



Department of Energy  
Washington, DC 20585

**JUN 27 2007**

The Honorable Henry A. Waxman  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Waxman:

Thank you for your June 22, 2007, letter regarding the cleanup of the Santa Susana Field Laboratory (SSFL) and the Energy Technology Engineering Center (ETEC).

On May 2, 2007, the United States District Court for the Northern District of California held that the U.S. Department of Energy (DOE) must prepare an Environmental Impact Statement (EIS) for Area IV of ETEC, and the Department was permanently enjoined from "transferring ownership or possession, or otherwise relinquishing control over, any portion of Area IV" until DOE completed the EIS and issued a Record of Decision, pursuant to the National Environmental Policy Act. The Department of Energy (DOE) on May 24, 2007, suspended deactivation and decommissioning (D&D) activities at ETEC located in Simi Valley, California, while the Department evaluated stakeholder concerns and input regarding the D&D activities at the site. In addition, DOE placed all operations in a safe and stable configuration. We regret any confusion over the differently phrased messages that announced our suspension, but can assure you that it is DOE's intent to comply fully with the court order, and prepare the EIS. The reference to a 45-day suspension was intended as a benchmark only.

While DOE does not plan to restart the cleanup of ETEC until after the EIS is completed, we need to continue certain limited activities, most of which began before the suspension, or the issuance of the Court order, in order to protect public health, safety, and the environment. These would include: ongoing characterization of the site, including related remedial investigation studies, as requested by the State of California, repairs (e.g., patching of holes) to buildings that will remain standing during the completion of the EIS, and the evaluation of limited off-site waste disposal, at facilities licensed or permitted to accept the waste (probably the Nevada Test Site for the radioactive waste). DOE will also be evaluating the consequences of retaining the buildings during the completion of the EIS (i.e., termination of Boeing employees and subcontractors, and delays to the completion of site characterization and cleanup).

DOE's hazardous waste activities at ETEC are regulated by the State of California under Resource Conservation and Recovery Act (RCRA) authority. Recently, the



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California Department of Toxic Substances Control (DTSC) sent DOE, NASA, and Boeing a Draft Enforcement Order with aggressive cleanup milestones that would be impacted by the need to suspend cleanup activities pending completion of the EIS. DOE is currently negotiating with DTSC to ensure that these milestones reflect the completion of the EIS. Attached is a copy of DOE's June 20, 2007, letter transmitting its comments on the Draft Enforcement Order to DTSC. DOE is working cooperatively with the DTSC to determine the most suitable path forward. Additional discussions are scheduled or planned. It is expected that the State will issue a final Consent Order by late July, or early August 2007.

The State is also requiring that DOE, NASA, and Boeing complete a site-wide Environmental Impact Report for SSFL. As part of the RCRA closure, DOE has conducted extensive site characterization, sampling and analysis, and prepared RCRA Facility Investigation Workplans. It is DOE's intent to discuss fully with the U.S. Environmental Protection Agency (EPA) the need for additional site characterization including a radiological survey, and we are committed to the undertaking of that survey.

DOE remains committed to working cooperatively with EPA, the State of California, the stakeholders, and all interested parties to conduct not only the District Court ordered EIS, but to also meet all the milestones and schedules for cleanup required by the State of California.

Ongoing discussions with the State of California, EPA, and all interested parties will focus on the development of an integrated schedule for completion of the EIS, the Environmental Impact Report, and associated cleanup.

If you have any questions, please contact me at (202) 586-7709 or Mr. Eric Nicoll, Acting Assistant Secretary, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,



James Rispoli  
Assistant Secretary for  
Environmental Management

cc: The Honorable Tom Davis  
Ranking Minority Member



## Department of Energy

Washington, DC 20585

JUN 20 2007

Mr. Norman E. Riley  
Project Director  
Department of Toxic Substances Control  
1001 I Street  
Sacramento, CA 95812-0806

SUBJECT: Comments on Draft Enforcement Order for Corrective Action at the Santa Susana Field Laboratory (SSFL)

Dear Mr. Riley:

Enclosed are the initial U.S. Department of Energy's (DOE) comments on the Department of Toxic Substances Control (DTSC) Draft Enforcement Order for Corrective Action (Order) at the SSFL. These comments are provided in advance of our scheduled meeting to review the Draft Order with you on June 22, 2007, at SSFL Building 436. The DOE remains dedicated to working cooperatively with the DTSC to develop a plan and timetable for completion of the cleanup at the Energy Technology Engineering Center, subject to the completion of the Environmental Impact Statement for Area IV.

If you have any immediate questions, please contact me at (510) 637-1617.

Sincerely,

A handwritten signature in black ink, reading "Richard J. Schassburger". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard J. Schassburger  
Federal Project Director  
Oakland Projects Office

Enclosure

cc w/encl:  
A. Elliott, NASA  
J. Leatherwood, NASA  
T. Gallacher, Boeing  
R. Amar, Boeing



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## DOE Initial Comments on DTSC's Draft Enforcement Order for Corrective Action

### Comments

1. Section 3.2 Corrective Action Schedule. The draft Order specifies March 2013 as the completion date for removal of chemically contaminated soil in the Surficial Media Operable Unit (OU), implementation of an approved groundwater cleanup remedy in the Chatsworth Formation OU, and implementation of an approved long-term soil cleanup remedy in the Surficial Media OU.

The stated purpose of the draft Order was to formalize the timeframes for SSFL cleanup. These timeframes, including the 2013 completion date, were discussed during a joint meeting between DTSC, DOE, and the Boeing Company in December 2006. During that meeting the parties decided on a path forward that was predicated on the accelerated removal of all remaining facilities within Area IV of the SSFL, DOE's former Energy Technology Engineering Center (ETEC).

The Department of Energy remains dedicated to working cooperatively with the DTSC to develop a plan and timetable for completion of the cleanup at ETEC. An important issue in developing the plan and timetable is if and when the DOE can demolish Building 4024 and the Radioactive Materials Handling Facility (RMHF).

DTSC has expressed its concern that demolition of these buildings at this time would be inappropriate because Judge Conti has ordered DOE to develop an Environmental Impact Statement (EIS) for Area IV at SSFL. As stated in your letter of May 23, 2007, DTSC believes these buildings may be useful for management of waste materials generated during other cleanup activities. Also, your letter of June 4, 2007, directed DOE to immediately stop all decontamination and decommissioning activities at the Hazardous Waste Management Facility (HWMF), the RMHF, and Building 4024 until an EIS is completed as ordered by the recent Court decision.

Accelerated removal of the remaining DOE-owned facilities was intended to satisfy two critically important issues: 1) removal of the two remaining radiologically contaminated facilities under the jurisdiction of DOE authority and 2) significantly simplify sampling and analysis at the Group 7 Solid Waste Management Units (SWMUs). Specifically, Group 7 includes the HWMF and RMHF. DOE's intent was to complete physical demolition of the facilities in FY07 and FY08 and complete the RCRA Closure Plan activities within one year of the physical demolition for each facility.

DOE is willing to postpone demolition of Building 4024 and the RMHF, given the DTSC's concerns. However, DOE is concerned that postponing the demolition of these buildings would result in DOE having difficulty meeting DTSC's proposed 2013 date for completion of the cleanup at ETEC. In DOE's experience at other sites, development of an EIS takes eighteen (18) to twenty-four (24) months; which, at this point, means the

EIS will not be finalized and the Record of Decision (ROD) issued until sometime in 2009.

Assuming demolition is postponed until 2009, DOE will have to restart the procurement process with all the attendant planning, reporting, meetings and discussions necessary to get contractors in place after the ROD is issued. This streamlined process could take up to six months.

DOE is also concerned that sampling of soil underlying these buildings, with the buildings in place, would need to be verified once the buildings are removed, and that process could take up to an additional two months depending on the results of the verification. DOE's cleanup experiences at other private sites indicated that characterization of soil contamination could not be done adequately with buildings in place above the soil needing characterization. Alternative core drilling and horizontal drilling at ETEC to obtain soil samples, pending completion of the EIS, is necessarily limited to those areas that can be reached by these methods and is quite costly.

For RMHF, DOE would also have to go through the closure plan approval process with the State following EIS preparation and after additional characterization of the building soils, and that process could take an additional ten months. (The closure plan for HMWF is already done.) Finally, cost increases due to a second delayed procurement, and any alternative sampling techniques employed, would further delay the completion of the project by at least six months, if outyear appropriations did not increase.

When these post-EIS time periods are added to the two extra years for D&D work that is suspended during the preparation of the EIS, and the time for the remaining cleanup that would need to be undertaken, DOE likely would not be able to meet the 2013 deadline. For example, the demolition of RMHF would by itself take more than a year. Alternatively, if the State does not extend the 2013 deadline for the cleanup of ETEC, DOE believes it could meet that deadline only if DOE were allowed to deactivate and demolish Building 4024 and the RMHF as stated in the Engineering Evaluation/Cost Analyses issued for each building earlier this year.

DOE is in the initial EIS planning process and is developing a comprehensive stakeholder list and strategy for inclusive community involvement. DOE will work with the stakeholders, regulators, NASA, Boeing, and all interested parties to determine the best approach for compliance within NEPA.

2. Section 3.7.3 Development of CMI documents. DTSC should allow the combining of documents when possible.
3. Section 3.7.5 Financial Assurance Mechanism. This section requires the Respondents to implement a financial assurance mechanism which would allow DTSC access to the funds to undertake CMI tasks if the Respondents are unable or unwilling to undertake the required actions. This section also requires annual adjustments to the mechanism. Finally, this section references the California Code of Regulations, Title 22,

Sections 66264.143 and 66265.143 for the types of financial assurance mechanisms that are acceptable to DTSC. DOE believes that the requirement of a financial assurance mechanism is not applicable to a federal agency. The basis for this belief is that Title 22, Sections 66264.140(c) and 66265.140(c) specifically exempt federal and state agencies from compliance with the requirement of providing a financial assurance mechanism. DOE requests that DTSC exempt DOE from compliance with this section.

4. General Comment. Although the draft Order specifies dates for submittal of the initial documents and provides for the final completion date of March 2013, the Order should include timelines for review cycles by DTSC for the interim documents, allowances for DOE milestones extensions if those review cycles cannot be adhered to. This information is required for the development of realistic schedules as required by Section 3.2.1.