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RESPONSE TO COMMENTS
FOR
A HAZARDOUS WASTE PART B FACILITY PERMIT
AND CEQA NOTICE OF EXEMPTION
FOR
BOEING SATELLITE SYSTEMS
EPA ID NO. CADO60897063

I. INTRODUCTION

The Boeing Satellite Systems (Boeing) located at North Selby Street and East Imperial Highway, El Segundo is an aerospace satellite company. The facility is permitted to store hazardous waste in four hazardous waste management units located throughout the facility. The Company has been in operation at this location since 1978. It is engaged in the design and production of communication satellites. It also manufactures electronics units, propulsion units and several related parts and components that are used in satellites.

The Department of Toxic Substances Control (DTSC) granted a Hazardous Waste Facility Permit in 1993 to continue operating a hazardous waste storage facility for a term of ten years. The facility consists of four hazardous waste storage units (S-12, S-15, S-16, and S-17).

On May 15, 2006, Boeing submitted a revised RCRA Part B application to the Department of Toxic Substances Control (DTSC) to renew their permit. Based on the review of the revised Part B application, a technical completeness letter was issued to Boeing on October 13, 2006.

DTSC prepared a draft Hazardous Waste Facility Permit and CEQA Notice of Exemption for public review. On October 16, 2006, DTSC issued a public notice on the proposed Permit and California Environmental Quality Act (CEQA) Notice of Exemption (NOE). A 45-day public comment period started on October 16, 2006 and ended on November 30, 2006.

DTSC conducted a public hearing on November 16, 2006 at the City Council Chambers (Room 1), El Segundo City Hall, 350 Main Street, El Segundo, CA 90245.

During the public comment period, only one person commented on the draft permit renewal. DTSC received 21 comments from this member of the public, which have been included in this response.

II. PUBLIC COMMENT

The following are written comments from Mr. Philip B. Chandler and DTSC's response:

Comment No. 1

The permit application project documents related to the proposed issuance were not completely included on-line with the notice. U.S. EPA recommends in FRL-7875-9 [Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs], which was published in CFR Vol. 70, No. 42 [March 4, 2005] that its recipients—agencies such as DTSC that receive funding from them—establish an on-line information repository as a means to enhance public participation. Mr. Watson Gin, the Deputy Director in charge of the Hazardous Waste Management Program (HWMP), has indicated his desire to have all permit-related documents available electronically for public access. Clearly, a repository should include electronic versions of all applicable documents such as the Boeing Satellite Systems application and CEQA documents. DTSC has again failed to do this. Please re-notice and assure that all applicable information is available in and on-line repository.

Response No.1

The comment cites draft guidance that, once final, will be a recommendation and guidance only, not a requirement. Current State laws, regulations and policies do not require DTSC to post on its website all documents pertaining to permit applications. Although it is not required by regulations, DTSC does post some of the key documents relating to a pending or completed permit decision on its website (e.g., fact sheets, draft and final permit, and public notices of the public comment period and public hearing). The purpose of posting these documents on the website is to inform the public as to the status of the permit decision (e.g., public comment period and public hearing dates), provide basic background information regarding the facility and the proposed permit decision, and provide information regarding the location(s) where interested parties may view further documents concerning the proposed permit decision. Currently, DTSC does not generally post on its website the numerous documents, some of which are quite voluminous (e.g., Part B permit applications), that are incorporated into the

proposed permit decision by reference or considered in making the permit decision. All of these documents, however, are available for public review in the DTSC office issuing the permit decision and/or the public repositories established during the public comment period. These copies of the proposed permit decision documents, referred to as the “administrative record”, are intended to be the primary source of information for public review. Based on the above, DTSC declines commentator’s request to re-notice.

Comment No. 2

More specifically, DTSC continues the electronic misuse of the so-called “Attachment A” as a proxy for the actual permit. This is deliberately deceptive and violates all rules of conscience by an agency of the State of California. The HWMP has deliberately “streamlined” the “permit”---your agency’s terms not mine—such that only regurgitated “unit” descriptions and a few piddling bits of other information are included in what the agency presents as “the Permit”. The vast bulk of informative material lies buried in the application which your agency makes grudgingly available at a community repository and at the agency. How many citizens realize that your miserable scrap of information—“Attachment A” fails to contain the most significant information to them as a community? How many citizens mistakenly assume that when they go on-line they have “Permit” and don’t realize that DTSC has effectively hidden 90% of it from them? Shouldn’t the agency be held accountable for its deceptive practices? Isn’t the agency clearly abusing its regulatory ability to include things by reference when the bulk of the Permit is treated that way and not even made available electronically? Does it take very tight legislation on what will be placed on-line to cause DTSC to properly treat the public it is supposed to serve?

Response No. 2

DTSC disagrees with the comment that the public comment process is a “deceptive practice” and notes that the term “all rules of conscience” is inappropriate in the context of a permit issuance. Further, DTSC disagrees with the comment that it is being “deliberately deceptive” in providing Attachment A electronically but not other portions of the permit. Attachment A is a portion of the Hazardous Waste Facility Permit. Part III.1(a) of the Permit clearly states that the Part A and Part B Applications are made a part of the permit by reference. DTSC has made the Part B application, as well as the draft permit, and draft CEQA Notice of Exemption available for review during the public comment in order that the public has access to all relevant information that is included in the permit making decision. Members of the public are able to access the documents at the repositories identified by DTSC in the public notice. The Notice of the public comment period of the draft permit decision, which is posted on the website, provided the public with information as to where these additional documents are available for review. None of the details of the draft permit are “concealed” and the full permit, including incorporated and supporting documents are available for

public review. Incorporation by reference is a common legal practice and is specifically authorized pursuant to California Code of Regulations, title 22, section 66270.32, subsection (e), in the drafting of hazardous waste facility permits. Please see Response to Comment No. 1.

Comment No. 3

There is no post-closure assurance of financial responsibility for the tanks at S-13. Groundwater contamination was encountered in the single well emplaced at S-13. Please explain the rationale behind not requiring post-closure care for S-13 in this permit. Please explain if the S-13 closure performance standards are adequate given current indoor air issues.

Response No. 3

The tanks at S-13 area were closed in accordance with the amended Closure Plan dated December 7, 1995. Mr. Chandler, as a DTSC staff member, assisted in this closure approval. A closure certification acknowledgement letter was sent to the facility on January 24, 1996. Please see closure reports dated October 27, 1994 and June 22, 1995. Comments on the tanks at S-13 area are beyond the scope of this permit renewal project; however, DTSC is providing the following brief history and information in the closure of this unit. Groundwater sampling was performed on June 15 and September 15, 1994. Two groundwater samples and two duplicate groundwater samples were collected from monitor well MW-1 at depths of 102 feet to 105 feet. The samples were analyzed for volatile organic compounds using EPA Method 8260. Freon 113 was detected at 23 ug/L and acetone at 28 ug/L. The maximum concentrations of Freon 113 and acetone detected in groundwater were approximately 52 to 162 times less than respective cleanup levels. The maximum contaminant level (MCL) for Freon-113 is 1,200 ug/L and the cleanup level of acetone as outlined in the closure plan (dated April 1994 and amended by DTSC on December 7, 1995) is 1,500 ug/L. Therefore, the cleanup goals have been met and no post-closure care is necessary.

With respect to indoor air issues, a soil vapor extraction system was installed on April 3, 1995 to remediate the contaminated soil found during closure. Approximately, 7,100 pounds of Freon-113, 2,300 pounds of isopropyl alcohol (IPA) and 2,200 pounds of acetone have been removed from the soil underlying site. Additionally, a set of rebound soil vapor samples was collected and analyzed approximately eight months following system shutdown. Acetone and IPA were not detected in any of the closure soil vapor samples collected from the soil vapor monitor probes and the nested monitor well. Freon 113 was detected in the closure soil vapor samples collected from the soil vapor monitor probes and the nested monitor well. The highest Freon 113 concentration detected in the closure soil vapor samples was 4.1 ug/L, which is approximately 280 times below the lower limit of soil vapor cleanup goal; thereby meeting the requirements for closure.

Comment No. 4

I couldn't find a definitive list of the various constituents-of-concern (COCs). Is it in the application somewhere other than the closure plan? Is it there at all? Doesn't title 22 have some requirement for the recitation of COCs? Isn't it technically responsible to cite them in the closure plan as more than RCRA codes or analytical protocols? How can a member of the public know precisely what COC could be present? My recollection is that COCs are everything that a facility might have used to could find its way into the waste management units. Such a list may or may not be coincident with the waste codes. For example, some Hughes facilities have had constituents such as cerium, indium, etc. I don't see analytical protocols that cover these. Were such materials present at the facility during its history? Given the failure of Hughes to provide an honest appraisal of COCs at S-13 years ago—despite the soil gas data, it is incumbent upon DTSC to be more proactive at the units included in this permit. Accepting an argument that constituents found in significant quantities in the soil at S-13 couldn't be from it and closing the unit on that basis should never be allowed again at this Facility. Therefore, the closure plan in this application takes on added significance.

Response No. 4

The constituents of concern (COCs) and its analytic methods are listed in the Attachment XIII.4: Sample Analysis Plan of Closure Plan section. These chemicals were used in the Boeing's manufacturing operations. DTSC is evaluating the site for additional COCs during the Corrective Action Program recently initiated with Boeing. The public may view those documents and the COCs in the public file at DTSC as they become available.

Comment No. 5

Please revise the permit to require that the COCs shall be all waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the Boeing units. The following shall also be considered COCs: (a) any constituent associated with the wastes which shall be listed in a table in the Closure Plan; (b) any constituents of other waste generated and stored by Boeing, © constituents that have been observed in the Los Angeles County Sanitation Districts testing; and (d) any constituents found in previous investigations or monitoring in any medium whether liquid, solid or gaseous.

Response No. 5

Please see Response No. 4. At this time, a revision to the permit is not necessary.

Comment No. 6

The closure plan for this facility, included as part of the application, offers two principle closure performance standards ----"background" and "no-detect", each with its own flaws as presented. It then offers an "out" in case these aren't met---performance of a health risk assessment (HRA) to some unknown future standard. The "background" standard is to be determined with too few samples to be statistically valid. DTSC must have Boeing take more samples than at 3 locations. Please provide an explanation of how and why DTSC believes that 3 locations is an adequate description of background? Please explain how the sampling locations will be chosen within the context of the nature of the expansive Boeing complex. For example, will the historical uses and potentials for contamination be addressed for any sampling location selected for background? No explanation is given as to where these samples are to be obtained—no protocols or methodology provided for such selection. Stating that "background" will be used but not providing a reasonable explanation for how this will be determined means that the closure performance standards are inadequate. Please explain what statistical approach will be used to develop background from the six samples at three locations and justify.

Response No. 6

Section 9: Soil Sampling Plan of the Closure Plan section describes the rationale and protocols for sampling beneath the hazardous waste management units. However, the closure plan will be revised to include the rationale and protocols for background soil sampling. The number of background samples is determined by an iterative approach where the facility proposes a number of samples takes and analyzes the samples, and then does a calculation in accordance with the Student "t" test to confirm that the number of samples was sufficient. If not, additional samples must be taken and the calculation re-done. This is taking into account spatial variability in the soil horizon. Therefore, the three proposed sampling locations with six soil samples by the facility is the initial step in determining the number of background locations and samples in the Student "t" test. A new permit condition in Section-2 of Part-V of the permit has been included to require the revision of Section 9 within thirty (30) after the effective date of the permit for the inclusion of the rationale and protocols for background soil sampling.

Comment No. 7

The "no-detect" standard, primarily for anthropogenic COCs, is offered without citation of detection limits for the COCs. I couldn't find a definitive COC list either with which to match up the non-existent detection limits. This means that there really isn't any standard doesn't it? Non-detect can be achieved by simply having large detection limits—detection limits greater than even a number that

would be given by an existing promulgated standard, CHHSL, Region IX Preliminary Remediation Goal (PRG), or even by a site-specific HRA number for a given constituent. In fact, one could select a detection limit such that the secondary use of the HRA (even with the non-existent protocol) would not be triggered. Please explain why DTSC would approve the permit with such a flawed, indeterminate, closure plan.

Response No. 7

The method detection limits (MDLs) is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero. The certified laboratory performs detection limit studies on an annual or quarterly basis (depending on the method) to demonstrate that it can meet the projected maximum reporting limits (MRLs). These detection limits can be found in the method or instrument manufacturer's literature; so, one cannot arbitrarily just select a detection limit. The analytical methods for chemicals of concern can be found in Table XIII: Sample Analysis Plan of Closure Plan section. The U.S. EPA procedure used for establishing detection limits is described in the Code of Federal Regulations (CFR), 40 CFR 136.

Comment No. 8

An alternative of health risk assessment (HRA) is cited with a broad brush treatment that it will be done with whatever requirements there are at the actual time of closure. Although not stated in the closure plan, it is presumed that the HRA would be invoked if COCs were found to have been released at concentrations above the flawed determination of background or above whatever detection limits happen to be selected at the time by the facility. If this is DTSC's understanding, then shouldn't the closure plan in the application be fixed now to make explicit?

Response No. 8

The closure performance standards (cleanup levels) allow the facility with the options to achieve clean-closure by cleanup to background levels (non-detect for organic chemicals) or cleanup to levels determined to pose an insignificant risk to public health and the environment through a site-specific health risk assessment. We cannot assume that the hazardous waste management units are contaminated without any data collected. Health based levels cannot be determined until there is reasonable sampling data collected and determined that clean-closure cannot be achieved to background levels. Hence, an explicit description of a health risk assessment protocol in the closure plan section is premature at this stage of the facility operation.

Comment No. 9

I could not find included in the application either the Health Risk Assessment (HRA) nor even a description of the protocols and real performance standard for each of the various COCs. Is it there someplace? This appears to mean that DTSC is proposing to approve an unknown HRA protocol as a closure performance standard. Please explain how this is protective of human health and the environment. Please explain how it is legally defensible to use such an approach to closure performance standards to satisfy Title 22 and to satisfy the exemption claimed in DTSC's Notice of Exemption (NOE). Please explain why there is no ground water protection component in the closure plan.

Response No. 9

If closure cannot be achieved to background or non-detect levels, then the COC concentrations found will be used in a site-specific HRA to develop a real performance standard that is protective of human health and the environment. Please see Response No. 8 regarding Health Risk Assessment determination. If clean-closure can be achieved through non-detect and background levels, then it is protective of human health and environment.

Regarding the NOE, the main purpose of the California Environmental Quality Act (CEQA) is to identify the effects of a project on the environment and to determine if a project activity has a significant effect. A significant effect is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. DTSC has completed an Initial Study to determine if this project action has a significant effect on the environment. Through this evaluation, DTSC has determined that this project activity (i.e. the permit renewal) will not have potential for a significant effect on the environment. There are no significant changes to the originally permitted hazardous waste management activities. The basis for determination of the CEQA Notice of Exemption (NOE) is not based on the closure performance standards as the commentator suggested.

At the time of actual facility closure, the Closure Plan will be updated/revised to include activities and sampling based on historical evidence of contamination or potential contamination. At the time of the permit issuance, it is assumed there have been no releases from the permitted hazardous waste management units unless historical data is available. At the time of actual closure, the facility will be required to provide proof through the logical sampling procedure to confirm any releases. If there are such releases found during the sampling confirmation process, then further evaluation is required to ensure groundwater protection. The facility is currently undergoing corrective action and a groundwater protection component is included in the Corrective Action Consent Agreement dated November 16, 2006.

Comment No. 10

Please explain and justify why that with halogenated volatile organic compounds (VOCs) being stored in the waste management units that the closure plan lacks any soil-pore gas sampling? This appears to be the standard approach for such constituents and DTSC simply ignores it? Please add special conditions to the permit to require such soil vapor sampling in accordance with the protocols described in the 1997 revised Los Angeles Regional Water Quality Control Board (LARWQCB) Interim Guidance for Active Soil Gas Investigation and the joint 2003 DTSC and LARWQCB Supplemental Advisory. The revised Closure Plan should include a multi-level baseline soil vapor survey to measure any soil-pore gas.

Response No. 10

We agree with the comment. A new permit condition Section-2 of Part-V of the permit has been added to require the facility to include soil gas sampling in a revised Closure Plan to be submitted within thirty (30) days of the effective date of the permit.

Comment No. 11

Please add special conditions to the Closure Plan portion of the permit to have Boeing use the methanol and sodium bisulfate preservation portion of U.S. EPA Method 5035 for VOC soil sampling. Field preservation is preferable to the method proposed. Sending Encore sub-samples directly to the laboratory should not be acceptable. If DTSC persists in allowing this, please provide a technical rationale that VOC losses will not be significant from the sample. The specific preservation protocols should be described in the revised Closure Plan.

Response No. 11

We agree with the comment. A new permit condition in Section-2 of Part-V of the permit has been added to require the facility to include field methanol and sodium bisulfate preservation for soil samples in a revised Closure Plan to be submitted within thirty (30) days of the effective date of the permit.

Comment No. 12

Please add special conditions to the Closure Plan portion of the permit to have Boeing log all borings using the Unified Soil Classification System designations, Munsell color chart designations, PID readings and other repeatable standardized notations required under the DTSC guidance, "Drilling, Coring,

Sampling and Logging At Hazardous Substance Sites.”

Response No. 12

Attachment XIII.4 of the Closure Plan provides adequate handling and documentation procedures in accordance with the Permit Writer Instructions for Closure of Storage and Treatment Facilities.

Comment No. 13

Please add special conditions to the Closure Plan portion of the permit to have Boeing use stainless steel sleeves rather than brass because of the metals, acids and caustics that are considered part of the COCs.

Response No. 13

We agree with the comment. A new permit condition in Section-2 of Part-V of the permit has been added to require the facility to include the use of stainless steel sleeves in a revised Closure Plan to be submitted within thirty (30) days of the effective date of the permit.

Comment No. 14

Please add special conditions to the Closure Plan portion of the permit to have Boeing include step-out and step-down provisions to the Closure Plan in case contamination is encountered in the initial sampling. The Closure Plan should address lateral and vertical extent of any contamination encountered at any of the waste management units. Please explain why three feet was selected as the sampling depth. Given the sumps in the container storage areas DTSC should require a minimum of five feet.

Response No. 14

Lateral and vertical extent of any contamination encountered at any of the hazardous waste management units will be delineated. At this time, DTSC cannot assume that the hazardous waste management units are contaminated. The basis of the soil sampling plan in the Closure Plan is confirmation sampling to see if the hazardous waste management units are clean, not for the sake of delineation or specific contaminant investigation. The three feet is sufficient for confirmation sampling.

Comment No. 15

How are wooden pallets “closed”?

Response No. 15

DTSC did not find any usage of wooden pallets in the permit application. The hazardous waste containers are stored on top of a metal screen in the secondary containment area.

Comment No. 16

How does DTSC plan to address the inevitable spillage accumulation in the asphalt/concrete aprons leading up and into the storage areas? Please remember past experiences with hexavalent chrome in curbing soil and asphalt outside of the Hughes Missile Systems storage area in Canoga Park.

Response No. 16

All hazardous waste management units will have concrete and asphalt sampling in the units of the storage areas. This is stated in the Closure Plan section XIII.

Comment No. 17

Has Boeing provided an adequate map-----½ foot contour intervals—to show pattern of surface water run-off on the site? Have all Holocene faults, including blind thrusts been accounted for in the application? What are they? Hopefully, someone had the sense to look at recent editions of the Bulletin of the Seismological Society of America. If not, the applicant and DTSC will be overlooking some significant fault systems—Newport Inglewood, Charnock, etc. Were they adequately treated in the NOE? I think not. What hydrologic information was provided in the application? Was any explanation given for the well at S-13? Does the application explain the “non-S-13” COCs? How close are the units in the application to S-13? Are there any other potential sources of the S-13 constituents between the units in the permit and S-13? Since DTSC and the facility agreed that some of the S-13 constituents must have come from somewhere else, could that somewhere else have been the units in this permit? Shouldn’t that have been determined as part of this permitting process? Does the waste analysis plan include all waste streams? Is there a list of COCs for this site? Is it accurate and complete? What are the design limitations for profile analyses? Records may need to be kept longer than suggested since post-closure may be a requirement from some of the partial closure work. Did the application finally list all of the materials used to coat the containment areas? Did the design specifications for the containment foundations get provided? Are there any existing cracking patterns in the concrete containment? Has DTSC properly inspected the concrete for settlement cracks? Did the seismic loading calculations for the roofing get included in the application? How is the waste

moved around within the facility? Does it ever cross public streets to get from point of generation to point of storage? What are the drum stacking heights? What is the aisle spacing? Why are seismic calculations provided for stacking of drums? Is there spillage outside of the containment as wastes are being brought in? This was demonstrated at other Hughes facilities. Are there any wooden pallets within the containment areas? How are these handled at closure? How are pallets handled before closure? Before they are disposed of, are they sampled to assure that spillage of hazardous waste has not affected them? Are they simply recycled out to the general public with waste constituents in place? Is or was there any underground piping associated with the containments? Is or was it double-walled? Did the containments drain to underground tanks? What is the expected service life of the containments? What sort of air monitoring is being provided? Copies of the various environmental permits should have been included in the application. How are these being made a permit requirement — even by reference—if they are not included? What are the closure performance standards? This is one element that every citizen will have some concern about and it is lacking from the permit----pardon me, perhaps it is in the application that is only available when someone comes in to a repository. What ground water protection component is there or is this the standard health risk only clean-up? Did the cost estimate include groundwater investigation? If not why not, given the results from S-13? Was the facility given a notice of deficiency (NOD)?

Response No. 17

The answers to these questions can found in the Part-B permit application. The Hazardous Waste Storage Operations Plan and Operations Plan Map #1 and Map #2 answer several of the questions raised.

The discussion of the closed S-13 area is beyond the scope of this permit renewal application. However, this area has been included in the corrective action program.

A ½ contour interval map to display surface run-off at the Boeing facility is included as Map II.4 of the Part B permit application.

California Geologic map dated 1980 which is Map II.10 of the Permit Application demonstrates that the BSS facilities are not located within 3000 feet of faults or lineation.

DTSC believes that it has considered all seismic faults known within this area, during the development of the CEQA Notice of Exemption.

Seismic consideration was included in the design and construction of the hazardous waste management units to meet the applicable Building Code.

The hydrologic information contained within the application (also located in Map

II.12 of the permit application) included identification of depth to groundwater, the location of water wells in the general vicinity of the facility, a map identifying these wells, identification of the shallow aquifers below the facility, the permeability and communication between these aquifers, the groundwater flow, and location of the closest water production well in the area of the facility.

The waste analysis plan includes all waste streams, and can be found in Section V of the application. The list of Chemicals of Concern (COCs) is included in Attachment XIII.4 of the Closure Plan section, and is considered accurate as of the date of publication of the document.

The discussion of incompatible waste is included in Section V of the Part B permit application, titled "Additional Requirements for Ignitable, Reactive, or Incompatible Wastes."

The design limitations for profile analyses are the same limitations that would occur for any laboratory analyses and include systematic error, random error, detection error, false positive errors, false negative errors, etc.

The hazardous waste is collected from satellite accumulation areas in 5 to 15 gallon containers by trained personnel and transported to the hazardous waste storage areas within the fenced property.

There is no drum stacking at the hazardous waste management units and no wooden pallets within the containment units. The containment units do not drain to an underground storage tank.

DTSC has no record of cracking patterns in the concrete containment at the Boeing facility. DTSC inspects the secondary containment concrete for settlement cracks at permitted facilities, including the Boeing facility during its inspection.

The expected service life of the containment areas is unknown; however, the secondary containment area is required to be inspected by the trained personnel at Boeing for cracks and leakage.

The facility operations will comply with applicable federal and local (e.g., South Coast Air Quality Management District or SCAQMD) standards for air emissions from processes and containers. Potentially applicable standards include requirements for air pollution control permits, emission controls, and monitoring, recordkeeping, and reporting for air emissions. Applicable air emissions standards currently include SCAQMD rules and federal standards for RCRA facilities including:

- 40 CFR 264.1030: Subpart AA (Process Vents)
- 40 CFR 264.1050: Subpart BB (Standards for Equipment Leaks); and,

- 40 CFR 264.1080: Subpart CC (Air Emission Standards for Tanks, Surface Impoundments, and Containers).

Please see Section XI: Environmental Control Permits for the list of SCAQMD permits. These permits are under SCAQMD's oversight, and inspected by SCAQMD for compliance.

The Closure Plan states that Boeing plans for the clean closure of the facility. This Closure Plan is designed to comply with 22 CCR Article 7 (sic), and clean closure of the facility will be accomplished by achieving non-detect or health-risk based standards for soil and wipe samples of tank, equipment, and piping surfaces. This information, as stated, is included in the Part B Permit application Section 11. It is available for public viewing upon request. Soil removal and groundwater investigation were not included in the Closure Cost Estimate because it has not been determined that these actions are needed at the time of permit renewal. However, if soil removal and groundwater investigation is determined to be necessary, DTSC will be requesting Boeing to update the CCE to include these actions.

DTSC issued the first Notice of Deficiency (NOD) on August 23, 2004 and the second NOD on April 10, 2006 to Boeing Satellite Systems during the review of its permit renewal application.

Comment No. 18

The assurance of financial responsibility (AFR) for corrective action is required by statute to be included in permits issued by DTSC. Why isn't this addressed? Why isn't the AFR for corrective action addressed? Explain how S-13 could be closed with reference to corrective action but the agreement to conduct corrective action be put in place 10 or more years later —only when the permit renewal is done? By its silence on corrective action AFR, it is believed that this permit is inconsistent with and contradictory to the intent of H&SC) §25200.10(b). Please explain how DTSC thinks that it is in compliance. H&SC requires that, "When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action." [H&SC §25200.10(b)] Title 22 states "That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action." [Title 22 CCR §66264.101(b)] In perusing the consent agreement, it is clear that DTSC has not completely addressed corrective action but has failed to require corrective action AFR in the permit. There appears to be no schedule of compliance for completion of corrective action in the permit itself. Where is it?

Response No. 18

The AFR is addressed in the draft Hazardous Waste Facility Permit as special conditions 1.b, 1.c, and 1.d. The facility will be required to comply with the financial assurance requirements of California Code of Regulations, title 22, Division 4.5, Chapter 14, article 8. In addition, Section 9.6 of the facility's Corrective Action Consent Agreement, located on page 28 of that document, states that: "As directed by DTSC, within 90 calendar days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanism may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, financial test, or corporate guarantee as described in 22 Cal. Code Regs. section 66265.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondent is unable or unwilling to undertake the required actions."

Comment No. 19

Please provide a justification for the use of a corrective action consent agreement (CACCA) as the mechanism to address corrective action. Please explain what steps occur if a Facility elects not to honor such an agreement. Is it legally enforceable without having to issue a unilateral order? Please provide the regulatory and statutory citations that describe a CACA and allow its substitution for an order in order to address the statutory requirements for corrective action having to be addressed in a Permit---if it isn't complete at the time of issuance of the permit.

Response No. 19

Section 25200.10(b) of the California Health and Safety Code provides, in relevant part, that the Department, and any permit issued by the Department shall require corrective action. The statute does not set forth any particular mechanism with which to accomplish the required corrective action. There are no statutory requirements to use an order in order to carry out corrective action as part of a permit. A Consent Agreement is an alternative to enforcement orders and related litigation. A Corrective Action Consent Agreement Docket HWSA: P3-06/07-004 was entered into between Boeing Satellite Systems and DTSC on November 16, 2006, and is fully enforceable. Failure to honor a Consent Agreement can expose a facility to severe sanctions. Part-VI: Special Conditions for Corrective Action was revised to include references to that Corrective Action Consent Agreement.

Comment No. 20

DTSC has used a Notice of Exemption (NOE) to attempt to satisfy its CEQA obligations. DTSC uses the categorical exemption and states that the project “will not have potential for significant effect on the environment.” One can drive a truck through the closure plan. Without an adequate closure performance standards, this project, as proposed to be approved, clearly does have potential for significant impact on the environment. Reference to a future HRA to be developed with indeterminate standards is ridiculous. The permit is silent on use and disposal of common wooden pallets which may accumulate hazardous waste spillage during use---DTSC does not adequately consider this in any permit—and may be recycled outside the facility to other uses without being “cleaned”, thereby becoming a treat to the environment as well as directly to human health. The off-site traffic is addressed, but the permit is silent on one possible aspect traffic/hazardous waste interaction. The facility is distributed over a large area which is divided by public streets. The permit does not assure that transport from point of generation top point of storage within the “distributed” facility does not cross public streets. The seismic evaluation is lacking in description of potential effects of nearby faults. Reference to a ground shaking zonation is not assurance of no potential for significant effect. Corrective action financial assurance is not being required. Other DTSC sites have filed for bankruptcy leaving the public to pay the costs and the cleanups delayed such that waste discharges migrate and contaminate significantly greater amounts of ground water. Moreover, DTSC has delayed corrective action at this facility for over 10 years. The argument that corrective action at Boeing is not related units may not be accurate. Previously, closure of former S-13 tanks revealed constituents in soil and ground water that DTSC neglected as part of closure, buying the facility’s claim that they hadn’t stored these constituents. That issue seems to be rolled over into corrective action. It is my belief that those constituents were in fact from the former tanks. If similar behavior occurs again, then closure would again cross over into corrective action. DTSC cannot have it both ways when it addresses CEQA considerations—this issue extends far beyond the Boeing situation. When it is convenient put closure issues into corrective action but then turn around when it is convenient to get an NOE and say that corrective action doesn’t deal with releases from hazardous waste management units. Please explain more fully the reasons for exemption, with special attention to items 3, 5, 8, 9, and 11. Please explain how an inadequate closure plan is protective of the environment.

I would urge DTSC to require a proper closure plan before it approves this permit. In addition, the NOE should be replaced by a negative declaration since it is clear that the application as it stands is not protective of human health and the environment. DTSC should require corrective action AFR as special conditions of the Permit---unit by unit since that is the way the “Attachment A” is written.

Response No. 20

Comment No. 20 is a summary of all the comments from the commentator. Please see all responses above. Please see Response No. 9 regarding CEQA Notice of Exemption determination, and see the Corrective Action Consent Agreement regarding the S-13 area.

The final permit includes additional permit conditions for revisions to the closure plan to ensure that it is fully adequate to address closure of the hazardous waste management units with proper sampling procedures to ensure that these hazardous waste management units are adequately closed and in accordance with the California Code of Regulations and DTSC guidance.