



Department of Toxic Substances Control

Matthew Rodriguez
Secretary for
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Edmund G. Brown Jr.
Governor

September 19, 2011

VIA EMAIL

Mr. Allen Elliott
SSFL Project Director
National Aeronautics and Space Administration
MSFC ASOI, Building 4494
Huntsville, Alabama 35812

Dear Mr. Elliott:

Thank you for the opportunity to comment on the National Aeronautics and Space Administration's (NASA) "Notice of intent to conduct scoping and prepare an Environmental Impact Statement (EIS) for Demolition and Environmental Cleanup Activities for the NASA administered portion of the Santa Susana Field Laboratory (SSFL), Ventura County, California" (Notice of Intent). NASA's Notice of Intent was published in the Federal Register on Wednesday, July 6, 2011 (F.R. Vol. 76, No. 129, pp. 39443-39444). The California Department of Toxic Substances Control (DTSC), as the primary regulatory agency responsible for overseeing NASA's environmental cleanup activities at SSFL, appreciates the time you have taken to communicate about NASA's intentions with respect to its obligations under the National Environmental Policy Act (NEPA). DTSC especially appreciates NASA's continued commitment to comply with the Administrative Order on Consent (AOC) that was negotiated between and signed by DTSC and NASA on December 6, 2010, and, as identified in the AOC, NASA's commitment to clean up its portion of SSFL to background, with specified exceptions.

DTSC's comments in this letter largely mirror comments that have been provided to you verbally in July, when the Notice of Intent was issued, as well as in a number of subsequent conversations with you and others at NASA. DTSC's comments focus on two primary areas: 1) The scope of the alternatives that NASA is proposing to evaluate in its EIS must be modified because all but one of the current alternatives are inconsistent with the AOC; and 2) NASA's coordination of its NEPA activities must be better coordinated with similar activities DTSC must conduct under the California Environmental Quality Act (CEQA).

Proposed Alternatives

NASA's Notice of Intent identifies five environmental cleanup alternatives to be considered in the EIS. None of the cleanup alternatives presented have been identified by NASA as its "preferred alternative," and only one of the alternatives would be compliant with NASA's Administrative Order on Consent. The remaining four alternatives listed would, if pursued by NASA, violate the AOC. In previous conversations, you indicated that NASA is compelled to list these specific other alternatives as "reasonable alternatives" in order to comply with NEPA guidance and regulations that have been issued by the Council for Environmental Quality.

DTSC disagrees that the alternatives listed by NASA represent the only way that NASA's alternatives must be expressed, and considers the alternatives that NASA listed to not be compliant with the terms of the AOC. The concept of NEPA compliance was considered at the time the AOC was negotiated, and language was included in the AOC that contemplated the approach NASA would take in preparing its NEPA analysis. On page 17 of the AOC, in Section 4.2.1 it states, "NASA shall make its specific decisions on *how to conduct the clean-up to background defined in this Agreement* in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.)" [emphasis added]. The AOC anticipated that the alternatives to be considered by NASA would be those identified in NASA's Remedial Action Implementation Plan, a plan that is to be developed after investigation activities have been completed and cleanup alternatives identified. Only at that time, when the various options that meet the AOC requirements are presented, can the environmental impacts of those options be fully understood and evaluated. In addition, as more fully explained below, at that time, not only will the potential environmental impacts be identified as required by NEPA, but methods for mitigating those impacts, as required by CEQA, will also be identified and integrated into the Remedial Action Implementation Plan, prior to its approval.

NASA's identification of the alternatives in its Notice of Intent is not a consideration of "reasonable alternatives," because NASA would be constrained from selecting any of them but the one that is compliant with the AOC. In order for NASA to continue in its commitment under the AOC, and to ensure that NASA's NEPA documents are useful to the public, NASA must designate alternatives that exist, are plausible and are consistent with the AOC. No advantage or benefit is gained by reviewing a series of alternatives that must ultimately be discounted because they are not available due to their inconsistency with the AOC.

Coordination of NEPA and CEQA Activities

As provided for in the AOC, in our previous conversations DTSC asked NASA to collaborate with DTSC to develop a joint EIS/EIR that would satisfy NASA's requirements under NEPA and DTSC's requirements under CEQA. You responded that it was NASA's opinion that for this site and set of circumstances that it was impossible for NASA to consider participating in a joint NEPA/CEQA process to develop a

combined EIS/EIR, with one factor being timing. DTSC disagrees with NASA's opinion for the following reasons:

- 1) The AOC compels NASA and DTSC to develop a joint EIS/EIR document. As with the points raised above, the concept of a joint NEPA and CEQA process was anticipated at the time the AOC was negotiated, and language was included in the AOC that contemplated a joint process being pursued. Again on page 17 of the AOC, in Section 4.3 it states, "DTSC and NASA shall work to coordinate the CEQA and NEPA processes." DTSC believes that conducting a joint NEPA/CEQA process would be the ultimate expression of carrying out the terms of the AOC, and absent any compelling procedural or substantive barrier to doing so, believes that the AOC requires a joint process.
- 2) DTSC can identify no substantive or procedural barriers to developing a joint EIS/EIR document that complies with both NEPA and CEQA. DTSC has participated in many instances at other sites in California where joint documents of this type have been prepared. In those cases, the EIR/EIS is developed collaboratively by both the federal and state entities, and the final document produced satisfies the procedural and substantive requirements of both NEPA and CEQA. DTSC is aware of no impediment that exists in this case that would prevent a joint document from being developed. Although NASA has already commenced its initial scoping process, DTSC stands ready to commence its CEQA efforts and could readily integrate NASA and the NEPA process into its CEQA efforts, with no disruption of the process and no delay in the final timing of a decision.
- 3) If NASA were to proceed with its NEPA EIS independently, regardless of when NASA were to complete its EIS and issue a Record of Decision, no demolition or cleanup work could proceed until DTSC completes its CEQA efforts. DTSC must approve all site activities, and must comply with CEQA in doing so.

Continued Coordination

As DTSC communicated with you in July, DTSC was concerned with the content and timing of NASA's initial notifications and with NASA's failure to coordinate with DTSC in the time leading up to the publishing of its Notice of Intent. Since then, DTSC acknowledges NASA's efforts to communicate and coordinate more closely. While DTSC appreciates the spirit of cooperation and communication that NASA has expressed, it is essential that it be demonstrated through concrete actions.

DTSC believes it is essential, for the sake of the continued success of the site investigation and cleanup efforts and more importantly, for the sake of the community surrounding SSFL and its interest and participation in the decisions being made about the cleanup, that NASA's and DTSC's efforts related to NEPA and CEQA must be communicated and coordinated effectively. Failure to communicate clearly and

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effectively can cause significant confusion, and erode the community's confidence and trust that DTSC and NASA are making the right decisions based on sufficient information. DTSC looks forward to working with NASA on the adoption of a plan of action that will allow our agencies to collaborate more closely in the future on the preparation and adoption of environmental documentation under both NEPA and CEQA.

As stated in the introduction to these comments, DTSC greatly appreciates NASA's commitment to clean up its portion of SSFL to background levels as it has committed in the AOC, and for its continued cooperation with DTSC in the investigation and cleanup process. We look forward to NASA's action in response to DTSC's comments in light of NASA's obligations under the AOC. If you have any questions, please feel free to contact me at (916) 322-0504 or Mr. Rick Brausch, Legislative and Policy Director and SSFL Project Director, at (916) 327-1186.

Sincerely,



Deborah O. Raphael
Director

cc: Miriam Barcellona Ingenito
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