

From: [Abe Weitzberg](#)
To: [Rohlfes, Larry@DTSC](#)
Cc: [Kracov, Gideon@DTSC](#); [Campbell, Arezoo@DTSC](#); [Vizzier, Mike@DTSC](#)
Subject: Hirsch emails
Date: Wednesday, September 21, 2016 4:36:22 PM
Attachments: [Meeting Notes 10072008.pdf](#)
[Meeting Notes Unknown Date circa 092008.pdf](#)
[noreply@dtsc.ca.gov_20150206_085636_Redacted.pdf](#)
[noreply@dtsc.ca.gov_20150206_091852-outline of proposed agreement-includes CBG!!!.pdf](#)
[noreply@dtsc.ca.gov_20150206_092058 --State"s suggested alternative--AOC.pdf](#)
[noreply@dtsc.ca.gov_20150206_092117--re SSFL Proposal 2.pdf](#)
[noreply@dtsc.ca.gov_20150206_092223 State meetings including Dan and RPs.pdf](#)
[noreply@dtsc.ca.gov_20150206_092324-NPR listing letter.pdf](#)
[noreply@dtsc.ca.gov_20150206_092342---early briefing on consent orders.pdf](#)
[noreply@dtsc.ca.gov_20150206_092727-TASC and Chris Rowe.pdf](#)
[noreply@dtsc.ca.gov_20150206_092834-manipulating electeds.pdf](#)
[noreply@dtsc.ca.gov_20150206_093040 - -re negotiations.pdf](#)
[noreply@dtsc.ca.gov_20150206_093145 --re Norm Riley.pdf](#)
[PRA Response0001.pdf](#)
[Re NASA to not attend Wk Grp -7-22-99.txt](#)
[Re RESPONSE REQUESTED Santa Susanna Field Lab...\(1\)-Public participation in negotiations--Summer 09.pdf](#)
[Re telcon today w Louise & me \(2\)-3-30-09.pdf](#)
[WeitzbergPRA11-15-14-NB-mm.pdf](#)
[WeitzbergPRA11-20-15 response.pdf](#)
[1998 EPA to Feinstein0001.pdf](#)
[1998 Hirsch upset0001.pdf](#)
[1999 DHS letter0001.pdf](#)
[consent order 3-31-09.pdf](#)
[Consent Order 6-2-09.pdf](#)
[consent order alternative 7-22-09.pdf](#)
[email 7-21-11 1130 garden pathway.pdf](#)
[email 7-30-10 1424-details of "not to exceed".pdf](#)
[Final Letter Responsive Documents-FOIA.pdf](#)
[Fwd_outline of proposed agreement 7-14-09.pdf](#)
[Meeting Agenda Presentation 05012008.pdf](#)
[Meeting Agenda Handout Notes 01072009.pdf](#)
[Meeting Handout Notes 04092009.pdf](#)
[Meeting Handout 03262009.pdf](#)
[Meeting Notes 02222008.pdf](#)
[Meeting Notes 04042008.pdf](#)

Larry,

Attached is a small representative set of Hirsch emails that illuminate his excessive influence on the SSFL cleanup. You can note the inclusion of references to several community members who spoke at the September 20, 2016 IRP meeting at Chatsworth DTSC, as well as many elected officials and their staffers. Please add these emails to the IRP website, perhaps in a single master file. There are references to SB-990, Superfund listing, the EPA TASC, and CAG requests in the context of ongoing negotiations with the RP's and pulling strings at the offices of elected officials.

There are many more emails to come as well as other relevant documents. The excessive influence of Dan Hirsch in the conduct of the SSFL cleanup is well documented and future similar special interest or political influence is something to be avoided by DTSC if it is to effectively protect the California public.

Thanks,
Abe

Abe Weitzberg phone: 818-347-5068

5711 Como Circle mobile: 301-254-9601
Woodland Hills, CA 91367

10/7/08 Meeting

Still hopeful for land transfer

Cindy

However, regardless, SB 990 must be implemented
Believe negotiations are important to continue

Boeing remains committed to cleanup - to "safe" level

Steve Shestak

Need certainty in process

Boeing Submittal

Norm

- from PRG to final remedial goals

"Normal" approach is to use site specific factors
in risk assessment

SB 990 - forecloses site specific factors in risk assessment
Makes no sense to use two different approaches
for rad v. chem.

Approach does allow consideration of balancing criteria

Technical limitations - background, Detection limits

Certainty cannot be provided prior to process running
its course

Technical memo does not meet prerequisite requirements

Memo proposes methods to consider ag scenario in different ways -

Boeng believes memo lays out an approach that is compliant w/ SB 990

Why is DTSC interpreting SB 990 as requiring/eliminating flexibility for

Norm Doesn't make "sense" to use two different risk assessment scenarios -
SB 990 calls for using rural ag for land use assumption for both rad & chem

Specifics

GW - Irrigation of fruits/vegs
- livestock watering/feeding }
Need to build it into risk assessment - limitations could be built into remedy selection

Base case underestimates
Default case overestimates (but not sufficiently)
Alternative case underestimates

Area averaging

- may be available but needs to be better discussed & understood before acceding

Fish consumption

Pork

Beef/livestock

Milk

} needs inclusion

Purpose of technical memo

- not intended to be full risk characterization
- intended to focus on soil only

Fish - did not include because focused only on soil for comparison purposes

- would include in places where sustained fish population could be maintained

Timeliness - have been working vigorously to research & crunch numbers

* Originally thought that Ag 10^{-4} and Res 10^{-6} were substantially similar -
in crunching it's found that that's not the case

Would like the rest of comments in written form -

Dan -

Dissatisfied that this isn't what Boeing
committed to

Understood

Boeing could meet rad stds from 990
Could do chemicals except for certain cases (4 chems)

Using 4 chemicals as surrogates, but all
chemicals create problem

For chemicals must clean up to background
& detectability

What areas of flexibility is Boeing looking for

- site specific parameters instead of defaults
- area averaging \rightarrow not all pathways pertinent

Alternatives Chart

Alt III - Assumes 10^{-4} cleanup std, & removal of key ag

Alt II - Assumes 10^{-6} background & DL

Alt I - Assumes 10^{-4}

Boeing wanted certainty to get back to residential w/
eco-risk as cleanup goal
- the only way to get to land deal

Bob L

Where did the states flexibility go?

States response appears to eliminate what Boeing's thought was for areas of flexibility

★ Boeing thought they were trying to get back to residential cleanup standard.

NRDC - Interested in site being cleaned up
SB 990 cannot be "set aside"

Bob L Believe SB 990 is not "clear" and is open to interpretation w/respect to chemicals

Dan Concern that Boeing may be eliminating its flexibility

- Need realistic estimation of costs/

Soil movement costs may be significant, but there are other costs that proposal doesn't capture.

Alternatives to consider

Leave in place (cap & cover)

Soil treatment

Removal (scoop & haul)

SB990 - very clear on risk assessment
- open discretion on remedy selection

Other costs - timing/schedule
streamlining risk assessment/characterization

Timely/Effective/Protective Cleanup as goal

* Getting appropriation from Congress for rad work/
survey & cleanup could save money for Boeing
- funding needs of DOE likely slows process

* Acceleration of cleanup could save money

* Cleanup/removal assists in surface water
concerns/costs

* Early involvement to build consensus & expedite
decisions

Flexibility w/in SB 990 ?

Next Steps ?

Reaction to State's position :

State's position is very clear now

Need to capture these views in consent order
or revision to existing order.
SRAM amendments

Negotiations to amend, or unilateral order

Order would be issued to Boeing, DOE & NASA
if unilateral

Preference to first speak w/ NASA & DOE
before committing to negotiating new order

Proposed revisions to order early would
help accelerate process

April white paper → September memo deals w/
only risk assessment methods

Additional technical discussions:

area averaging - meeting to be proposed for later
detection limits - October
background

- Averaged over RFI area - not acceptable
- Toxicologists will be involved
- in Chatsworth -

Zoned 5 acre - not acceptable

Area to be discussed in line w/ assumed
land use

Open to discussing conditions where averaging
would be acceptable -

★ Vertical/uninhabitable topography

10/21 next meeting on background/detection limits
possible piggy back

Schedule next large group

TABLE 4

ENVIRONMENTAL IMPACT ANALYSIS SUMMARY FOR REMEDIAL CLEANUP ALTERNATIVES
 SANTA SUSANA FIELD LABORATORY
 (PAGE 1 OF 1)

10-4 10-6 10-4

	Alternative I: Base Case	Alternative II: Default SB990	Alternative III: SSFL SB990	Units
Project Metrics				
Soil Excavated	180,000	720,000	207,000	cy
Truckloads Hauled	12,000	48,000	13,800	loads
Estimated Project Duration	750 / 3	3,000 / 10	860 / 3½	workdays / years
Emissions Footprint				
CO ₂	24,000,000	97,000,000	28,000,000	lb
CO	240,000	961,000	276,000	lb
VOC	47,000	188,000	54,000	lb
NO _x	504,000	2,017,000	580,000	lb
SO _x	8,000	31,000	9,000	lb
PM-10 Dust	106,000	426,000	122,000	lb
GHG Units ¹	24,000,000	97,000,000	28,000,000	lb of CO ₂ Equivalents
Fuel Consumption				
Diesel	1,070,000	4,270,000	1,230,000	gallons
Gasoline	33,000	133,000	38,000	gallons
Sustainability Score	17	6.2	16.3	Out of 20

No way to understand these #'s and whether the assumptions stand if rad is considered

¹ Note that one pound of greenhouse gas (GHG) unit is equivalent to one lb of CO₂ or 1/8 lb of methane spanning the lifetime of the gas. Also referred to as greenhouse gas potential.

Focus on next steps

Intent of document

- Summary analyses of SB 990 issues - 3 scenarios

- ① Cleanup values & volumes for residential
- ② " " " " for strict SB990
- ③ Brings recommendation proposal to use site specific parameters, in rural residential & values & volumes estimates

Original thought ^{was} that eliminating potential for residential development would make cleanup decisions much easier

Thought Superfund approaches would allow interp. of SB 990 to come close to original sub. residential estimates

10^{-4} rural resid. using default parameters is .

- Claim that they've always had concern about all chemicals, but that they focused on Φ as examples

Hope there is room to come to resolution on these issues that does not

Want State to take lead in discussion of issues to get outcome on chemicals closer to sub residential

Who is Dan's expert?
Sept. 25
Can he be there?
Grant?

Listing on NPL

Concerns - schedule impact
SB 990 as ARAR kicked/deferred

Benefits: Rad characterization/DOE

→ Document: impact/analysis of different approaches

180K	v.	280K	v.	700K
3 yrs		3+ yrs		10 yrs

?? Remedy selection - is removal the only option?

Avail. Options as compared to letter of SB 990
cap & cover
default sub residential 10^{-4}

Need certainty - cannot give because CERCLA
doesn't give it early

Chem is biggest driver - rad issues not so much.
for cost & cleanup

Need to talk to Dan about Chem issues prior to
Sept 25 meeting in Chatsworth
Committed to no residential use of site - willing to execute
land use covenants

From: Daniel O Hirsch <cbghirsch@aol.com>
To: Linda Adams <ladams@calepa.ca.gov>, Maziar Movassaghi <Maziar@dtsc.ca.gov>
CC: Rick Brausch <RBrausch@dtsc.ca.gov>, Patty Zwarts <PattyZ@calepa.ca.gov>
Date: 6/2/2009 8:36 PM
Subject: Consent Order

Dear Linda and Maziar,

I understand that what is planned to be the last negotiating session among Boeing, NASA, DOE, and the state before tentatively approving the draft Consent Order, subject to a public comment period, is to occur June 9. Not having been able to see the text, I am unable to provide any informed suggestions, but I did want to call to your attention three key issues that may or may not be issues in the draft.

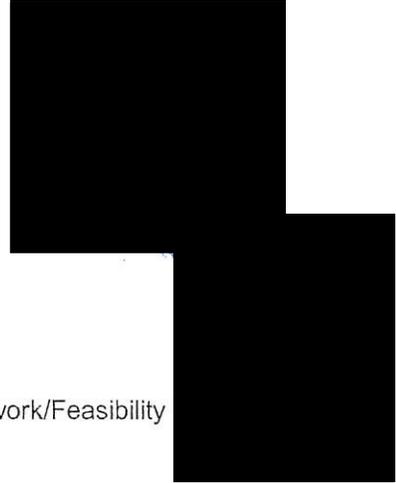
1. We have been assured that the Consent Order binds the RPs (Boeing, NASA, DOE) to comply fully with SB990. However, the RPs submitted to DTSC in April a "Feasibility Study (FS) Work Plan" that they assert reflects the upcoming revised Consent Order and which in fact appears to suggest that they believe they do not have to comply with 990. In that FS Work Plan, http://www.dtsc-ssfl.com/files/lib_feasibilitystudy/feasibilitystudywork/Feasibility Study Work Plan April 2009.pdf, the RPs list the laws and regulations that they must comply with. SB990 is not included. (see in particular p. 3-9)

Instead, they cite to other provisions in Chapter 6.8 of the Health & Safety Code, section 25356.1.5, which generally references following standards at least as strict as the federal National Contingency Plan (federal Superfund). They call out in particular 25356.1, without describing it; it states that cleanup standards will be based upon expected land use. SB990, however, is explicit: for SSFL, the land use scenario must be either the rural residential (agricultural) or suburban residential, whichever is more protective (almost always the ag scenario). They ignore that requirement.

You will recall that in the fall the RPs tried to get SSFL placed on the federal Superfund list before Bush left office, in the belief that so doing would result in a less protective land use scenario being used and less cleanup being required. That effort was unsuccessful. It would appear from the FS study that they are trying to argue that the Consent Order merely requires them to follow federal Superfund requirements, not SB990's specific requirements for SSFL. (see also p. 3-14)

This evasion of SB990's requirements is reinforced on p. 2-2, in which they say the exposure scenarios include only a current trespasser, industrial worker, and future hypothetical resident and recreator, leaving out the ag scenario required by SB990. Similarly, on p. 4-1, they say the response actions they will consider for the contaminated soil includes institutional controls such as "access restrictions, monitoring, and land use restrictions." This is barred by SB990, which does not permit avoiding cleanup to the ag standards simply by declaring the land will not be used for ag/rural residential purposes.

I would urge that the Consent Order be carefully reviewed to see if indeed the RPs have managed to insert language that they can point to



as requiring consistency with federal Superfund guidance even if it conflicts with SB990; that cites to section 25356.1 rather than 990 itself (commencing with 25359.20); or that somehow implies land use restrictions can negate 990's cleanup requirements. I am particularly concerned that references may be purposely oblique in the Consent Order, but upon deeper scrutiny turn out to imply not having to use the land use scenario, EPA's defaults, and other requirements in 990.

These concerns are reinforced by the "Fact Sheet" submitted by GSA on behalf of itself, DOE, and NASA to Congressional staff a few weeks ago, that claims 990 is pre-empted by the feds and they don't have to comply; have notified Justice Dept.; and will sue to overturn 990 if they don't get their way in the Consent Order. This is at great variance to DOE's commitment to Senator Boxer in September testimony to strictly comply with all state laws and NASA's similar promise to fully comply with 990 made as recently as last week. If the Consent Order binds the RPs to full compliance with SB990, we should not be seeing either the claims made in the FS Work Plan or the "Fact Sheet." Since the latter documents contradict the promises made about strict compliance, there is a question about good faith negotiation over the Consent Order, and very careful scrutiny of all of its language is in order.

2. I understand that there may be citations in the Consent Order draft requiring the state to follow certain specified guidance documents and even computer models. One has to be very careful here. Some guidance that the RPs have previously cited turned out to be long-discarded EPA guidance overridden and contradicted by EPA's preliminary remediation goals (PRGs) as cited in SB990. For example, some guidance or computer programs that the RPs have previously cited include land use assumptions that contradict the default assumptions in EPA's PRGs and the requirements of SB990. Citing to that guidance would arguably put the state in the position of being said by the RPs to have agreed to negate 990.

The RPs may also have inserted references to documents that suggest permitting averaging contamination over wide areas. This would be troubling, as it could permit high levels of contamination be left in place at one location because other locations significant distance away were clean.

There is no reason to cite to specific guidance, or guidance at all. Guidance is just that, guidance; it is not regulation or law, and regulators are free to depart from it if they have reason to do so. And most of what the RPs referred to in the past as guidance is not even guidance (e.g., instead are computer programs) and not in effect (e.g., having been replaced by newer guidance such as EPA's PRG documentation cited in 990.) Nor should the state want to bind itself in a Consent Order to any particular guidance, which can change and evolve over time. But mostly I am concerned that by referencing certain guidance, the RPs may feel they have succeeded in contradicting requirements in 990 which with the guidance conflicts. Law trumps guidance, not the other way around.

3. And of course there is the tolling matter. An agreement to comply

with SB990--even if the Consent Order makes that crystal clear without contradiction, a matter I worry about--is essentially worthless if the parties insist on the right to break out of the agreement at any moment they wish, and even to challenge the state law beyond the expiration of the statute of limitations. That is no agreement at all. And it would leave a gun perpetually to the head of the DTSC Director, so that every single directive given to remove any particular contaminated , revise a report, take a measurements, etc. would be subject to the RPs saying "No," and threatening to break out of the Consent Order and challenge 990, no matter how long after the passing of the statute of limitations.

A commitment to comply with SB990 must be a binding commitment, not a promise today that can be broken with impunity tomorrow.

I continue to believe, given the behavior of the RPs in the FS Work Plan and the "Fact Sheet," raising questions about their promises to Congress and others to comply with state law and their good faith in the Consent Order negotiations, coupled by their resistance to permitting consultation by the Secretary with whomever she wished during these negotiations, indicates it is likely the issue may need to be escalated to Congressional representatives and senior Obama Administration officials to get DOE and NASA to live up to their commitments and to comply with the recent Obama directive to not claim pre-emption in any but the rarest of cases. The lower level people at DOE and NASA may need to hear from people considerably higher up in order to get these matters resolved.

Best wishes,

Dan

From: Daniel O Hirsch <CBGHirsch@aol.com>
To: Rick Brausch <RBrausch@dtsc.ca.gov>
Date: 7/14/2009 4:05 PM
Subject: Fwd: outline of proposed agreement
Attachments: SSFLPROPOSAL.doc

Rick,

Here is what I just got from Norm. It goes vastly beyond what he told me it would, with 21 additional demands by the RPs and the one key item that he had told me now modified. It also suggests there is likely to have been a bunch of troublesome stuff in the current draft of the consent order that they want to carry over or even worsen. Doesn't seem to simplify things much for the community but primarily reduce responsibilities for the RPs.

Let's talk about it when you have a chance.

Dan

Begin forwarded message:

> From: "Norm Riley" <NRiley@dtsc.ca.gov>
> Date: July 14, 2009 10:05:40 AM PDT
> To: <CBGHirsch@aol.com>
> Subject: outline of proposed agreement
>
> Dan,
>
> Attached for your consideration is an outline of a proposed
> agreement between CBG, DTSC, and the SSFL parties for an SB-990
> compliant cleanup of the site. There is one caveat: DOE HQ has not
> given it's final okay to the wording of the attached document. I am
> sending it nevertheless because we would like to begin the
> discussions with CBG and Boeing as soon as possible. If you have
> any questions or comments about this, please do not hesitate to give
> me a call at (916) 327-8642 or cell (916) 869-5346.
>
> Norm

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Outline of Proposed SSFL Agreement:

1. Boeing will enter into a Consent Decree with DTSC and stakeholders with no stipulated penalties and no tolling language, but with reservation of rights. NASA and DOE will enter into a separate and parallel Consent Order(s). The agreement(s) will be consistent with the concepts described below:
2. Groundwater clean up will proceed on a separate path (see 22 below).
3. Remedial Action Plans and EIR will be prepared based on approved investigation reports, but without risk assessments, and with consideration of technologies that have been successfully implemented at other sites.
4. Clean up standards will be to the higher of background concentrations, detection limits or RBSLs/PRGs.
5. CERCLA balancing criteria will be applied in making the final cleanup decisions
6. CBG, and the other plaintiffs will work with DOE to allow timely closure and completion of D&D of Area IV buildings by September 2011.
7. CBG, and the other plaintiffs will work with DOE to allow the removal of the current requirement to prepare an EIS.
8. Import soil for backfill shall be from sources approved by DTSC.
9. Allow interim removal actions.
10. DTSC will support removal of Surface water outfalls from NPDES permit by the RWQCB as clean up (including use of interim removal actions) is completed and approved by DTSC, watershed by watershed.
11. DTSC will terminate existing 2007 consent order.
12. Radiological characterization of Areas I, II, III and the Southern Undeveloped Area will be required based on a review of documents from the amended RFI/RI reports, other sources such as licenses, and records used for EPA's survey in Area IV.
13. Confirmation sampling requirements to demonstrate achievement of clean up goals will be specified in the Remedial Action Plan.
14. Reduce RI report DTSC review turnaround.
15. DTSC will work closely with interested community members and groups to ensure the public remains involved in meaningful ways throughout the implementation of this agreement.
16. Excavation will not be performed for areas with soil concentrations lower than DTSC approved backfill material.
17. Engineered Corrective Action Management Unit (CAMU) for non-hazardous waste will be an acceptable option for *consideration* in remedy decision where appropriate.
18. Soil investigation and sampling may be concurrent with removal actions.
19. The new chemical background dataset will include the existing approved dataset and all data (e.g. Chatsworth Formation, Santa Susana Formation,

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drainages and hill tops) collected during the 2009/2010 study if supported by the statistical analyses.

21. Existing regulatory guidance and implementing software shall be used for hypothesis testing and establishing background threshold values for comparison of site and background data.
22. The Remedial Action Plan for groundwater and bedrock will carefully consider all technologies but will focus on those that have been successfully implemented at other sites. In consultation with DTSC, site-specific field studies will be limited to those technologies that studies and data from other sites have indicated will have reasonable chance of success and that are deemed to be necessary.