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June 22, 2007

The Honorable Samuel W. Bodman
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Secretary:

I am writing to you regarding recent announcements the Department of Energy has made about the cleanup of the Santa Susana Field Laboratory (SSFL) and the Energy Technology and Engineering Center (ETEC). There are inconsistencies in these announcements that I would like you to clarify.

On May 2, 2007, the United States District Court for the Northern District of California issued a decision ordering DOE to conduct an Environmental Impact Statement (EIS) instead of a Finding of No Significant Impact (FONSI) prior to remediating the ETEC.¹ The court stated that “the DOE’s decision to issue a FONSI rather than prepare an EIS was not in accordance with the law and constituted a clear error of judgment” and that “[c]haracterization as a cleanup doesn’t exempt the remediation from [an] EIS requirement.”² The court noted: “The purpose of an EIS is to obviate the need for speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action.”³

On May 23, 2007, notwithstanding this court order, I learned that DOE was planning on imminently demolishing two structures on the site as part of cleanup activities prior to conducting the EIS. My staff immediately contacted DOE to inquire about DOE’s plans.

¹ *Natural Resources Defense Council v. Dept. of Energy*, No. C-04-04448 SC (N.D. Cal. May 2, 2007).

² *Id.* at 29, 32.

³ *Id.* at 44.

The Honorable Samuel W. Bodman
June 22, 2007
Page 2

On May 24, 2007, via an e-mail message, DOE informed my staff, and other congressional offices, that it had suspended all deactivation and decommissioning activities at the SSFL site, while it evaluates stakeholder concerns and input. This email stated in its entirety:

The Department of Energy (DOE) is committed to cleaning up the Energy Technology and Engineering Site (ETEC) in accordance with applicable Federal and State regulations.

The Department is suspending its deactivation and decommissioning (D&D) activities at the ETEC Santa Susanna Field Laboratory in Simi Valley, California, while the Department evaluates stakeholder concerns and input regarding the (D&D) activities at the site. The Department will place all operations in a safe and stable configuration during this pause that allows time to complete the evaluation. DOE will continue to perform environmental monitoring activities.⁴

The same day, DOE issued a public statement about the suspension, writing:

The Department today suspended its deactivation and decommissioning (D&D) activities at the ETEC Santa Susanna Field Laboratory in Simi Valley, California for approximately 45 days. During this time, we will continue to perform environmental monitoring activities and place operations in a safe and stable configuration while we work with state and federal regulators and evaluate all input on a path forward.

We remain committed to cleaning up the Energy Technology and Engineering Site (ETEC) in accordance with applicable state and federal regulations to ensure the utmost protection of human health and the environment.

DOE's e-mail to me and other members of Congress and its press statement are similar in many regards. But there appear to be at least two notable differences. The e-mail to Congress did not put a time restriction on DOE's decision to halt deactivation and decommissioning activities at the site, and it tied the decision to halt activities specifically to DOE's desire to "evaluate stakeholder concerns and input." In contrast, the statement to the public noted that deactivation and decommissioning activities would last for approximately 45 days while DOE worked "with state and federal regulators" on a path forward. The press statement made no mention of evaluating stakeholder concerns.

These discrepancies in the statements appear to be part of a series of mixed messages from DOE. Although DOE is under a court order to prepare an EIS before performing

⁴ E-mail from Steve Lerner, Department of Energy, to Congressional Staff (May 24, 2007).

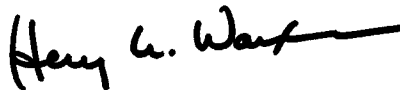
The Honorable Samuel W. Bodman
June 22, 2007
Page 3

remediation, DOE was unable to assure my staff that an EIS would be conducted prior to commencement of remediation activities. Previously, DOE committed to fund the Environmental Protection Agency to undertake a radiological survey of the site, but then never followed through on this commitment, despite the need for essential information on the condition of the site.⁵

In order to provide Congress, the public, and the State of California with a clear understanding of the timeline for remediation of this site, I request that you explain DOE's plan before additional actions are taken at the site. Specifically, I ask that you confirm that DOE will conduct an EIS prior to beginning remediation as directed by the district court and that DOE will finally allow the EPA to undertake a radiological survey.

I would appreciate a response by June 27, 2007. If you have any questions, please contact Greg Dotson or Erik Jones with the Committee staff at (202) 225-4407.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

⁵ Letter from Felicia Marcus, EPA Regional Administrator, to Sen. Dianne Feinstein (Dec. 8, 1998)