



FREQUENTLY ASKED QUESTIONS (FAQs) Regarding the Draft Consent Order for Response Action for the Cleanup of Santa Susana Field Laboratory Site

November 3, 2009

INTRODUCTION

In August 2009, DTSC released a draft consent order (1.9) for the cleanup of the Santa Susana Field Lab (SSFL) site that reflected the product of DTSC's negotiations with two of the three parties responsible for cleaning up the site (DOE and NASA). In September, at the request of those two parties, DTSC released an additional draft consent order (2.0) that reflected additional changes to the agreement that DOE and NASA were seeking. DTSC made that draft available to allow the public to comment on its provisions as well, even though DTSC had not agreed to the changes represented in that draft.

This document describes a number of the concerns expressed by the public during the comment period, not only as expressed in writing but also discussed in a number of workshops and conversations with the public. The following provides a synopsis of the concerns and questions raised, and DTSC's responses to those questions, including how the DTSC Draft Response Action Order addresses the concerns.

QUESTIONS & ISSUES RAISED DURING PUBLIC COMMENT PERIOD:

Q. Why wasn't Boeing part of the previously released draft orders?

A. The previous draft consent orders only referred to the U.S. Department of Energy (DOE) and NASA because, at that time, those agencies expressed their satisfaction with the product of their negotiations, and their desire to recommend the proposed draft to their management for approval. DTSC was not in the same position with Boeing, primarily because The Boeing Company (Boeing) was asking for a provision in the order to extend the statute of limitations for challenging SB 990 (see the next question below) which DTSC did not believe was appropriate or acceptable.

DTSC chose to release the draft of the order that did not contain Boeing not because Boeing does not bear considerable responsibility for the cleanup of the site, but because of DTSC's commitment to transparency. DTSC acknowledges and is committed to ensuring that all of the parties responsible for the conditions at this site (Boeing, DOE and NASA) fulfill their responsibilities to clean up the site. Although the draft orders that were shared only represented DOE and NASA, DTSC has continued to negotiate with Boeing with the goal of also reaching agreement with them.

The November 3, 2009, DTSC draft cleanup order proposes to include all three parties as Respondents: Boeing, DOE, and NASA. Regardless of whether DTSC ultimately reaches agreement with all parties in a single agreement or multiple agreements, DTSC is committed to negotiations with all three to achieve commitments from all the parties to clean up the site.

Q. It was explained by Boeing representatives at several of the workshops that the additional element in the order that they were seeking was to indefinitely extend the statute of limitations, an ability they believe the order also gave to DOE and NASA. Have Boeing and DOE reached agreement on this issue, and how does the new order address that problem?

A. **No, the parties have not reached an agreement regarding inclusion of language extending the statute of limitations. The November 3, 2009, DTSC draft cleanup order contains language that DTSC believes balances the concerns of the parties, especially the federal agencies, in a way that does not impact their unique circumstances. The new draft does not, however, contain provisions that would extend the statute of limitations.**

DTSC continues to negotiate in good faith with the responsible parties. In doing so, it seeks to reach an agreement that will provide confidence that the parties will carry out their commitments in the order.

Q. In 2.0, neither DOE nor NASA appears to accept SB990 as the law guiding the cleanup. Why isn't there a provision in 2.0 that acknowledges the site must be cleaned to the standards set by SB990? What does the draft consent order released on October 30, 2009, say about SB990?

A. **DTSC understands that the language in 2.0 created significant concerns regarding the State's authority over the cleanup at Santa Susana and the parties' acceptance of SB990.**

The November 3, 2009 DTSC draft order would have the responsible parties agreeing to comply with State law, to comply with the terms of the order, and to recognize and comply with DTSC's decisions regarding the site and its cleanup.

Q. Draft 2.0 would have called all of the workplans and reports already submitted to DTSC "sufficient." Does that mean that documents that have yet to be reviewed would automatically be approved, regardless of whether they are adequate or whether they meet SB990 standards?

A. **Many workplans and reports submitted by the parties are still being reviewed and revised and have not yet been approved. More importantly, as pointed out, none of the workplans or investigation reports, even those that had been approved, comply with SB 990 requirements.**

The November 3, 2009 DTSC draft order will make it clear that the work that has begun can continue (to avoid unnecessary delays) but that any of the documents that need revisions will be revised and updated as necessary, especially to make them comply with State law (SB990).

Q. Draft 2.0 says that those responsible for the pollution want the site to be cleaned up so that it can be returned to use as soon as it is feasible. Shouldn't the point of any cleanup be the protection of public health and the environment and not returning the land to use as soon as possible?

- A. As DTSC has said on many occasions, DTSC’s highest priority for this site is that it be cleaned up so that it protects public health and the environment, regardless of how the site may be used in the future.**

The November 3, 2009DTSC draft order makes this priority clear.

- Q. Draft 2.0 says the standards detailed in several sections “are consistent and compliant” with SB990. Does limiting that statement to just those sections mentioned mean that SB990 does not apply to the rest of 2.0? Shouldn’t it apply to the entire draft cleanup order?**

- A. We understand that many of the provisions in draft 2.0 create confusion and doubt as to the cleanup standard required and how SB 990 would apply and be complied with.**

The November 3, 2009DTSC draft order contains a number of changes that make it clear that SB990 standards are to be complied with throughout the cleanup and that all work on the site must meet that very important objective.

- Q. Could the use of interim cleanup work mentioned in 2.0 be used to bypass public involvement? Does the new draft consent order address interim response actions?**

- A. DTSC understands the public’s concern, and appreciates the public’s desire to understand what cleanup activities are occurring at the site and to be involved in the decision-making process.**

The November 3, 2009DTSC draft order makes it clear that the interim cleanup work cannot be used to bypass compliance with SB990, and, with the exception of emergency or immediate actions where timing is critical, all work plans will be made available for review and public comment. Any interim cleanup activities that do not achieve SB 990 cleanup standards will be required to be revisited and additional work done to meet those standards.

- Q. Draft 2.0 would require that DTSC consider factors such as emissions caused by the work and the natural restorative power of the land in its cleanup decisions. Some community members fear that requiring these considerations could result in those factors outweighing protection of their health and be used to weaken SB990’s cleanup requirements. Does the new order address the issue?**

- A. DTSC acknowledges that in 2.0 these factors were presented in a way that could allow them to influence cleanup decisions in ways that could potentially weaken the impact on public health in decision-making. DTSC acknowledges these factors are important in understanding and evaluating cleanup options,**

The November 3, 2009DTSC draft order removes these provisions primarily because including them is unnecessary. The cleanup process already requires DTSC to consider this type of information, and DTSC is also required to consider it in evaluating its cleanup decisions under the California Environmental Quality Act.

Q. Draft 2.0 would only “expect” DOE and NASA to seek sufficient federal funds to pay for their part of the cleanup. Hasn’t DTSC said that the responsible parties must pay for the cleanup? Why doesn’t the new order *require* the federal agencies to seek sufficient funds?

A. **The federal agencies are subject to the appropriation of funds from Congress. While they can request funds through the federal budgetary process, they cannot guarantee that they are appropriated those funds.**

The November 3, 2009 DTSC draft order requires the federal agencies to make a good faith effort to seek the funds needed to do the work. More importantly, the new draft order will ensure that the unavailability of federal funds does not stop work at the site by obligating Boeing to continue to clean up (because they, too, are responsible for the contamination) even if the federal funds are not available.

Q. Draft 2.0 includes a provision allowing for change of ownership in the land under certain conditions. Doesn’t that violate SB990? What does the new draft order say about new ownership during the cleanup of Santa Susana?

A. **Version 2.0 contained provisions pertaining to change in ownership, but did not explain how that might have occurred, if at all, before the site was cleaned up. SB990 does prohibit the site to be sold or leased prior to completion of the cleanup.**

The November 3, 2009 DTSC draft order makes it clear that the site cannot change hands before the cleanup is completed except in the very specific circumstance that the soil is completely cleaned up, and the only cleanup still occurring is the long term groundwater cleanup. The new draft also allows for current telecommunications and emergency access leases and agreements to continue because they are not expected to impact the cleanup or cause health concerns.

Q. Is the lack of agreement on the Consent Order delaying the project schedule?

A. **Absolutely not. Boeing, NASA and DOE are continuing to comply with the current 2007 consent order and are performing the work on schedule as required by that order. DTSC is concerned, however, that the longer it takes to reach agreement on the new order, the harder it will be to go back and update or redo any work being performed that is not in compliance with SB990. DTSC is pressing ahead very aggressively to come to agreement with the parties and implement the new order.**

Q. Under 2.0, could imported soils that are more contaminated than those being removed be allowed?

A. **Order 2.0 contained provisions that described conditions under which this might have occurred.**

The November 3, 2009 DTSC draft order makes it clear that any proposal to use imported soils must meet SB 990 standards, and if the Respondents find that

doing so creates insurmountable challenges, to present their reasons why in the Feasibility Study for consideration.

Q. We are concerned that cleanup under SB 990 could completely denude the site. Does DTSC agree?

A. **DTSC has heard this concern expressed many times. It is extremely important to understand that we are nowhere near the point in the characterization and cleanup process where we can anticipate what remedies will be necessary. We won't know until we have a better understanding of where the contaminants are and what the available options are for cleanup.**

Q. What is the interim tolling agreement that DTSC and Boeing agreed to in early October?

A. **The Interim Tolling Agreement gives Boeing and the State more time to negotiate a consent order. Between now and February 15, 2010, Boeing has agreed not to file a lawsuit challenging the constitutionality or validity of SB990. The agreement also set up a very aggressive schedule for DTSC and Boeing (and DOE and NASA) to resolve their issues and come to agreement. It is DTSC's commitment and desire to reach agreement and move forward with implementing an order that accomplishes a cleanup that protects the community and is in compliance with SB 990.**

Q. What are the next steps to be taken?

A. **Here are the future steps DTSC anticipates:**

On or before November 13, Boeing (and DOE and NASA to the extent they are willing to proceed on this schedule) will give to DTSC a detailed list of its disagreements with the November 3, 2009 version of the draft consent order.

Between November 16 and December 18, Boeing, NASA, DOE, and DTSC will meet at least twice to discuss any remaining areas of disagreement. DTSC will hold a public meeting during this time to report on the status of the talks.

On January 8, 2010, DTSC and Boeing, in coordination with DOE and NASA, will release a joint statement regarding open areas of disagreement.

Between January 19 and February 1, 2010, DTSC will hold another public meeting, if necessary, to discuss the order and any remaining issues.

On or about February 1, DTSC and Boeing will determine if there is an agreement in principle.

The interim tolling agreement expires on February 15, 2010.

The interim tolling agreement is posted on the DTSC website at:

http://www.dtsc-ssfl.com/files/lib_correspond/orders/64388_InterimTollingAgreement.pdf