

Rocketdyne Cleanup Coalition
Southern California Federation of Scientists
Physicians for Social Responsibility – Los Angeles
Teens Against Toxins
Committee to Bridge the Gap

11 December 2014

Boeing Settlement
c/o Executive Officer
Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

By email to: Russ.Colby@waterboards.ca.gov

Re: OBJECTIONS TO BOEING SETTLEMENT

On November 6, 2014, an Amended and Restated Consent Judgment and Final Order (Amended Consent Judgment) in The People of the State of California, ex rel., Regional Water Quality Control Board, Los Angeles Region v. The Boeing Company, Case No. 56-2010-00371686-CU-MC-SIM, was lodged with the Superior Court of the State of California, County of Ventura. Subsequently, the Los Angeles Regional Water Quality Control Board (hereafter “Board”) posted on its website a notice that the new Consent Judgment had been lodged with the court. The notice indicated written comments could be submitted by 11 December.

The Consent Judgment had, however, already been approved and signed by the Water Board and Boeing, prior to the Water Board soliciting public comments. This sequence creates an unfortunate impression, consistent with a long similar history, that public input on important matters such as this is merely a *pro forma* exercise that can have no real effect on the outcome. Such action increases the already pervasive perception that deals involving pollution affecting the public are worked out behind closed doors between the polluter and regulator, often with the result, as here, that the polluter to a significant degree is allowed to largely walk away from its obligations to not pollute.

We ask that these comments be provided to the court, and to the Members of the Board, with the exception of the Chair, Charles Stringer, who has an apparent undisclosed conflict of interest involving Boeing and its Santa Susana Field Laboratory (SSFL) discussed in more detail below.

Background

SSFL is a former nuclear reactor and rocket testing facility located in the hills overlooking Simi Valley and the west San Fernando Valley. Boeing owns most of SSFL. For decades, accidents, spills, releases, sloppy practices, and violations of fundamental environmental laws and

regulations resulted in widespread radioactive and chemical contamination of soil, structures, groundwater, and surface water. A partial nuclear meltdown in 1959 was but one of a series of nuclear accidents. Tens of thousands of rocket tests and work developing munitions resulted in a great deal of chemical contamination as well.

For decades, Boeing and its predecessors have released large amounts of surface water to offsite areas with pollutants in excess of permissible levels. Actions taken by the Water Board to enforce Boeing's NPDES discharge permits, which were constantly being violated, were weak and ineffective. Many in the community viewed this state of affairs as due to a too-cozy relationship between regulator and polluter. Boeing has historically had a great deal of influence with the Water Board, resulting in hand-slaps rather than significant enforcement action. In any case, whatever the Water Board has done hasn't worked, as the violations and other exceedances of pollution limits in water leaving the property continue.

The Failure of the Water Board to Effectively Bring Boeing Into Compliance

Time after time, the Board has taken weak actions; Boeing has failed to comply; the Board has then not taken significant steps to bring Boeing into compliance; and the pattern repeats itself:

In 2005, the Regional Board issued Boeing a Cleanup & Abatement Order, but the Violations Continued

In 2007, the Regional Water Board Issued a Cease and Desist Order, but the Violations Continued

Because of continuing violations, in December 2008, the Regional Water Board Issued an Order Directing an Interim Source Removal Action (ISRA) for Outfalls 8 and 9, but the Violations Have Continued

In 2010, the Board and Boeing Negotiated a Consent Judgment, Setting Stipulated Penalties for Violations, but the Violations Have Continued

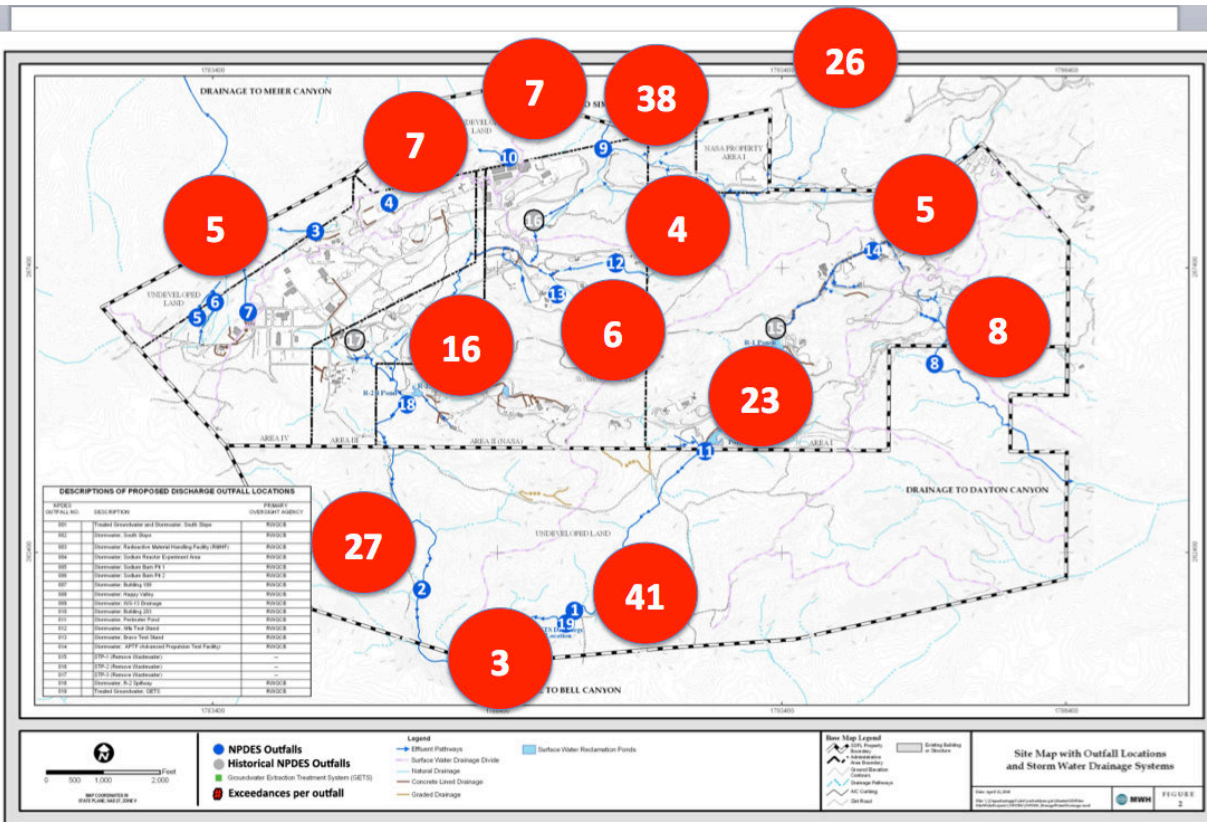
NOW, Boeing and the Board Have Cut a New Deal, Extending the 2010 Deal, With Its Weak Penalties That Have Not Resulted in Boeing Coming Into Compliance.

Recent History of Exceedances of Pollution Limits and Benchmarks

Between 2008 and early 2014, Boeing has had 216 exceedances. Surface water keeps leaving the site with pollution at levels above those specified by the Board as acceptable in terms of public health and/or the environment.

The map below shows the exceedances by outfall:

Exceedances Per Outfall 2008-Early 2014



Below we summarize the exceedances by pollutant:

SSFL Water Pollution Exceedances

2008-2014 (First Quarter)

Contaminant	Number of Exceedances
Iron	33
Iron (Mass/Day)	3
Fluoride	1
Dioxin (TCDD-TEQ)	50
Dioxin (TCDD-TEQ) (Per Month)	6
Dioxin (TCDD-TEQ) (w/o DNQ values)	2
Dioxin (TCDD-TEQ) (Mass/Day)	8
Chloride	3
Zinc	3
Zinc (Per Month)	1
Nitrate as Nitrogen	1
Nitrate + Nitrite	2
Total Residual Chlorine	4
Total Residual Chlorine (Per Day)	2

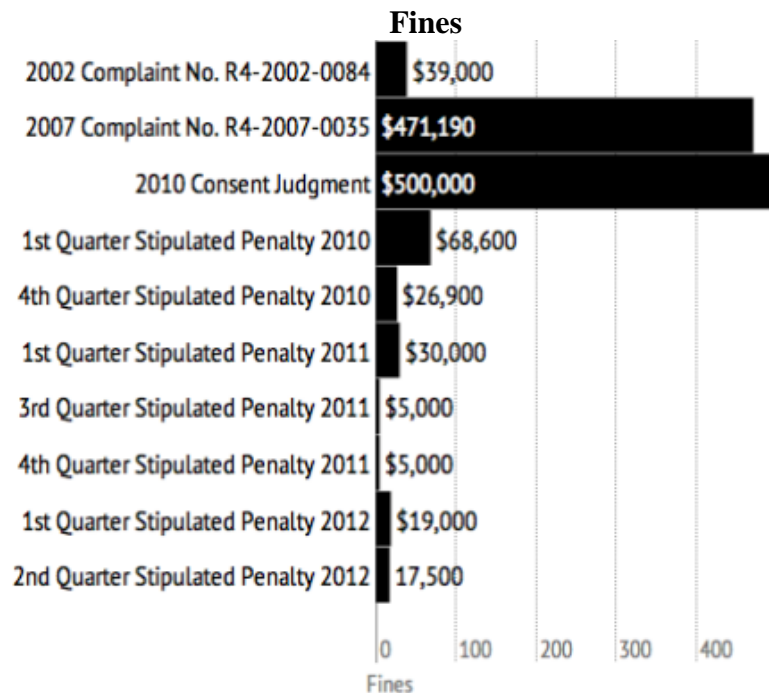
Manganese	20
Lead	27
Lead (Per Month)	5
Bis Phthalate	1
pH (Field)	9
Chronic Toxicity	1
Cadmium	2
Copper	2
Copper (Per Month)	2
Chromium	1
Total Dissolved Solids	1
Gross Alpha	1
E. Coli	11
E. Coli Geometric Mean	3
Fecal Coliform	8
Fecal Coliform Geometric Mean	3

Total Exceedances: 216



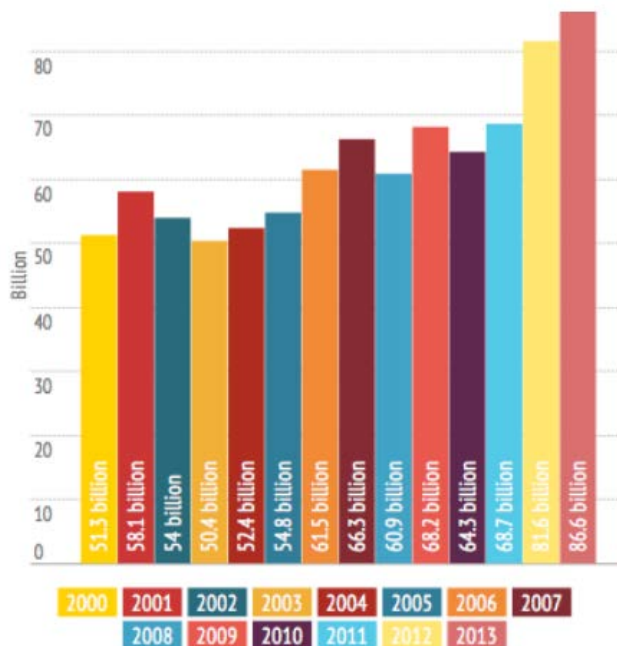
The Tiny Fines Haven't Worked to Bring Boeing Into Compliance Because it is Far Cheaper to Violate the Limits than to Comply

Since 2002 Boeing has been fined over \$1.2 million for the violation of pollution discharge limits at the Santa Susana Field Laboratory. These fines were implemented as an attempt supposedly to force Boeing to take effective action at stopping the ongoing pollution violations at the site, but these fines have been unsuccessful in doing so. When looking at the individual fines imposed and what they represent from a financial perspective for Boeing it is easy to see why they have not done much to curtail violations at the site.



Above is a chart listing the fines Boeing has been issued over the past 12 years. As previously mentioned, the fines have accumulated to a total of about \$1.2 million. This means that Boeing has paid an average of \$100,000 in fines per year. In the same period of time, Boeing's income has steadily increased and reached \$86.6 billion in the year 2013. When taking these numbers into account the average annual fine (\$100,000) Boeing receives for violating pollution limits at the Santa Susana Field Laboratory represents only about **one-millionth** of its annual income.

Boeing's Annual Income by Year



To put this into a better perspective we also made a comparison on what the financial implications such fines would mean when scaled to the income of an average American family. According to the United States Census Bureau the average household income in the United States is \$53,046, and when we scale the fines Boeing is receiving in relation to their income it would be the equivalent of these families receiving a SIX CENT fine. This puts into perspective how ridiculously low the fines imposed on the Boeing company have been and it seems extremely reasonable to believe that one of the major reasons pollution violations at the SSFL site have not ceased is because it is cheaper for Boeing to pollute than to comply with state regulations. The proposed order will impose fines in similar amounts to those of its predecessor even though fines in this amount have proven to be ineffective.

Apparent Conflicts of Interest Between Key Board Officials and Boeing

The original controversial deal to allow these very low stipulated penalties for Boeing's violations – essentially viewed as a very cheap permit to pollute – was signed on May 26 and 28, 2010. It was negotiated on behalf of Boeing by Peter Weiner and a colleague from the firm of Paul Hastings LLP. The negotiations themselves presumably took place over an extended period of time before the time the agreement was signed.

The Executive Officer of the Water Board until May 14, 2010, was Tracy Egoscue. Upon leaving the Board, Ms. Egoscue went to work for Paul Hastings LLP in its Environmental Practices Group which was and is headed by – Peter Weiner.

We respectfully suggest that the Board should disclose whether Ms. Egoscue played any role on behalf of the Water Board in negotiating the original consent decree with Mr. Weiner and/or

others at Paul Hastings LLP. It is this very weak deal between Boeing and the Board that is now being extended.

We would also like to express our concern with what we feel is another apparent conflict of interest. The Water Board is chaired by Charles Stringer. It is important to note that Stringer is also principal and general counsel at Renewable Resources Group (RRG), a Los Angeles-based consulting firm. This is significant because Renewable Resources has in the past acknowledged that it was hired by Boeing for work relating to its cleanup duties at the Santa Susana Field Laboratory. Mr. Stringer has directly been involved in the RRG contract work for Boeing regarding SSFL, the very site in question in this Boeing-Board agreement. Furthermore, as Principal of the firm, he directly profits from the RRG contract with Boeing about SSFL. The work undertaken by RRG under contract to Boeing has been very controversial. It is widely perceived as trying to set up an “astroturf” or fake grassroots group to support Boeing’s efforts to be relieved of much of its obligation to clean up SSFL.

However, Mr. Stringer has not publicly disclosed his ties to Boeing and its SSFL site. Not a word about that potential conflict regarding Boeing appears in any of his Form 700 statements of economic interests. Furthermore, we have found no public disclosure of Mr. Stringer’s ties to Boeing on the Board’s website. Nor have we found publicly posted any public recusal and direction to Board staff to exclude him from receiving any documents related to Boeing. If we have missed such records, we would appreciate having them called to our attention.

While there is nothing public on the Board website that we can find disclosing the potential conflict or creating a wall around him regarding transmission of information about Boeing, Boeing itself issued a press statement after the apparent conflict of interest was raised in a report by ConsumerWatchdog. It asserted Mr. Stringer had recused himself from any decision related to Boeing. However, no such recusal document has been made public by the Board that we can find; there is no indication that such an action occurred beginning from his appointment to the Board; and in any case, recusal is insufficient. Any staff member who might think about truly enforcing the pollution regulations against Boeing will know that the Chair of the Board has these ties to Boeing and SSFL and that relationship can have a chilling effect on coming down hard on a company with which the Board Chair is so financially entwined.

We respectfully suggest there be full disclosure of Mr. Stringer’s ties to Boeing and SSFL, what work he and his firm have and are doing for Boeing, and when, if at all, written disclosure of that conflict was made and written direction to staff to wall Mr. Stringer off from any information about Boeing and SSFL.

The Renewed Consent Decree

At the core of the deal cut by the Board and Boeing (executed, by the way, by Peter Weiner of Paul Hastings LLP for Boeing), is an agreement by the Board to issue only trivially small fines for continuing violations of the NPDES discharge permit and to agree to handcuff itself so that it is barred, with narrow exceptions, from taking any other enforcement action against Boeing’s continued violations of its pollution discharge obligations. We find very troubling this sweetheart deal between polluter and regulator to essentially authorize, for a tiny

fee, continued pollution in violation of the permit.

We respectfully suggest that such a deal, while great for Boeing, is terrible for the public interest and the environment. We urge that it be rejected and in its place, the Board start using its full arsenal of enforcement penalties and tools to finally bring this serial violator and scofflaw into compliance with the pollution requirements it was supposed to be complying with for decades but has for decades been violating.

Respectfully submitted,

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