California Regional Water Quality Control Board
Los Angeles Region

Linda S. Adams
*Secretary for*
*Environmental Protection*

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Arnold Schwarnegger
*Governor*

August 12, 2009

Daniel Hirsch, President
Committee To Bridge The Gap
605 Waldeberg Road
Ben Lomond, CA 95005

Dear Mr. Hirsch:

REQUEST FOR RECONSIDERATION AND RELATED MATTERS (SSFL)

This letter is in response to your letter dated July 16, 2009, directed to me and the other members of the Los Angeles Regional Water Quality Control Board. In your letter, you made a variety of assertions about the Regional Board's proceedings on May 8, 2009, and requested reconsideration of the Regional Board's decision of that date to adopt the NPDES permit for the Santa Susana Field Laboratory. You also included a variety of allegations against Executive Officer Tracy Egoscue.

At the outset I would note that at our July 16, 2009, Board Meeting, you addressed the Regional Board during the public comment portion of our agenda, and the Regional Board considered at length your claims, and whether a hearing to reconsider the decision to approve the NPDES permit was appropriate. After considerable discussion, the Regional Board denied your request. Nevertheless, I wanted to respond to your letter in writing.

1. You have contended that The Boeing Company's statements that the Department of Toxic Substances Control (DTSC) refused to allow Boeing to undertake interim removals of contaminated soil were false, and that these representations were material and should form the basis to reconsider the permit.

While at the hearing Peter Weiner did make statements alleging t hat DTSC impeded Boeing's ability to undertake a source removal action, as Ms. Egoscue recited to Acting Director Maziar Movassaghi in the Regional Board's June 16, 2009 response, there is no indication that the Regional Board considered the statements by Mr. Weiner to have been material to its decision, irrespective of whether they were true or false. To the contrary, every indication is that the Regional Board made its decision in consideration of the fact that the Regional Board's cleanup and abatement order, which compelled the interim source removal action, would necessarily result in short-term soil conditions highly susceptible to runoff in a rain event, and that it would be inappropriate to order Boeing, on the one hand to remove the contaminated soil, and then issue an NPDES

permit that ignores the obvious short-term effects of the soil removal action compelled by the cleanup and abatement order. The majority of the Regional Board determined that the one-year of benchmarks instead of numeric effluent limitations was more likely to encourage prompt source removal because the means of obtaining immediate compliance with the final numeric effluent limitations in the permit are inconsistent with the short-term effects of source removal, which is the best mechanism for long-term compliance and consistent attainment of water quality standards. The Regional Board understands that you disagree with this conclusion.

2. Your contention that Ms. Egoscue acted outside her proper role in any way, either in staff presentations to the Board in the May hearing or in her role in our determination about revisiting our decision is neither accurate nor appropriate. This Board understands its decisions and takes responsibility for them, and publically attacking the Board's Executive Officer will not be tolerated.

Ms. Egoscue did not did not "refus[e] to permit the Board to consider the DTSC Acting Director's letter and decide whether to revisit its approval of the Boeing relief." In fact, she did not "refuse to permit the Board to consider" anything, in the June 16th letter or otherwise. While your letter of July 16th repeatedly characterizes the June 16th letter as "Ms. Egoscue's letter", as stated at the outset, the letter was transmitted by the Executive Officer on my direction and was written on my behalf. In fact, Ms. Egoscue timely transmitted Mr. Movassaghi's letter of June 12, 2009 (and for that matter, yours of July 16, 2009), to the members of the Regional Board for our consideration, as she does with any significant communications where doing so would not violate the Government Code's rules relating to ex parte communications. Had the Regional Board determined that the substance of the letter might have changed the outcome of the proceeding, at our meeting of July 16th the Regional Board would have instructed the matter to be agendized for consideration of appropriate action. Contrary to your assertions, Ms. Egoscue did not state in the June 16th reply letter that say she would refuse to present the Acting Director's June 12th letter to the Regional Board — she appropriately said she would not include the letter in the administrative record related to the adoption of the permit. That was the correct decision. The Executive Officer is not authorized to add materials to the administrative record of a proceeding that has already occurred. The administrative record must contain materials the Regional Board relied upon in making the decision. Since the June 12th letter had not yet been written, the Regional Board could not have relied upon it when it adopted the NPDES permit.

3. Ms. Egoscue did not assert, as you contend, that the Board Members "knew when they were voting that [the testimony] was in fact false".

While the Regional Board expects candor and veraciousness by all persons testifying before it, Ms. Egoscue properly noted in the June 16th letter that stakeholders (from both the discharger and environmental community alike) often make one-sided comments that are not readily subject to verification, and the Board Members give such comments

the weight they are entitled. To be clear, the information in Mr. Movassaghi's letter would not have resulted in a different outcome because, as stated above, Boeing's rationale or excuse for not having undertaken the source removal action before the cleanup and abatement order was not the point—rather, it was the fact that the Regional Board's order to undertake interim removal would impede Boeing's ability to comply with the effluent limitations that are expressed as benchmarks.

The Regional Board fully understands the significance of the contamination at the Santa Susana Field Laboratory, not just to your community, but to the region as a whole. The Regional Board is also well aware of the history of the site, Boeing's compliance history, and the egregious activities undertaken at the site by Boeing's predecessors in interest, and we have consistently and aggressively addressed the Santa Susana Field Laboratory within the scope of our authority and the requirements of law. While I understand your disappointment in the outcome of the proceeding, I have been advised that in addition to your incorrect written accusations, you have also accused Ms. Egoscue, in public, of having been party to surreptitious agreements with representatives of The Boeing Company, with unstated ulterior motives.

While it is your prerogative to disagree with the Executive Officer's recommendations or activities (and for that matter, the Regional Board's decisions), your disagreement with the approach of this agency or the decisions of the Regional Board are not an appropriate basis to impugn the integrity of the members our staff. The Executive Officer has been expressly charged by this Board with the responsibility of forging relationships with stakeholders on both sides of the Regional Board's stakeholder isle to promote a more effective regulatory environment. Far from inappropriate, her actions in this matter have been fully consistent with the Regional Board's expectations. On behalf of the Regional Board, I would ask you to ensure that your own comments, as you expect of Boeing, especially as relate to the Executive Officer or other members of our staff, remain truthful, respectful, and accurate.

Sincerely,

Mary Ann Lutz,
Chair

cc: (list attached)

cc: **[via U. S. Mail]**

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bc: **[via email only]**
Michael J. Levy, OCC

MJL/skd
August 11, 2009
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