifications, based on undefined circumstances, to weaken the standards for unspecified chemical-specific exposure pathways. It also limits risk calculations on soil to the top two feet of the surface and would apparently not require full cleanup of groundwater.
11. Sec. 3.3. This section, and subsequent sections, would allow interim response actions, a circumstance not contemplated in SB 990, and a circumstance that could delay, perhaps forever, the cleanup of this site. Also, there are no provisions for public input into development any such interim response actions.
12. Sec. 3.4.1. This section refers to many documents that were developed without public input and which contain multiple references to cleanup standards that were developed prior to the effective date of SB 990 and, at a minimum, should be re-evaluated to assess compliance with SB 990. It is particularly objectionable that the SRAM was prepared in 2005 with no public input.

13. Sec. 3.4.14. This section would allow NASA to use a deed restriction noting groundwater contamination, rather than undertaking a cleanup.
14. Sec. 3.4.5.1. This section, 3.4.5.1, keeps the public in the dark. Without proper and open disclosure, the public will not know if it is fully informed of potential health risks, nor can the public be informed of or comment on any cleanup actions. There has been great distrust by the public regarding proper disclosure of contamination at SSFL. The public has a right to know about historical operations on the site, including nuclear research and operations. If there is confidential disclosure of contamination to DTSC, is there then confidential cleanup and remediation?
15. Sec. 3.5. This section determines cleanup remedies in a fashion far weaker than that codified in SB 990. In addition, this section contemplates a feasibility study prepared without public input, with contaminated fill that may not even meet rural residential cleanup standards, and it relies on decisions made by the respondent agencies rather than DTSC as the lead agency for the cleanup. This last point—the apparent delegation of authority to the respondent agencies—occurs in many other places in the proposed consent order(s).
16. Section 3.6.1. This section would delegate to the respondents the responsibility of drafting a Response Action Plan whose very terms exclude compliance with SB 990. Worse, the citations to code are for weaker cleanups for a site’s expected land use, a standard completely unacceptable for a site as contaminated as SSFL and contrary to SB 990’s requirements.

Consent Order, Version 2.0.

In changes recommended apparently by NASA and DOE, we note the following concerns:

1. As noted, the new language in Section 1.3.3 deletes the reference to “cooperation with implementation of this amended Consent Order” and substitutes a commitment to provide DTSC with information. There is no commitment to comply with SB 990. For obvious reasons, this is completely unacceptable and would render SB 990 moot.
2. Sec. 3.1. The collection of guidance documents referenced in the original document stated that they would be used “to the extent they are not inconsistent with SB 990.” Version 2.0 instead now states that these documents may be used if they are consistent with SB 990 under the terms of this Order.” In other words, this new language would require with compliance with SB 990 only when authorized by the proposed order.
3. Sec. 3.2.2 Version 2.0 eliminates the role of DTSC review and approve the historic site assessment for past use of radioactive materials.
4. Sec. 3.2.5.4. Version 2.0 eliminates the provision of SB 990 that the cleanup standards be based on EPA’s most protective preliminary remediation goals. This deletion completely undercuts the cleanup standards of SB 990.

Conclusion:

On behalf of constituents, we are deeply appreciative that DTSC and Cal-EPA made these documents available to the public and prior to either of them being ratified. We believe that California, our federal agencies, and the effected community now have a new chance to negotiate a consent order that will truly comply with SB 990. We are strengthened in our resolve by the leadership of President Obama, who on May 20, 2009 directed federal agencies to give “full consideration of the legitimate prerogatives of the states” prior to undertaking actions inconsistent with applicable state law.

Thank you for considering our views.



**FRAN PAVLEY**  
Senator, 23<sup>rd</sup> District



**ZEV YAROSLAVSKY**  
Los Angeles County Supervisor



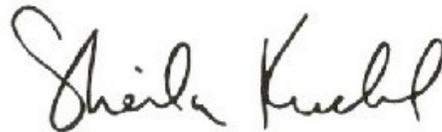
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