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October 8, 2009

Mr. Rick Brausch
Deputy Director, DTSC
1001 "I" Street
P.O. Box 806,
Sacramento, California 95812-0806
(Via U.S. Mail and E-mail)

re: Draft Amended Consent Order(s) Comments
for Santa Susana Field Laboratory
"Alternative" release concerns

Dear Mr. Brausch,

Please find below, my comments related to the recent release of an altered version of the Draft Amended Consent Order (draft ACO) for cleanup action of the Santa Susana Field Laboratory. Thank you for agreeing to receive my comments a few days late, due to personal family bereavement from the recent loss of my mother. I appreciate your willingness to consider these comments in DTSC's decisions moving forward.

I would like to address both the conceptual issues of SB990 as they apply to the Amended Consent Order (ACO) as well as the details where modifications are appropriate based on our highly detailed research of the site and the related political and public health issues. Our research has benefitted the clean-up process for many years in improving the quality of reports, transparency with the public, and we continue to work closely with US EPA in helping to provide assistance with the overall understanding of the site itself, as well as the massive library of existing data and their inter-play of context between facilities, programs and ownership issues.

These comments are based on issues and not on people, but these issues are a result of people, just as the solutions required to get the job done, will also require the right team of people and the right focus if we are to have any chance at making the clean-up, consistent with SB990 standards, a reality at this highly complex site. There has been a lot of blame throughout the recent efforts to explain the decisions made by DTSC to the public, and therefore feel we need to thoroughly examine these decisions and the ramifications of these decisions on the future clean-up of the site.

In my review, I have had numerous conversations with both you [Mr. Brausch] and others within the DTSC agency structure. In discussing the recent events/decisions with all of the responsible parties as well as people at various levels within DTSC itself, there are two things that ring true with everyone: We need **one** order with **all** the parties on board, and we need **one** person who can truly make these decisions and see it through this critical juncture. It is because of the unique skills and experience necessary to accomplish these tasks, that I feel that the removal of Norm Riley as the Key Decision-maker and project leader was a mistake. It was wrong for the project, and wrong for the people below. It was his ability to make a decision and move things forward in a firm but trustworthy manner that

made progress of the last two years, so unique compared to the efforts of so many people in decades past.

SB990, while at the core of the decisions ahead, must be more thoroughly understood by the people making these decisions as well as the community, and is not adequately discussed or described for the purposes of true implementation here, or in any of the communication I have seen come from DTSC since the announcement of the initial draft release ACO on August 19th, 2009.

In working on this project for nearly a decade as a community member living directly below the site less than 2 miles from the site, I have observed the changes that have taken place, the claims on both sides of the fence, and have taken great care to analyze, without bias, the circumstances which we now find ourselves. I think this is crucial if we are to find a way forward that makes sense and can result in action at the site, and not in the courtroom. The best way we can possibly achieve our goals now, would be to reinstate Mr. Riley, and bring Boeing back into the document and trust back to the table, and your expertise in putting together legislative guidance to implement the law has been your position and skill-set, and it is my opinion that is where we need you most right now.

SB990 is an idea of the “most protective standard of clean-up,” but is not descriptive in exactly what that means. “The Agricultural Standard” is what we then turn to, but we must be realistic when we analyze and compare the PRG (public remediation goal) with regard to certain radionuclides, to the detection and analytical technology available today. There are very specific limitations that must be understood, where certain radionuclides cannot be detected in the field at the level, which SB990 would require for clean-up and would require for back-fill that would replace the soils removed from the site.

We do not want to be so unwavering in our ideals of what SB990 must mean to us, that we demand that soils at these levels be removed and deposited elsewhere, and then replaced with soils that also do not meet the standards due to its’ [SB990] stringency. This is where we must agree that in our search for “reasonability,” we consider other balancing criterion, and we limit the clean-up levels to “background” x 1.2 multiplier, so that no soils that are essentially “background” be removed and replaced with other soils that are also essentially background. This seems to be the most protective of the factors that have been under discussion and still acknowledges the realities of the scientific limitations we face.

We must then use the best possible detection technology and simply go to non-detect. This way we truly delineate the problem areas and will be able to clean-up smart – eyes open.

Background and non-detect and the best detection equipment and analysis are key.

In these recent discussions with all the responsible parties at recent meetings held at DTSC, as well as personal interviews of key individuals, it is clear that within the federal process, as well as the state process, whenever a law is enacted, there is a process for the over-sight or regulatory agency to write guidance documentation as to how to follow that law. This was never done.

I believe that it is the responsibility of the legislative branch (Brauch, Legislative Director) of the regulatory governing agency (in this case, DTSC) to write such documentation so the law could be implemented. That is the very purpose of the legislative branch of DTSC, to implement and translate

law into regulation, action, and expectation and communicate those expectations to the responsible parties. Instead, nearly a year of discussion of interpretation by the RPs, which later resulted at an impasse over issues like area averaging and soil vs. sediment and drainages and other details that will still require review, but we must first get past this first and very primary hurdle – is everybody onboard?

In reviewing the initial letter dated March 9th and signed by five elected officials expressing concern about the Consent Order negotiations and the fact that non-party participants were not being allowed into confidential discussions, we found this to be inappropriate. The earlier discussions were about interpretation of the law, but were not formal meetings for a consent order for response action. It was each of the RPs that stated that they did not want non-party participants in the formal negotiations and it was inappropriate to ask for such a concession. Even more inappropriate to demand release of an unfinished, incomplete, with unauthorized omissions and edits throughout, and ask the public to repair the situation.

It is therefore our opinion that because this was never done, it was then necessary to modify the existing consent order to reflect such instructions as to how to implement the law, and how to determine whether or not the law is being followed. In the case of SB990, it was not specific and perhaps due to the lack of specificity by the authors, it has made implementation (strict compliance) very difficult to define for that same reason.

In my own discussions with all the involved parties and representatives, I felt it was crucial to get to the real issues of why the negotiations came to an impasse in order to be able to understand the issues under debate within the document as no effort to provide such notes to the public has been made.

It is apparent that the CalEPA leadership wanted to move this forward but failed to deal with the issue of reservation of rights, when it was in fact Cal EPA/DTSC that failed to provide guidance as to how to interpret and follow the newly signed and codified law. The release of a second document that was also altered, was astounding to us, especially since it had been modified in such a way that none of the parties would have signed. I therefore felt it was crucial to understand why such a decision took place, and why it was thought to be necessary or responsible to take such a risk with the future clean-up and safety of our communities.

Addressing the timeline of recent events:

March 9th – letter from elected’s to CalEPA Secretary Linda Adams

Maureen Gorsen leaves her position as DTSC Director (recused due to prior involvement as Boeing Attorney), making newly appointed acting Director Maziar Movassaghi with no “ethical screen” between he and the SSFL project.

April 8th – Newly appointed Acting Director of DTSC Maziar Movassaghi removes decision-making authority from Norm Riley, then Project Director for the SSFL Clean-up. For months, no decisions are then made on issues related to the site characterization, clean-up as well as surrounding sites of related interest such as Runkle Canyon.

Several meetings occur between the responsible parties (RPs) and regulatory representatives of the

State that included Maziar Movassaghi, Rick Brausch, Norm Riley, Nancy Long, Steve Koyasako in some cases, the Secretary herself. The representation that these discussions were going on without the knowledge of senior management is inaccurate and inappropriate and without merit.

Ten renditions of the ACO have been proposed and countered by the RPs over the last 8 months, and yet it was portrayed when the release of the initial document to the public occurred as if the document had been seen by senior management of CalEPA and DTSC for the first time in August at the time of the release.

August 19th The document released to the public was portrayed as the document most recently negotiated amongst the parties in good faith, to the point that it was ready to be signed. The document released, was later discovered to have been altered, with key changes and omissions having occurred. The fact that the primary landowner had been eliminated from the Order was downplayed and in fact their role was minimized in the description of the decisions made and direction moving forward.

The displayed a profound lack of understanding of the real issues at hand.

When we wrote a letter to the Governor's Office requesting that the actual 2.0 version of the consent order be released, we were told that it would be in a few days. Shortly thereafter, a version that was "an alternative version" was released, with no explanation as to the changes or why they occurred. We were then told that we had additional time and could comment on both documents, though no clear explanation as to why there were two versions, or which one we should consider, or what the context or differences were between the documents was explained. Instead, we were told to comment and that all this had occurred because the "public" needed to see the document even though it was far from being ready for release. Why the rush?

DOE and NASA individually and collaboratively as well as Boeing, wrote letters¹ questioning the "new approach" by DTSC and why 8 months of good-faith negotiations were ignored. To further complicate these matters, inaccurate statements were made by DTSC as to the reasons for the decisions, and the elected's [Brownley, et al.] actually praised the Secretary² for breaching her own confidentiality gag-

¹ <http://www.acmela.org/consentorder101.html>
<http://acmela.org/images/DOE-NASA to DTSC 09-08-09-1.pdf>
<http://acmela.org/images/8-27-2009 letter from DOE to DTSC.pdf>
<http://acmela.org/images/Boeing letter to Community August 27 of 2009.pdf>
<http://acmela.org/images/NASA Press Release August 21 of 2009.pdf>
<http://acmela.org/images/NASA to DTSC 8-21-09.pdf>
<http://acmela.org/images/SSFL Update from Maziar DTSC August 19 of 2009.pdf>
<http://acmela.org/images/8-11-09 letter from DOE to DTSC.pdf>

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<http://acmela.org/images/Julia Brownley August 19 of 2009 SECRETARY ADAMS ACME Aerospace Cancer Museum of Education.pdf>

order, and then created an “Assembly Select Committee³” to investigate these matters, then limited the attendance of the meeting, and then praised herself for putting it together AFTER having already cancelled it. All the while the public has become further disenchanted by the despicable behaviors being displayed and even celebrated, all in the name of protecting the political legacy of Kuehl/Brownley/Hirsch SB990, rather than protecting the people it was written for.

The very idea that the elected’s are commending the CalEPA Secretary for breaching the confidentiality mandated by the Consent Order process is certainly questionable. Their letter signed by six elected’s states that the new order would provide clean-up to the “least-protective standard” violating 990. This is untrue and demonstrates that they either have not read the Order (draft ACO(s)) or do not understand it.

We are extremely disappointed in the new leadership decisions, and the idea that the public has been asked to comment on two documents, both of which are more than a hundred pages of detailed issues, and neither is the actual order that was negotiated between the parties. When we asked what the differences were between the documents, we were assured time and time again, that the only difference was the removal of Boeing from the document, yet significant and very troubling language omissions and changes such as in section 1.3.3 are found where the reference to compliance was changed to providing information.

We were told by you, Mr. Brausch, that DTSC did not necessarily stand behind the document and that was why it was so important to let the public see it? You have been unable to answer these questions, Mr. Movassaghi not been truthful in giving answers about these issues to us, and the Secretary has refused to respond all together, so we are truly without leadership and have no confidence in the ability for the new “executive level” of DTSC or CalEPA to move this forward properly.

From the outset, Mr. Movassaghi’s attitude has been that Boeing is a minor player in a site clean-up where they own most of the site, control all of the site, which further demonstrates Mr. Movassaghi’s lack of understanding of the technically complex details that make up the site itself, as well as the goals of the clean-up at the site. Furthermore, as a California employer (perhaps California’s biggest employer), they are they only RP that cannot contest the validity of SB990 on the basis of Federal Supremacy, and they are the party that has been removed from the order. Without understanding the key dynamics between the responsible parties who trade roles as owners, operators, and contractors and sub-contractors for each other. This back-and-forth finger-pointing has been the cause for most of the stagnant inaction of years past. It was not until Mr. Riley took charge, and initiated the first Consent

³ http://acmela.org/images/SSFL_Select_Committee_Cancelled_from_Pavley_Sept_23_of_2009.pdf
http://acmela.org/images/California_Legislature_Draft_Consent_Order_Comment_Letter_Oct_2_of_2009.pdf

Order for Corrective Action in 2007 that things finally began to change for the better, with real, tangible, progress toward real clean-up and trust began to build on all sides, until now. We were further disappointed to see him [Movassaghi] at the workgroup meeting, hiding in the audience, all on the state's dime, instead of introducing himself to the public as the new "decision-maker" on the project.

Our letter addressed to the Governor on this issue was copied to DTSC and continues to go without response from any of you despite the participation of several community organizations and many individuals signing the letter. This further demonstrates the complete lack of leadership, understanding and knowledge amongst the "executive level" team that have pledged personal involvement again and again, as well as lacking technical and managerial expertise to bring the negotiations with the Responsible Parties (RPs) to a successful conclusion. We expect response to this letter in your response to comments, as well as a response from the Governor's Office⁴.

We wrote a letter to Mr. Movassaghi expressing our concern, again without any response to date, expressing our shock and dismay about the recent decisions and total omission of responsiveness⁵.

Our unanswered questions that we continue to ask and will continue to ask (dated 9/10/09)⁶.

In addition, we ask that a cogent explanation of why DTSC has wasted time putting out one then two faked-up versions not satisfactory to any side in the negotiations?

What substantive progress has been made on the site since Maziar Movassaghi took over on April 8, 2009?

- ✓ Why have no decisions been made on Runkle Canyon since April?
- ✓ Why have all the toxicologists left the project?
- ✓ What has been done specifically to get RAD support on the project?
- ✓ Why has Mr. Movassaghi refused to acknowledge the work done by ACME? What will DTSC now do to aid ACME to continue its' efforts now that we are threatened with closure? (30,000 site photographs, aerial hi-res, historical hi-res photographic and document research and

⁴ Group Letter to Governor Arnold Schwarzenegger dated September 1, 2009 asking for answers about these recent decisions.

http://acmela.org/images/ACME_Group_Letter_to_Governor_Schwarzenegger_SB990_Norm_and_Consent_Order_Sept_1_of_2009.pdf

⁵ Letter to Maziar Movassaghi dated September 14, 2009 expressing shock and dismay (no response).

http://acmela.org/images/ACME_Letter_DTSC_Movassaghi_Sept_14th_2009.pdf

⁶ Twenty Questions from ACME to DTSC presented on 9/10/09 at the Aerospace Cancer Museum of Education where an informal meeting was held regarding the Consent Order recent decisions by DTSC (no response).

http://acmela.org/images/ACME_CleanupRocketdyne_Consent_Order_101_Questions_to_DTSC.pdf

<http://acmela.org/consentorder101.html>

collection that have benefitted the project throughout the RFI process since our involvement).

- ✓ How will DTSC rebuild the trust and confidence lost?
- ✓ How will DTSC improve morale internally and get the project moving again?

And questions we continue to ask until a proper response is received:

1. Who made the decision to split the Order and make the personnel changes on the SSFL Project for DTSC removing Norman Riley from leadership of the project? This decision was specifically characterized to implicate Mr. Riley as being “soft on SB990 and reason for his dismissal”
 2. Why was there a rush to publish a document to the public that DTSC and no one else seemed to be behind? Was it related to the threat made at the prior workgroup meeting by Mr. Hirsch?
 3. Why was an altered version shown to the public and portrayed as the actual version negotiated?
 4. Why was the primary respondent removed from the Order?
- Why is the acting Director of DTSC down-playing the role of The Boeing Company in the clean-up? Has some side deal been struck between Boeing and the new executive leadership of DTSC? This gives the illusion that Boeing plays a minor role when they in fact control the site and own most of the site (84%).

Throughout the document there are incorrect omissions relating to Boeing that were presumably removed because Boeing was being removed from the Order. Even if they are not a respondent, their role as landowner and operator must be clearly described in any/all orders signed by any/all of the respondents.

Thorough understanding and accurate descriptive language is necessary and we therefore request that experienced DTSC and CalEPA legal comments be provided to the public for our review (should include Nancy Long and Steve Koyasako. We asked for this on 9/10/09 and have not received technical comments as promised by DTSC. We hereby request that those written comments be included in the detailed response to all comments provided to the public prior to a final version being released for final public review.

These narrowly considered decisions demonstrate a lack of overall understanding of these complexities. We are asked to believe that there is another “identical” order for Boeing but are told we cannot see that order, but we should have confidence in that which is not covered in this order (with the federal entities) will be included in the Boeing order (that we cannot see). To put simply, this is insulting to the intelligence of this community and puts the entire project at risk.

Some have pointed to the complexity of the order as being something that the general community does not have the skills to comment on. While it may be true that many of the community members do not have the reading comprehension-skills to deal with the complexities of the document, there are still many of us who disagree, as we do not find the document overly complex, but rather missing important details and/or language based on lacking knowledge of the site and its’ history, or an unwillingness to state unequivocal intended compliance with the law. In short, the lacking understanding is with the editors of the altered amended document released to the public, who don’t seem to realize the nuances necessary to make the process work through thorough understanding of the historical dynamics between the RPs at the site.

Our comments are both on a detailed, as well as conceptual in relationship to the recent decisions made by the State on behalf of our communities on the draft ACO, the leadership changes, and the total and complete lack of ethical transparency and foresight on the part of the State of California.

General Comments and questions about the Order (draft ACO) and ramifications of recent decisions:

- ✓ Will you stay as Project Director after the next election and into the next administration to see this project through?
You have now said that you are NOT a political appointee but you are still Deputy Director for ALL of DTSC. How will those responsibilities conflict with your new role as project manager for Runkle Canyon, and for the Santa Susana Field Laboratory?
- ✓ Are you a political appointee or designee? We have received two different answers to this question. I think perhaps the more appropriate question is then, have you given up your other duties in the full-time position you held as Deputy Director of Legislation for DTSC? If not, how do you propose to do both jobs?
- ✓ Access to the site is carefully controlled. In this draft document it is not mentioned that Boeing is the landowner who actually controls the gates and the access permitting for all the respondents, and they are not part of this order. How will you address this since you have not adequately addressed it in the document?
- ✓ How can we comment on this document without seeing the companion document for Boeing?
- ✓ How can we possibly know that they will sign when they have refused up until now?
- ✓ On what basis do you believe that these decisions are in any way to the benefit of the community?

Throughout the document, including 1.33 and 1.6, 4.27, reservation of rights, severability, access, background, etc., there are important omissions that allow Boeing to cease from being a party to the clean-up. They are the only respondent that does not have the federal jurisdiction debate issue to rely upon, and now we are being asked to accept the idea that they will just decide to comply so they “aren’t out in the cold”?

For three decades there has been finger pointing where (as clearly demonstrated by the ownership issues) the landowner is also the operator for the facility owner who leases the site from the landowner. It is truly a vicious circle and the primary reason that the first consent order (11/07 Riley, et al) was that all the parties signed and did so under penalty of perjury. After decades of inaction, we started to see real progress. Now, by dividing the order into two, the same loopholes threaten our progress or even possibility of completion. By breaking that circle, the order loses all its’ teeth.

One of the reasons stated by DOE that makes them able and willing to proceed forward in a manner “consistent with SB990” due to reasons “unique to the site including the fact that they are not a landowner. This language tells us we should be concerned that DOE is not actually concerned about compliance because of a potential loophole in phrasing about land transfer ability.

Throughout the document they [DOE] continue to state federal supremacy issues.

Regarding the “Tolling language” that has been the ‘stopping point’ in the negotiations as stated at the last workgroup meeting by Mr. Hirsch as well as by Boeing in recent meetings discussing these issues. What are the legal ramifications and how are they different from the refusal to acknowledge SB990 as law today as we see in section 1.3.3?

We would also like to note that we recently became aware that Boeing in fact inherited a great deal of the “data” from Atomics International, so much of the DOE historical data will need to rely on cooperation with Boeing, who is NOT a respondent in this Order. Force-majeure based on potential access, ownership, contractor relationship (and also being the land-owner, but not the “facility owner’ as well as data access will potentially stagnate the process just as we have seen in recent activities related to the RWQCB and the recent “Urgency Ordinance” (2009 ISRA related Ventura County BOS, Parks Action).

Lacking knowledge about the true hurdles to SB990 as a reality are further demonstrated by the recent comments signed by six elected officials (Kuehl, Brownley, Pavley, Parks, Smith, Yaraslovsky), who seemingly have not read any of the versions of the Consent Order released. This disappointing parroting of the words about absolute compliance with SB990 while entirely missing the point about scientific limitations making absolute compliance ability in question, or the fact that the primary landowner is not a respondent in the Order [Boeing] continues to cloud the real issues.

Implementation guidance for that law should have been separately written by DTSC’s legislative branch, which would then enable the interpretation of the law to be openly reviewed and considered. Since guidance documentation was not provided by the legislative branch, it has been necessary to implement the law through modification of the existing consent order. In order to truly modify the existing consent order for this purpose, it must continue to include all parties. Since the tolling portion of the document is not relevant to the federal respondents, it is not necessary to separate the document, but rather, have a separate tolling portion within the same document. It has even been publically stated by Boeing that they would be willing to consider a separate tolling document outside and separate from the draft Amended Consent Order (ACO).

If the language as recommended by the non-federal respondent [The Boeing Company] is not acceptable to the State, the State must clearly provide us legal explanation for that decision since this is the apparent source of the impasse that has led to negotiation breakdown. We believe that the release of an altered version of the document did not show good-faith process on the part of DTSC and therefore, it is understood that the Boeing Company needs some reassurances that they reserve their rights through the process. We do not necessarily agree with the tolling language as written, but understand that if we, the community get in return, language that states (Section 1.33 example) that all respondents will fully and unequivocally comply with the elements of the order, this would be a very fair compromise. The schedule and PRGs as referenced must rely on background data, and therefore, the background study is of primary importance to the success of the implementation of SB990.

The current language makes compliance voluntary and only to provide information. We understand this counter-proposed language by DOE was under review, and that DTSC also found this language questionable and in need of clarification to make clear their unequivocal commitment to comply.

Following are our technical comments on the Amended Consent Order 1.9, 2.0 (as released to the public) as well as the actual 2.0 version, as negotiated by the parties (that has NOT been released to the public).

Cover: “an alternate version” of 2.0 is not explained. These profound changes were released without any explanation to the public as to the reason for the early release, why it was needed, and the purpose and expected outcome from these recent decisions made on behalf of the public. When asked why Boeing was excluded from the Order, we have been told that it was “force them to sign the document,” which is not only an inadequate explanation, but also an impossible expected result. This is an Order to take corrective response action, and the removal of the primary responsible party from the Order to take those actions, simply eliminates them from being so ordered. Without being clear about the expected result, or told of the reasons for the recent actions on the part of DTSC, the public is expected to comment on these two documents without any real context or insight as to the points of contention that led to an impasse in the negotiations between DTSC and the parties.

After having knowingly altered the document with substantive changes that were not adequately explained or declared to the public.

The actual Order as negotiated by all the RPs and DTSC representatives – comments:

**Cover: “CONFIDENTIAL SETTLEMENT COMMUNICATION
DRAFT FOR DISCUSSION PURPOSES ONLY
DISTRIBUTION LIMITED TO CalEPA, DTSC, BOEING, DOE, AND NASA**

The comments and proposed revisions set forth in this Draft represent joint efforts by Boeing, DOE, and NASA ("Parties") to respond to DTSC’s draft Consent Order by identifying issues needing clarification and/or proposing alternative language to resolve issues of concern. Because of compressed time of review, overall complexity of the matters being addressed, and continuing uncertainty regarding certain issues, the Parties each reserve the right to identify additional issues and/or propose additional revisions as the process of negotiation and drafting goes forward. In particular, the Parties have not yet fully resolved, and the proposed revisions set out in attached document do not yet fully reflect, how the Parties will be able to protect their respective rights regarding the interplay of the Draft Order, SB990, and the Atomic Energy Act. The Parties are considering several alternatives to avoid compromising any party's rights and principles regarding these issues, but in the meantime have made significant progress on potential agreed-upon amendments to the draft Consent Order. Additional language will likely be needed upon resolution of these issues to specify what work needs to be done by which parties in which locations and under what legal authorities, but in the short term we believe there is significant merit to moving forward with negotiations on the technical and other provisions of the proposed amended Consent Order. **None of the Parties' representatives has authority to bind his or her respective party to these proposals, and if consensus is reached on language through this process, each Party will need to obtain formal approval from authorized decision-makers.”**

Cover Comment 1: Implications were made that the document might have been signed without review by all, or that it might be signed in “secret” must be withdrawn from any consideration.

Cover Comment 2: This Order clearly indicates that it was a confidential negotiation where only the parties were allowed to participate. Letters were written by 5 of the 6 elected officials commenting on the order now, indicating that Norm Riley was somehow negotiating in secret and excluding Dan Hirsch from those negotiations when in fact, he was never in these negotiations and it was the RPs who refused to allow him to participate and required the confidentiality stipulation that Secretary Adams placed on this issue. Later, Assembly Member Brownley “praised” the Secretary for breaching her own confidentiality order, which the Secretary later breached herself when DTSC released the Order excluding the primary party [Boeing] without the knowledge of any of the parties who all wrote letters indicating that they were not aware of this decision until it was already released to the public, and that it was not the document they had agreed to [removing Boeing, and other elements].

Cover Comment 3: The Respondents have been altered to include only NASA and the Department of Energy, but in doing so, the ownership has also been modified and now inaccurately depicts the site without Boeing as the primary land-owner.

Parties must include all parties involved in ownership and/or operation of the SSFL site. This must include The Boeing Company who owns 84% of the site, all of Area IV (the nuclear portion) and most of the balance of the site.

1.2

Background incorrectly describes the ownership relationships throughout the section. Ownership errors include the lack of mention of the balance of Area IV also owned by Boeing, and the fact that Boeing owns 9 facilities in Area IV versus DOE’s ownership of 15 of the remaining facilities. It also fails to mention the fact that Boeing controls much of the data as they inherited the AI data (Atomics International) which includes former worker records related to DOE, which are actually owned and controlled by Boeing who is not on the Order (ACO). In the announcement made by Mr. Movassaghi, it was stated that DOE was responsible for 90% of the RAD contamination and 50% of the chemical. These numbers are entirely erroneous and are baseless and without merit, further down-playing the importance of Boeing’s role at the site as primary landowner and controller of all activities and operations at the site.

Area III is not mentioned though this is where receiving ponds (i.e. Silvernale Pond) are located that received runoff from the nuclear portion of the site (Area IV).

1.3.2

References by the elected’s and others that the NCP section referenced in this section is somehow soft on SB990 is inappropriate as CERCLA requires consideration of sections mentioned herein.

1.3.3

The counter proposed language by the respondents gives DOE unchecked discretion to decide what information it will share or withhold from DTSC, as well as complete discretion to decide what remedy or remedies it will implement and presumably, to inform DTSC of those decisions if and when it chooses to do so. In effect, the language makes compliance with SB990 optional for DOE. Language here should

reflect that which is shown in version 1.9 of the draft ACO as released.

This section clearly stipulates that DOE and NASA as federal respondents are not willing to adhere to state regulations, and the only respondent that is really required to follow state law is Boeing who has been removed from the order.

1.6

Following is the tolling language as proposed in the real version 2.0 that included Boeing: (We were surprised to receive this information from several sources including anonymous hand-delivery at ACME of a CD).

Denial of Liability; Reservation of Rights; No Admissions. By issuance of this Order, DTSC does not waive the right to take further enforcement actions. In addition, by entering into this Order, Respondents do not admit to any fact, statement, or recitation set forth in this Order, or to any fact, fault or liability under any federal or State statute or regulation or other provision of law. This Order shall not constitute a release, waiver, covenant not to sue or limitation of any kind, and Respondents and DTSC expressly retain all rights, remedies, defenses, causes of action, powers and authorities, civil or criminal, that Respondents or DTSC have – with respect to any disputes or claims amongst each other or against any other parties – under any statutory, regulatory, constitutional or common law authority, nor shall it be construed or applied in any way to affect the ability of Respondents to seek or obtain relief in federal court or any other court of competent jurisdiction. Without limitation of the aforementioned reservation of rights, Respondents do not admit or consent to the constitutionality, legality, enforceability, or validity of California Health and Safety Code section 25359.20 in whole or in part. DTSC asserts that California Health and Safety Code section 25359.20 is constitutional, legal, enforceable and valid. The Parties agree that the time beginning on the Effective Date of this Order and ending on the 30th day after the State provides notice to Respondents of its final remedy decision pursuant to section 3.6.3 of this Order, inclusive (“the Tolling Period”), shall not be included in calculating the application of any statute of limitations or other time bar that might apply to any rights, claims, causes of action, counterclaims, cross claims, or defenses (collectively “Actions”) concerning the constitutionality, legality, enforceability, or validity of California Health and Safety Code section 25359.20 under the U.S. Constitution or the California State Constitution. The Parties further agree not to assert, plead or raise any defense or avoidance based on the running of any applicable statute of limitations during the Tolling Period, or any defense or avoidance based on laches or other principles concerning the timeliness of commencing a civil action with respect to such Actions based on the failure of any Party to initiate an Action during the Tolling Period. To the extent that California Health and Safety Code section 25359.20 or any federal or State law or regulation incorporated into, referenced in, or authorizing this Order is subsequently modified, amended, repealed, invalidated, declared unenforceable or superseded, in whole or in part, Respondents’ obligations under this Order shall be modified accordingly, including as further provided below in section 4.27 (Severability).

When we asked The Boeing Company [Gallacher at the recent DTSC meeting] if it was the amount of time in the tolling period that was significant, it seemed that no one is specifically clear as to the actual legal requirement for filing⁷. We reiterate our request to have legal analysis of tolling agreements with other respondents who have signed consent orders with the State of California, and how this request for tolling differs from those. Since this is the issue that appears to be the reason behind the removal of Boeing from the Order, we feel that this must not be ignored any longer as the communities will not accept the non-answers provided to date.

2.4.2

ISEO section incorrectly refers to the Rifle and Pistol Club as a separate operation, unrelated to the site when in fact it was used for employees, and was created by the employees. The poster of the Gun Club had Bonnie Klea (an employee at the time) on the cover. Furthermore, it is inadequate to simply refer to this order as “rifle and pistol club” when the asbestos dump found in the creek inspired the clean-up and was clearly not gun-club related. This was also a former leased area that was indeed operational and a dumping ground based on findings discovered by ACME. In addition, the 1100 igniters that were discovered during this cleanup were clearly identified as operationally related as they included eight different types of squibs ranging from 3-10 millimeter in diameter, string style and linear black power basked which indicates a very early design. Even if we allow that some of the squibs were from the entertainment industry, it seems clear from the report that other igniters found were from SSFL research operations. Do the respondents now have a different theory as to the nature and origin of the igniters recovered in this process? This effort to dismiss to discount these findings as related to the site when clearly the materials buried in the creekbed were site related, and depositing such materials into a creekbed of a waterbody of these United States is illegal. Since we have also seen evidence on the respondents own maps of several “gun clubs” throughout the facility including areas 1, 2, 3 and 4 and that shooting was a known method of igniting waste to be destroyed through burning of the materials, and that shooting barrels at a distance was a method used to employ safety measures of “distance between the worker, and the materials involved” that were often very reactive at various temperatures and because it was often unknown as to the contents of the barrels, it would be reasonable that ignition might

⁷ October 14th when SB990 was signed into law by Governor Schwarzenegger, or the date when it was “codified into Chapter 6.8 of the Health and Safety Code, or if it was January when the law took effect. Section 25359.20 is that section of Chapter 6.8, and 25359.20(b) which indicates that actual clean-up action to take place under Chapter 6.8 or CERCLA which is the SuperFund provision. Ironically, this same provision indicates future use as a method for setting the clean-up standard, which in that case, would only provide for “open space

occur severally as the various materials reached temperatures that changed the material from liquid to gaseous, or solid to gaseous forms.

3.1

Work to be performed - We are concerned about the phrase “All corrective action work for the Site performed prior to the Effective Date shall be deemed sufficient under this Consent Order, and no modifications of any submittals under Consent Order for Corrective Action referenced in Section 2.4.3 shall be required except...” because it insinuates that all RFI work to date is acceptable and it has not yet been deemed acceptable or adequate, not only on the basis of SB990 compliance, but on the basis of actual proper delineation to non-detect of the nature and extent of all contaminated soils and plumes of contaminated groundwater at the site. It is therefore inappropriate for this section to state that these reports have been deemed acceptable.

It should also be clearly noted that while the work shall be based on SRAM v3, that v3 does not yet exist and is dependent on the radionuclide characterization study and background study in order for those step out levels to be set. In the absence of this information being available, we believe it more appropriate to step out to non-detect in all areas, so a proper feasibility study can be developed.

3.2.2

Historical Site Assessment must also include Area III, which received run-off from the Area IV operations at the site. We further do not accept the removal of Boeing from the document as valid justification for removal of these areas from mention. Since all areas of the site engaged in some comingling of operations and waste storage, all areas of the SSFL including all buffer areas must be included in all descriptive passages of the document relating the operational areas, specifically because they are as stated, “potentially impacted by Area IV operations” which in some cases were led by Boeing, though might have contributed to contamination in areas where the facility is owned by DOE. An example of this is that the SRE complex in Area IV which is infamously known for the 1959 partial meltdown, is actually owned by Boeing, and is thereby excluded from regulatory oversight under the proposed order as released to the public.

3.2.2

Removal of reference to Historical Site Assessment (changed to “review” which is a less stringent, less detailed level of research and consideration).

“...any drainages that originate from Area IV...” references that the HSA shall also include summaries of prior radiological sampling in Areas 1 and 2 and erroneously excludes area 3 which received runoff from Area IV to the south that includes drainage from the area known as the “17th street Drainage” which is a known radiologically contaminated area.

3.2.3.1, 3.2.3.2

Include important omissions of Area III in the referencing of work to be performed.

3.2.4.2

It is important to evaluate all COCs and COPCs to non-detect so full nature and extent may be considered.

3.2.5.6

Human Exposure Pathways refers to being consistent with procedures in SRAM 2 which does not specifically state Suburban versus Rural whichever provides the greater health protection, so reference to this version cannot be SB990 compliant.

3.4.1

Remedial Investigation – documents included in the a-z list to be used in relation to the RI/FS include some documents that are strictly related to Boeing owned and operated portions of the site, whereas other documents are omitted for areas such as Area III which, while owned and operated by Boeing, also receives run-off from several significant radiologically impacted areas within Area IV which fall clearly within the purview of this document no matter now ownership debate may be viewed. This demonstrates inconsistency, which leaves open loopholes to long-term adherence of the law as stipulated in Health & Safety Code 25359.20 (chapter 6.8), to be consistent with SB990.

A – Current Conditions Report and Draft RCRA Facility Investigation Work Plan, Areas I and III⁸

E – Sampling and Analysis Plan, Hazardous Waste Facility post-Closure Permit PC-94/95-3-03⁵

P – Happy Valley Interim Measures Work Plan Addendum Amendment⁵

R – Perchlorate Characterization Work Plan⁵

Additionally, as the SRAM Revision 2-Final – Standardized Risk Assessment Methodology⁹ is included in the list, but no reference to the soon to be completed SRAM Revision 3 which will include radionuclides and is a necessary step in making the elements of this Order (Draft ACO) enforceable and achievable. Please add a section that addresses this issue.

3.4.3

Comprehensive Surficial Media OU RI Reports include the nine surface impoundments and should also contain language to develop new SWMUs or AOCs should they arise through the investigative process.

3.4.4.

Submission of historic records should include video or film footage as there are tripods shown with cameras set up at each test in many of the historical photographs we have studied in our analysis. IN addition, at ACME we have been made aware by many former workers through our Oral Histories Interviews that films were made of the making of new systems, clean up and discovery actions and would be highly useful to understanding the issues that will make this investigation more efficient and more thorough. Please include video and film footage related to all operations part of this section.

3.4.5

Clarification is requested: Is this is to mean “site-wide” operational areas that might be considered as shared contribution? If this is the case, it would be very important to include a list of all areas that are

⁸ Areas I and III are both wholly owned and operated by Boeing and are included in the document which is supposed to exclude all references to Boeing.

⁹ Although SRAM version 3 does not yet exist, it should be listed for reference with clear indication that it must be completed within a specific time period in order to allow for the investigation to move forward. A specified date of estimated completion should be provided.

included in this order, as well as those which are not, as many Area IV facilities are owned and operated by Boeing and have been excluded from the detail work within this Order (Draft ACO). This is very disturbing as this is the very “teeth” of the order, which is to decide what is to be done, and by whom.

3.4.5.1

Related to Confidential Business Information, a list of documents that will only be provided through hardcopy should be included in the electronic version.

3.4.9.

Assessment of Potential Debris Areas contiguous to SSFL specifically include seep and spring analysis to more accurately understand the migration pathway that may include sub-surface migration and re-surfacing as a pathway that may not appear to be continuous in this context. This is where we feel potential harm to surrounding communities in the way of potential health impacts may be under-played and therefore not adequately considered a complete migration pathway.

3.4.13

Should further state that frontal plume containment measures should include isotopic tracer studies to better understand sourcing of the higher concentrated contaminated areas of the groundwater below the site.

3.6

Remedy Selection and Public Comment should include specific written recommendations from key project management from US EPA responsible for the soil characterization for radionuclides.

3.9

There may be a preferred option with the tritium plume to allow it to decay and that may be reasonable due to the 12 year half-life, but TCE will not degrade similarly and so the recordation of a land use covenant restricting groundwater use cannot be cited as reason for taking no action on the existing plume.

3.11

Public Participation Plan we requested that ACME be considered a repository as we make available thousands of historical and current photography and documents related to the site for public awareness and education. We reiterate this request here.

4.1

Project Director – this section requires written notice of 7 day advance notice of any change to Project Director by any of the parties. Was this given to the respondents when Norm Riley was removed? Were the respondents notified on or before 8/12/09 as the announcement was made on August 19th to the public.

4.8

Access – this cannot be provided adequately by the respondents included in this order as Boeing controls access to the site and is not included in the order. Specific language must be added that requires respondents designate access provisions through the Boeing Company. This is an area that is primary to the ability for the State to adequately oversee the regulatory role at this long-needed cleanup at SSFL. We have seen multiple examples of access denials due to ownership and control “squabbles” amongst the responsible parties, which have resulted in denial of access to regulators and

stakeholders.

In addition, the tables which were not included in any of the discussions about the Draft ACO documents, also contain many omissions such the fact that the SRE Complex is owned by Boeing and therefore excluded from this version of the Order (Draft ACO). Other areas include the pond dredge and the RMHF and hotlab areas where mixed ownership and operational history leaves potential gaps in the work to be completed. Without seeing both documents together, we are not able to have any confidence in the Order we are commenting on.

We appreciate the opportunity to comment on this process and look forward to the response to all comments submitted by the public and by other regulatory agencies and also reiterate our request that legal comments on the State's language issues related to the impasse for our review would greatly be appreciated. We look forward to working toward the common goal of achieving clean-up to the highest most protective standards.

Our documents and related letters concerning the Draft ACO can be found here, and ask that all questions and issues raised in previous communications be addressed and formally responded to as well:

<http://acmela.org/consentorder101.html>

http://acmela.org/images/ACME_Letter_DTSC_Movassaghi_Sept_14th_2009.pdf

http://acmela.org/images/ACME_Group_Letter_to_Governor_Schwarzenegger_SB990_Norm_and_Consent_Order_Sept_1_of_2009.pdf

Sincerely,

Christina Walsh

Cleanuprocketdyne.org, founder/director

ACME Aerospace Cancer Museum of Education, co-founder

<http://www.cleanuprocketdyne.org>

<http://www.acmela.org>

<http://www.ihcenter.org/acme>

<http://www.annenbergfoundation.org>

cc: Billie Greer for The Honorable Governor Arnold Schwarzenegger, Cal EPA Secretary Linda Adams, Maziar Movassaghi & Susan Callery – DTSC, Craig Cooper – EPA, Assemblyman Cameron Smyth, Assemblyman Sam Blakeslee, Assemblyman Bob Blumenfield, Assemblyman Michael Feuer, Assemblyman Jared Huffman, Assemblywoman Julia Brownley, Aron Miller for Senator Fran Pavley, Former Senator Sheila James Kuehl, Christina Walsh – CleanupRocketdyne.org, Phyllis Winger for Los Angeles County Supervisor Greig Smith, Shelly Backlar – Friends of the Los Angeles River, Thomas Gallacher – Boeing, Allen Elliott – NASA, Stephanie Jennings – DOE, Millie Jones for Los Angeles County Supervisor Michael Antonovich and Ventura County Board of Supervisors Linda Parks and Peter Foy.

