

# CITY OF LOS ANGELES



14 August 2008

Ms. Stephanie Jennings  
NEPA Document Manager  
U.S. Department of Energy  
5800 Woolsey Canyon Road  
Canoga Park, CA 91304

Re: Scoping Comments for SSFL EIS

Dear Ms. Jennings:

The City of Los Angeles, the Committee to Bridge the Gap, and the Natural Resources Defense Council (LA, CBG, and NRDC, respectively) appreciate the opportunity to comment on the proposed scope of the Environmental Impact Statement for the Santa Susana Field Laboratory (SSFL), as solicited in the Department of Energy (DOE) Notice of Intent to Prepare an EIS. 73 Fed. Reg. 28437-41, May 16, 2008. The EIS is being prepared in response to the 2 May 2007 ruling by the U.S. District Court of Northern California in a lawsuit we brought against DOE. *See Natural Resources Defense Council, et al. v. Department of Energy*, 2007 WL 2349288 (N.D. Cal. Aug. 15, 2007).<sup>1</sup>

The bulk of our comments will pertain to proposed scope outlined in the May 16 Notice of Intent. There are, however, several inaccuracies contained in the May 16 Federal Register Notice and one in particular – the description of the partial meltdown of the Sodium Reactor Experiment in 1959 – merits immediate correction before we turn to the substance of our comments.

Specifically, the Federal Register notice asserts that the July 1959 reactor accident involved only melting of fuel cladding, and that, “[r]adioactive gases from the accident were

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<sup>1</sup> For the Court’s ruling on plaintiffs’ Motion for Summary Judgment, *see NRDC et al., v. DOE*, 2007 WL 1302498 (N.D. Cal. May 2, 2007).

contained within the facility. Over a period of two months, the gases were vented and released to the atmosphere. The controlled releases were always below those levels allowed by requirements in existence both then and today.” *See* 73 Fed. Reg. 28438.

To correct the record, the melting was not merely of the cladding, but of fuel *and* cladding. The overheating resulted in formation and melting of an eutectic, *i.e.* an alloy of the uranium fuel slugs and the stainless steel cladding that melted at a lower temperature than either would alone. Radioactive gases – and presumably particulates – were not contained within the reactor, but were intentionally purged during the accident from the core cover gas to outside the reactor, and there were also numerous high radiation levels indicating leakage. Furthermore, the facility had no containment structure, as required of modern nuclear power plants, so radioactivity that escaped the reactor vessel readily reached the environment. The intentional venting over the next two months to the atmosphere may well have included not just the gaseous radionuclides. And there is substantial question about the claim that the releases were controlled and that they were always below levels allowed by regulations in effect then or now. The levels were so high that the monitors went off-scale during the accident and there is thus no way to reliably make such a claim.

The statements made in the Federal Register Notice about this serious accident are in error. We also find it puzzling that these statements are asserted in a Notice of Intent to Prepare an EIS, as they appear to prejudge significant matters that are properly the domain of what will presumably be a critical environmental analysis EIS that has not yet been prepared. Any such reinterpretation of well-established history raises troubling questions as to whether DOE intends to take a hard look, free of bias and pre-judgment, at the environmental impacts of the last several decades and its ongoing operations and cleanup of the site.

The matter is important because if DOE— before even preparing the draft EIS, let alone the final EIS – is pre-determining that its activities at SSFL, including this very serious partial meltdown, resulted in no environmental releases. Such an inaccurate starting point threatens to make the “hard look” NEPA process meaningless. Furthermore, if one were to presume that that the facility allowed no radioactive airborne releases besides permissible levels of noble gases, the scope of the EIS would be impermissibly restricted to just a few potential soil spills. Of course, there were numerous other contamination events besides the SRE accident (e.g., fires in the Hot Lab, releases from burning contaminated wastes in the Sodium Burnpit, and other reactor accidents). The history of the site makes clear the potential for widespread contamination caused in part by airborne releases of materials from numerous events, including the SRE meltdown, that could result in fallout over a wide area, and which would pay no attention to artificial area boundaries, as discussed in the next section.

We now outline our specific concerns and comments on the proposed scope of the EIS.

1. The EIS must address not merely Area IV of SSFL, but any environmental impacts of Area IV activities on the rest of SSFL and offsite areas.

SSFL is divided into four primary areas – Areas I, II, III, and IV – plus northern and southern buffer zones. Radioactive and chemical impacts from Area IV activities were not

restricted to Area IV alone. Indeed, the McLaren-Hart study performed for Rocketdyne, under U.S. Environmental Protection Agency (EPA) oversight, found contamination had reached the Brandeis-Bardin Camp Institute and the Sage Ranch, both offsite.

Monitoring performed for the site's NPDES discharge permit indicates contaminants leaving Area IV in surface runoff. For decades radioactively and chemically contaminated reactor components were burned in open pits in Area IV, with some of that contamination going airborne and falling out over a wide area. Contaminated process water, including water coming up from the ground into reactor vaults and picking up radioactivity, was run through a complex system of reservoirs, ponds, and pipes, eventually piped up to tanks outside Area IV where the water was used to quench rocket test stands after missile and rocket tests, producing huge plumes of contaminated steam that would fall out over wide areas, both on- and off-site. This same contaminated process water appears to have been used for irrigation purposes throughout SSFL. It has been recently discovered in documents obtained by the Department of Toxic Substances control that Area IV materials were taken to the burnpit in Area I and burned there, creating the potential for radioactive and/or chemical wastes from Area IV ending up in Area I, and being dispersed from there in the airborne fallout. Contaminated groundwater, surface water, and soil re-suspension and airborne releases that result in fallout of contaminated material do not "see" artificial boundary lines that may exist on a map and somehow stop their migration. Area IV activities thus have the potential to have impacted far more than Area IV – at minimum the rest of SSFL, and clearly the possibility for impacts offsite as well. Impacts of Area IV activities that extend beyond Area IV, both throughout SSFL and offsite, need to be assessed in the EIS, and remediation alternatives addressed.

2. The Draft EIS must address the cumulative environmental impacts of the history of activities at SSFL.

The EIS needs to carefully consider cumulative impacts to the environment at the site, taking into account the entire history of activities. Such a searching analysis must include but are not limited to the following: the cumulative impacts and risks from both radioactive and chemical contaminants from Area IV *and* the other Areas at the site; and impacts and risks from all environmental media and pathways (these should include analyses for impacts and risks related to surface soil and deeper soil contamination, surface water and groundwater contamination, vegetation, airborne contaminant releases from soil re-suspension, vapor intrusion, consumption of foodstuffs, etc.).

3. The Draft EIS may not segment its analysis and it may not base its plans on inadequate and unlawful standards.

In describing the entire site, the NOI notes that the Santa Susana Field Laboratory consists of Area IV, where DOE activities were primarily based; Area II, owned by NASA and operated by Boeing; Area I, part of which is owned by NASA and part by Boeing; and Area III owned by Boeing; and buffer zones. Work done on each area has contributed radioactive and/or chemical contamination to the other areas of the site. Work performed by Boeing and its predecessors on areas it owns was conducted for and under contract to various federal agencies, including DOE, NASA, and DOD divisions such as the Air Force and Navy.

In describing the jurisdictional setting, the NOI goes on to note that cleanup of chemical contamination at the full SSFL site is subject to the jurisdiction of the California Department of Toxic Substances Control (DTSC) pursuant to the Resource Conservation and Recovery Act (RCRA) and state statutes, and that DOE, NASA, and Boeing are parties to a Consent Order issued by DTSC in August 2007 pursuant to RCRA and the California Health and Safety Code. The NOI notes that an Environmental Impact Report (EIR) will have to be performed related to those matters pursuant to the California Environmental Policy Act. Additionally, the full site is subject to the jurisdiction of the Los Angeles Regional Water Quality Control Board and the requirements of the site's NPDES discharge permit, which have repeatedly been violated by having contamination from the site migrate offsite in surface water releases, and cleanup of onsite contamination is required in order to prevent continued violations. Additionally, as the NOI notes, California Senate Bill 990 (SB990) was signed into law in October 2007, requiring that the cleanup of the site meet specified standards in the law and that DTSC so certify. As the NOI states, "[u]ntil this certification is completed, the land at SSFL cannot be transferred or sold."

Thus, we are puzzled how the proposed scope of an EIS on this site can independently arrive at cleanup standards for chemicals in Area IV or decide what additional sampling may be needed for such chemicals, as both matters appear to be within the jurisdiction of DTSC under its RCRA authority, to which DOE is bound both by RCRA itself and the Consent Order to which it is a party. And given SB990 requirement to sum the risks from chemicals and radioactive contamination, and the authority of DTSC to address both and set up cleanup levels for both consistent with SB990's requirements, similar questions arise about the risks of artificially segmenting (and making entirely illogical) the relevant cleanup standards at the site.

It would be particularly helpful to clarify how a DOE-run EIS dealing with radioactive and chemical cleanup related to Area IV activities can function independently of the EIR the state is to conduct on the chemical cleanup (which, clearly, is under the State's RCRA purview). Does DOE anticipate in its EIS choosing its own chemical cleanup standards and remedies? How can it do that when the RCRA power is delegated to DTSC, not DOE? How can one avoid the risk of an EIS that chooses one set of cleanup concentrations that are in conflict with those imposed by DTSC under RCRA, and to which DOE is bound also by its participation in the Consent Order? This is particularly of concern given the mismatch in schedule between the tasks in the DOE-signed Consent Order – tasks which are to be completed by 2017 – and the schedule currently proposed for the EIS and any subsequent Records of Determination.

Unless significant care is taken, therefore, the EIS faces the risk of being seriously flawed by artificial segmentation. This is one site, with an array of activities undertaken by and/or for various federal entities in various areas of the site, resulting in radioactive and chemical contamination of a range of interconnected environmental media. The failure to coordinate fully and carefully with the state and meet strict, protective public health standards, given its ongoing cleanup authority and review, and with the other federal agencies whose activities contributed to the contamination of the site, and to thoroughly consider the interlocking problems associated with cleaning up all of SSFL, could be problematic and almost certain to run afoul of the law.

#### 4. Timing and Sequencing Considerations were not given full attention

There are some timing and sequencing matters not adequately addressed in the NOI. After initially releasing a draft Gap Analysis that proposed having DOE's EIS contractor perform additional radioactive and chemical sampling to be used in the EIS, DOE has now agreed to have EPA perform the radiological sampling. EPA is to begin with sampling for determining radioactive background levels, and then proceed to a full survey of the site itself. This will all take some time before results are available. The Draft EIS cannot be prepared until those sampling data, and additional chemical data, are finalized, as they are necessary for the analysis of impacts and remedies that is at the core of the EIS process.

As to the toxic materials, DTSC is reviewing draft RCRA Facility Investigation reports (RFI) for chemical contamination, and is likely to identify needs for further work on those RFI reports and additional characterization, including potentially further sampling for background determinations. Only after RFI reports for all of SSFL are submitted, reviewed, revised as necessary with additional work that may be required, and finally accepted, presumably with a public comment process, will a draft Corrective Measures Study (CMS) be prepared, reviewed by DTSC, revised as necessary, made available for public input, revised further, and finalized.

We don't understand the relationship between DOE's plans for an EIS and these other critical activities. The EIS process would appear to require completion of the contamination characterization and probably determination by DTSC of remedies, at minimum for the chemicals, before a draft EIS addressing impacts and remediation alternatives could be prepared. Yet the NOI speaks of issuing the Draft EIS in early 2009, just a few months from now.

We note that that contemplated schedule in itself raises troubling questions about the degree to which DOE intends to faithfully follow NEPA. How can scoping comments meaningfully affect the scope of the EIS if DOE plans to issue a Draft EIS on such a complex matter merely weeks after receiving, let alone analyzing, scoping comments?

Also, in the wake of the recent controversy that erupted when it was revealed that DOE had altered a critical table – the EPA PRG's – in its Gap Analysis, as well as other problems, DOE committed to revising the draft Gap Analysis, and presumably permitting review and comment of the new document. Again, this raises timing questions.

We recognize that DOE now may well be contemplating a schedule different from that suggested in the NOI, but we have no idea what it may be. We believe that these timing and sequencing issues need to be addressed at the outset of this process. For example, does one not need to have in hand the results of the EPA radiation survey and the final chemical characterization that is being done under DTSC oversight before assessing impacts and selecting remedies? How can one do either without having the characterization finally completed so one knows how much contamination there is, of what kind, and where? How can DOE in an EIS determine remedies for chemical contamination, or cumulative risks from radioactivity and chemicals, be it in Area IV or including areas affected by or potentially affecting Area IV, prior to completion of the RFI and CMA processes under RCRA currently underway under DTSC authority? These issues, affecting sequencing, scope, and segmentation, and coordination of the

radiological and chemical cleanup, must be addressed and done so in a fashion that complies with NEPA's "hard look" requirements.

## 5. Consideration of Alternatives

The proposed scope of NOI's description of the proposed alternatives for consideration in the EIS is inadequate.

Under NEPA, an EIS is required to take a "hard look" at alternatives. The alternatives must be meaningful, representing the true range of real options, and they must be identified in a way that is not in fact a pre-ordained outcome.

The fundamental alternatives are not included in the NOI; rather the proposed scope has detailed "non-starter" alternatives that lead automatically to one vaguely described choice, while simultaneously failing to put forth meaningful alternatives .

Alternative 1 is the No Action. Alternative 2 is virtually identical to Alternative 1 – no cleanup at all – but with monitoring. Alternative 3 is undefined "onsite containment" of contamination; Alternative 4 is "offsite disposal of contaminated media"; and Alternative 5 is an unspecified combination of onsite containment and offsite disposal. Since DOE is contractually bound to clean the site up for unrestricted use, and since onsite containment isn't possible anyway, this set of alternatives is essentially meaningless. The site is to be cleaned up. *The issue is to what standards.* And on that central matter, the NOI is completely silent as to alternatives.

The NOI, in Alternatives 3-5, says each alternative would involve containment and/or cleanup "aligned with potential future land use scenarios including, but not limited to, agricultural, residential, and open space." As written—and as read by the public—that statement clearly means that the containment or cleanup will meet standards for agricultural, residential, *and* open space land uses; for all practical purposes, cleaned up to whichever of those land use scenarios produces the lowest permissible remaining contaminant concentration.

The devil is in the details, and those details are not identified in the NOI. In the draft "Gap Analysis," however, DOE has, on the one hand, appeared to define the agricultural land use scenario as consistent with SB990's agricultural/rural residential scenario, which in turn is based on EPA's published Preliminary Remediation Goal (PRG) table for radionuclides based on EPA's default parameters for that land use scenario. Indeed, elsewhere in the GAP Analysis, states directly it is using EPA's radiological PRGs for the agricultural scenario, using EPA's default inputs.

However, as the Committee to Bridge the Gap revealed in its comments on the Gap Analysis, the PRG table actually included in the Gap Analysis had altered virtually every one of EPA's PRG values, relaxing them by orders of magnitude. DOE had apparently redefined the agricultural scenario – and the suburban residential scenario—ignoring all of the EPA default input values. DOE had removed from the agricultural scenario all of the agricultural components

– removing milk, beef, poultry, eggs, and fish and 75% of the fruit and vegetables included in the EPA default assumptions. For the residential scenario, DOE had removed the backyard garden in EPA’s default assumptions.

At the public meetings on the Gap Analysis, DOE promised to fix these problems and use the EPA radiation PRGs and the EPA default parameters for those PRGs for a true agricultural/rural residential land use scenario. We look forward to that being the case.

Even with those matters resolved – cleanup will be to the agricultural/residential land use scenario, using EPA’s default assumptions for its radiological PRGs and using the EPA agricultural radiological PRGs – other matters need to be resolved in the EIS that are not identified in the NOI scope. For example, we presume, although the NOI does not so state, that the cleanup standards and guidance will follow EPA’s CERCLA guidance, as required in the 1995 EPA-DOE Joint Policy on cleaning up DOE nuclear sites consistent with CERCLA, irrespective of NPL status. Thus risk, not dose, will apply; as will CERCLA’s requirement to use the  $10^{-6}$  risk level, and only falling back if necessary and if the nine balancing criteria are met, and then only falling back the minimum necessary. If DOE intends to make a case for cleanup standards for particular radionuclides that exceed the EPA PRG for the agricultural/rural residential scenario using EPA’s default inputs, it needs to do that in the EIS for each radionuclide. Individual proposed background values and detection limits need to be fully identified and addressed in the EIS, for both radioactivity and chemicals. These need to be based on the work of the technical panel including EPA currently meeting on the radioactivity issues, and similar new values for the chemicals (as old background values for the toxic materials were based in large measure on samples taken onsite at SSFL and thus cannot be considered valid background measurements). The actual choice of specific cleanup levels cannot be put off to some post-EIS nebulous process. The key decisions to be made in the EIS are the actual choice of specific cleanup values.

Consideration also needs to be taken of the effect of the cleanup standards not merely on the prospective land uses of SSFL in the future, but land use—agricultural/rural residential—in nearby offsite areas. In other words, if land use just on the other side of the SSFL boundary is agricultural/rural residential, the land use on the SSFL side of the boundary is not in itself dispositive, as one must protect the people and environment a few feet on the other side of the boundary line as well.

Also, we presume the cleanup standards will be “not to exceed” levels—i.e., if one finds contamination above the cleanup level, one cleans it up. Averaging a sample location that exceeds the cleanup limit with areas that are below the limit so as to not clean up contamination found would be unacceptable. If a child playing in a backyard is exposed to elevated radiation, that should not be permitted because a few acres away there are places with radiation that is not elevated.

And when multiple contaminants are found (e.g. several radionuclides, or radionuclides and chemically toxic materials), or exposure possible through multiple pathways, the resulting individual cleanup levels need to be adjusted downward so as to assure that the cumulative risk from all contaminants and pathways is at  $10^{-6}$  or as close to that level as feasible.

## SB990

DOE has requested that we suggest language for use as the Preferred Alternative, and we do so here, along with a variant of it as a second alternative, both of which would comply with SB 990. Certain other matters (e.g., groundwater, final remedy for the Former Sodium Burnpit) that need to be addressed in the alternatives are discussed later in our comments.

We believe that the Preferred Alternative in the EIS should be meeting the standards in SB990, as set forth below. Resistance to compliance with the requirements of SB990 would be counterproductive to the progress of the cleanup while entities resolve attempt to resolve the dispute. And at the end of the day, whether or not DOE believes itself subject to the terms of SB990, the site would still have to be cleaned up to SB990. Two cleanups, one to a lesser DOE standard and then thereafter to a second, more exacting cleanup performed by a private party, the landowner, makes no sense environmentally, economically, or otherwise.

Although we believe DOE must comply with SB990, we also believe this issue need not be addressed in the EIS. By voluntarily choosing to comply with the cleanup standards in SB990 as the Preferred Alternative, this potential issue becomes moot. We strongly urge DOE to adopt such a course as the preferred alternative.

Specific language could read as follows:

### *Preferred Alternative*

*Cleanup shall meet the standards and other requirements of SB990. In particular, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant. In the case of radioactive contamination, the department shall use as its risk range point of departure the Preliminary Remediation Goals (PRG) issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.*

*Cleanup shall aim at a cumulative cancer risk of  $10^{-6}$  (one in a million) from radioactive and chemical contaminants together; however, if well established background levels or the best detection limits reasonable exceed the  $10^{-6}$  value, the cleanup level for that contaminant will not be set below those background levels or detection limits. In practical effect, this alternative would involve setting the cleanup level for individual radioactive contaminants at the greater of the following: the EPA published agricultural default PRG for radioactivity, background, or the detection limit. For chemicals, for which EPA has not published agricultural default PRGs,  $10^{-6}$  values for individual contaminants will be calculated using the same default assumptions upon which EPA based its default agricultural/radiological PRGs, and the cleanup level will be the greater of the  $10^{-6}$  level, background, or the detection limit. When multiple contaminants are present, the "sum of the fractions" rule will be employed to adjust downward individual cleanup levels so as to maintain acceptable aggregate risk, but in no case will cleanup below background*

*or detection limits be required. For chemicals, hazards in addition to cancer will also be considered.*

*The background levels and detection limits for radioactivity shall be those established by EPA in its background radiation study for the site being prepared pursuant to the 2008 Inter-Agency Agreement with DOE and in conjunction with the Technical Working Group on those matters convened by DTSC. Similar processes involving the community will be used to establish detection limits and background values for chemicals via measurements in appropriate offsite locations. The proposed background and detection limits, and the basis for them, are include in Tables \_\_ and Appendix \_\_ of the Draft EIS, for public review and comment.*

*The land use scenarios used in establishing cleanup criteria will be, as indicated above, the rural residential (agricultural) scenario and the residential (suburban residential), whichever produces the lowest concentration for permissible exposure for the contaminant in question. In defining each scenario, the EPA default assumptions used in its radiological PRGs for those scenarios will be employed. The cleanup levels will be “not to exceed levels,” i.e., if contamination is found above that level, it will be cleaned up. Averaging with less contaminated sample locations will not be permitted.*

*Variant 1:*

*Same as the Preferred Alternative, but with the following additional provision:*

*Cleanup shall aim for a cumulative cancer risk of  $10^{-6}$  (one in a million) from radioactive and chemical contaminants together; however based on the nine CERCLA balancing criteria, if necessary for a particular contaminant, the cleanup level may fall back from  $10^{-6}$ , but only the minimum degree necessary and in no case resulting in a cumulative risk greater than  $10^{-4}$ . Cleanup below background levels or detection limit will not be required. The contaminants for which the Department is proposing falling back from the primary cleanup standard (the  $10^{-6}$  level, background, or the detection limit, whichever is greater) are identified in Table \_\_\_ of the Draft EIS, including the proposed cleanup level and associated estimated risk. The analysis of the nine balancing criteria to justify the proposed fallback is found in Appendix \_\_\_.*

## 6. Other Issues

**Groundwater:** Characterization of groundwater contamination and contemplated remedies need to be addressed in depth. At present there is ambiguity as to whether EPA’s radiation monitoring work is to include groundwater. We believe it must. We also are concerned about the practice over two decades of filtering water samples, which reduces the measured value in the filtered water, and of not saving and measuring the filter. Measurements over a number of quarters are needed of water either without filtering or with adding the contamination found in the filtered water to the amount found on the filter. Resolution of the tritium plume and the numerous gross alpha exceedances that have been reported even with filtering needs to occur. And thorough review of how to remediate the chemical and radioactive contamination found in the groundwater needs to be undertaken in the EIS.

**Sodium Burnpit:** The sodium burnpit, in which radioactively and chemically contaminated sodium-coated reactor components were, in violation of the requirements in place at the time, burned/reacted in water-filled pits, resulted in extensive contamination of the burnpit and surrounding areas. An “interim remedy” was undertaken a decade ago, removing some soil and replacing with nearby soil, but leaving the contamination in the fractures in the bedrock beneath the soil to be addressed in a final remedy later. That contamination can continue to migrate into the groundwater, exacerbating its pollution. That final remedy needs to be considered in the EIS.

**Area IV Landfill:** Given that radioactively and chemically contaminated wastes ended up being burned in the Sodium Burnpit when not supposed to be, as discussed above, there is a similar concern that such wastes could have ended up in the Area IV landfill. The landfill rests above a ravine that drains into Simi. Remedy for the landfill problem—including possible exhumation—needs to be considered, particularly in light of how difficult it would be to adequately characterize it. If radioactive wastes are buried here and there in it, the likelihood of a probe finding it may be small, but the problem posed may be large.

**Contaminated Process Water Pathways:** Contaminated water was pumped into a complex system of reservoirs, tanks and piping and used for a variety of purposes across the property—irrigation, quenching rocket test stands, etc. The impacts and necessary remedies for those impacts, given the prospect of spreading contamination well away from the initial area in which the water was contaminated, need to be addressed.

**Characterization and Disposal of Wastes:** The NOI asserts in its description of its proposed alternatives that radiological wastes would go to “an approved, out of state disposal facility” and “non-radiological” wastes would go to “approved disposal or treatment facilities.” The NOI does not define “radiological,” “approved,” or “treatment.” Approved by whom? Does one mean a “low-level” radioactive waste (LLRW) disposal facility licensed under 10CFR61? Or merely approved by the project proponent, DOE, even if not licensed to take radioactive wastes? SSFL has a troubled history of calling radiologically contaminated wastes “non-radiological wastes” and sending them to local municipal landfills neither licensed nor designed for radioactive wastes, or sometimes chemical waste dumps also not licensed or designed for such radwaste. And what is meant by “treatment”? The use of the “Tennessee loophole” by which wastes are sent there and end up in local garbage dumps not licensed for radioactive waste? Furthermore, how would wastes be characterized as “radiological”? In the past, DOE has tried to claim wastes that had added radioactivity (i.e., contamination) were not radioactive waste and could be sent to schools, farms, children’s zoos, etc. This matter must be addressed directly, and any wastes with measurable added radioactivity need to go to licensed LLRW or mixed waste disposal sites.

**Negotiations Between the State, Boeing, and Community Representatives:** As you know, under the auspices of the Secretary of Cal-EPA, negotiations have been underway for a number of months between Boeing, the State, and community representatives on a global resolution of cleanup issues. DOE, U.S. EPA, and NASA have been attending as well. One of the most productive things DOE could do in its NEPA process is to participate actively and cooperate thoroughly with efforts to reach this overall agreement, go along with what is reached between the primary parties, and get this long controversy behind us.

**CERCLA and ESA:** The EIS should include having DOE live up to the 1995 Joint Policy and thus following EPA CERCLA guidance for the cleanup. The site is zoned RA, residential agriculture, and under CERCLA guidance should thus be cleaned up to that land use scenario, as close to  $10^{-6}$  as possible. This would in essence follow SB990, but on an independent basis. Additionally, the EIS should include careful consideration of ESA matters, including protection of endangered and threatened species.

**Compliance with Regulations and Statutes:** The NOI contains a puzzling passage in describing how it will present alternatives. It says it will discuss “whether legislation or regulatory modifications may be needed to implement the alternative under consideration.” In general, we believe DOE should be complying with regulation and statute, not proposing alternatives that would violate them. And when statute exists, such as SB990, rather than considering ways to resist it, it should choose to clean the site up according to its standards, as a matter of policy if for no other reason, but also as a way of avoiding ending up in court over refusing to comply with applicable law.

**Thorough Consideration of Offsite Impacts:** The facility is located on a hilltop, so contamination on the property “wants” to move offsite, via wind and water, to the areas below. Those areas are populated, in part with rural residential uses, and whatever land use one assumes on top of the hill, the people on the other side of the site boundary need to be protected as well. And the long time periods for which some of these contaminants are dangerous need to be taken into account.

## 7. Conclusion

For more than half a century the federal government engaged in activities at SSFL that caused significant and lasting damage to the environment, both on- and off-site. For years, DOE has resisted full compliance with the environmental laws of the land, both federal and state. The Federal Court’s careful ruling in *NRDC v. DOE*, WL 2349288 (Cal 2007) provides DOE the opportunity to change course, perform a thorough cleanup that protects public health and the environment in California for the long-term, and get this controversy behind it. We urge DOE to get on board; to not resist cleanup to SB990 requirements; to perform a full and thorough EIS that considers the range of impacts of its activities on all of SSFL and neighboring areas, as well as the cumulative impacts of contamination throughout SSFL; and to fully coordinate with the other entities involved so we have a thorough, comprehensive cleanup of SSFL that finally protects the public and the environment. DOE now has a chance to do it right, and we strongly urge the Department to seize that opportunity. Thank you for your consideration of these

comments. If you have any questions, please do not hesitate to contact us at the numbers and addresses listed below.

Sincerely,

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