

1 STATE OF CALIFORNIA  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
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6 Santa Susana Field Laboratory ) RE: ORDER PETITION FOR REVIEW  
7 Area IV, Simi Valley )  
8 Ventura County, California )  
9 EPA ID No. CAD 000 629 972 )  
10 ) California Code of  
11 ) Regulations, Title 22  
12 ) Section 66271.18  
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14 **I. INTRODUCTION**

15 On February 16, 2006, the Department of Toxic Substances Control  
16 (Department) approved a Class 2 Permit Modification Request from the Boeing  
17 Company (Boeing) dated January 23, 2004 which revises the Closure Plan for the  
18 Hazardous Waste Management Facility (HWMF, Building 029 and Building 133) located  
19 in Area IV of the Santa Susana Field Laboratory, Simi Hills, Ventura County. On March  
20 17, 2006, Dave Einhorn, ASA (Petitioner) filed a petition for review (appeal) of the  
21 Department's decision. This Order denies Petitioner's request for review, which appeal  
22 provisions of the Closure Plan, relating to waste disposal options of decommissioned  
23 waste from the HWMF. This denial constitutes the Department's final permit decision  
24 and the denial is effective on the date of mailing of this Order pursuant to California  
25 Code of Regulations, title 22, section 66271.18 (d).  
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27 **II. JURISDICTION**

28 The Department has jurisdiction over hazardous waste facility permits and the  
imposition of conditions on such permits pursuant to the California Health and Safety

1 Code section 25200 et seq., and California Code of Regulations, title 22, section  
2 66271.18.

### 3 **III. BACKGROUND**

#### 4 **A. FACILITY HISTORY**

5 The United States Department of Energy (DOE) and Rockwell International  
6 Corporation, later replaced by The Boeing Company, operated the Hazardous Waste  
7 Management Facility (HWMF) under a Hazardous Waste Facility Permit (Permit) issued  
8 by the Department of Toxic Substances Control (Department) under the authority of the  
9 Resource Conservation and Recovery Act (RCRA). The Permit became effective on  
10 November 30, 1993 and expired on November 30, 2003. The permit conditions remain  
11 enforceable until closure of the HWMF has been certified.  
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13 The Permit authorized storage and treatment of alkali metals such as sodium  
14 metal and potassium metal. The HWMF consists of two separate sub-facilities:  
15 Building 029 and Building 133, both located in Area IV of the Santa Susana Field  
16 Laboratory. Building 029 was used to store alkali metal waste and contaminated  
17 equipment generated from various research projects. When enough waste was  
18 available, the waste was transported to Building 133 for treatment. Some of the  
19 contaminated equipment was cut down to size. Then, the waste and contaminated  
20 equipment were placed in a steel-lined chamber where it was heated with natural gas  
21 and then sprayed with water. The process produced a caustic (high pH) wastewater  
22 primarily potassium hydroxide (KOH) and sodium hydroxide (NAOH) The wastewater  
23 was collected in an open, below-ground tank and then pumped to an above-ground  
24 tank. The wastewater was transferred to a tank truck for offsite disposal. Boeing  
25 notified DTSC on July 21, 1998 that HWMF operations would cease immediately and  
26 that Boeing would submit a revised Closure Plan. The Department reviewed and  
27 commented on several draft Closure Plans. On January 23, 2004, Boeing submitted a  
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1 revised Draft Closure Plan and formally requested a Class 2 Permit Modification.  
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3 **B. PERMIT DECISION**

4 In 2004, Boeing submitted a Class 2 Permit Modification Request (Request) to  
5 the Department. The Request proposed updates and modifications to a previously  
6 approved 1992 Closure Plan for the HWMF (Building 029 and Building 133). The  
7 Closure Plan includes: 1) decontaminating existing structures in place, including  
8 buildings, tanks, concrete pads and asphalt pavement; 2) demolishing existing  
9 structures including buildings, tanks, concrete pads and asphalt pavement; 3) testing  
10 underlying soils for possible contamination; 4) excavating contaminated soils (if found)  
11 and backfilling (as required) with soil from an on-site borrow area; and 5) grading the  
12 area for possible future use.  
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14 A 60-day Public Comment Period occurred from January 30 to March 30, 2004  
15 which allowed the public to review and comment on Boeing's Request. Boeing held a  
16 public meeting on March 15, 2004. Upon public request, the Department extended the  
17 Public Comment Period by 30 days, ending on April 30, 2004.

18 After the Public Comment Period for the Request, the Department developed an  
19 Initial Study under the California Environmental Quality Act (CEQA). The CEQA Initial  
20 Study investigates potential environmental impacts of the proposed Closure Plan.  
21 Based on the Initial Study, the Department decided to prepare a draft CEQA Mitigated  
22 Negative Declaration which declared the project will not significantly impact the  
23 environment with the addition of mitigation measures. For the Closure of the HWMF,  
24 mitigation measures were placed to provide additional protection to rare plant species  
25 known to be in the area of the soil borrow pit. A Pubic Comment Period for the draft  
26 CEQA Mitigated Negative Declaration occurred from December 2, 2005 to January 17,  
27 2006.  
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1 On February 16, 2006, the Department approved the Closure Plan for the  
2 HWMF, issued the final Mitigated Negative Declaration and issued a Response to  
3 Public Comments Document that included responses to comments that were received  
4 during the Public Comment Period.

5 **C. PERMIT APPEAL PROCESS**

6 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the  
7 period for filing a petition for review (appeal) of this final Permit decision ended on  
8 March 20, 2006. A petition for review was received on or before that date from  
9 Petitioner. Pursuant to California Code of Regulations, title 22, sections 66271.14(b)(2)  
10 and 66271.15, those provisions of the permit renewal decision affected by the appeal  
11 comments were stayed until the Department completed its review of the appeal to  
12 determine which, if any, of the issues raised in the appeal meet the criteria for review  
13 pursuant to California Code of Regulations, title 22, section 66271.18.  
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15 **IV. STANDARD OF REVIEW**

16 California Code of Regulations, title 22, section 66271.18(a), provides that any  
17 person may petition the Department for review of the final permit decision, but only with  
18 respect to those conditions in the final permit decision that differ from the draft permit  
19 decision. In addition, those persons who filed comments, or participated in the public  
20 hearing, on a draft permit decision (during the public comment period for the draft permit  
21 decision) may petition the Department to review any other condition of the final permit  
22 decision, to the extent that the issues raised in the petition for review were either: (i)  
23 also raised during the public comment period for the draft permit decision, including the  
24 public hearing, or (ii) were not reasonably ascertainable at the time of the public  
25 comment period.  
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1 Section 66271.18(a) also provides, in pertinent part, that:

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3 "The petition shall include a statement of the reasons supporting  
4 that review, including a demonstration that any issues being raised  
5 were raised during the public comment period (including any public  
6 hearing) to the extent required by these regulations and when  
7 appropriate, a showing that the condition in question is based on:

8 (1) a finding of fact or conclusion of law which is clearly  
9 erroneous, or

10 (2) an exercise of discretion or an important policy consideration  
11 which the Department should, in its discretion, review."

12 California Code of Regulations, title 22, section 66271.12, specifies the extent to  
13 which issues are required to be raised during the public comment period for a draft  
14 permit decision. Specifically, this section states that "All persons, including applicants,  
15 who believe any condition of a draft permit is inappropriate or that the Department's  
16 tentative decision to deny an application or prepare a draft permit is inappropriate, must  
17 raise all reasonably ascertainable issues and submit all reasonably available arguments  
18 and factual grounds supporting their position".

19 In this Permit decision process, the Petitioner submitted comments on the draft  
20 permit modification decision during two Public Comment Periods. Therefore, Petitioner  
21 has standing to petition for review of any issues raised during the public comment  
22 period for the draft Permit modification decision, as well as any issues that pertain to  
23 changes from the draft to the final Permit decision and issues that were not reasonably  
24 ascertainable during the public comment period for the draft Permit decision.

## 25 **V. FINDINGS**

### 26 **Appeal Comment (a)**

27 Petitioner protests Boeing's plan to use the Bradley Landfill in Sun Valley,  
28 California to dump "miscellaneous debris" from the closure of the HWMP.

### **Response:**

The Department finds that Petitioner has failed to meet the burden to  
establish that the Department should grant a review of this issue pursuant to the criteria

1 for review set forth in California Code of Regulations, title 22, section 66271.18(a),  
2 because Petitioner has failed to demonstrate that this is a permit condition and that it is  
3 based on a finding of fact or conclusion of law which is clearly erroneous or an exercise  
4 of discretion or an important policy consideration which the Department should, in its  
5 discretion, review.

6 In the Response to Public Comments Document for this permit decision, the  
7 Department stated that closure of the HWMF involves the demolition and off-site  
8 disposal of all structures, concrete pads, asphalt paving and attached equipment.  
9 Section 8 of the Closure Plan discusses the demolition and sampling of the debris. In  
10 addition, an attached Transportation Plan discusses the off-site disposal options in  
11 Section 4 "Destination of Waste/Material".

12 Radioactive surveys of the HWMF do not indicate any debris will be considered  
13 "mixed waste" or low-level radioactive debris. However, any facility that once handled  
14 radioactive materials would be classified as "decommissioned waste", regardless of  
15 survey results, and will be subject to additional disposal requirements outside the  
16 jurisdiction of DTSC.

17 Parts of both Building 29 and Building 133 will be designated as  
18 "decommissioned waste". During the 1994 Public Comment Period, the Closure Plan  
19 and Transportation Plan indicated that all decommissioned waste would be sent to the  
20 Bechtel Nevada Test Site in Mercury, Nevada. The Transportation Plan was later  
21 revised for the 2005-06 CEQA Public Comment Period to provide that decommissioned  
22 waste will be sent to a Class I hazardous waste landfill, most likely the Chemical Waste  
23 Management's Kettleman Hills Facility. Both of these disposal options are in step with  
24 current regulations and California Executive Order D-62-02 (Davis, September 2002.)

25 Since the Bradley Landfill is not authorized to receive decommissioned waste,  
26 Boeing is prohibited from sending decommissioned wastes from the HWMF to the  
27 Bradley Landfill. Petitioner's contention that the waste from the HWMP will be sent to  
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1 the Bradley Landfill under the Closure Plan approved by DTSC in this modification is  
2 incorrect. The Closure Plan instead indicates that decommissioned waste will be sent  
3 to a Class I hazardous waste landfill, not the Bradley Landfill. Therefore this permit  
4 modification decision will not result in decommissioned wastes being sent from the  
5 HWMF to the Bradley Landfill.

6 This denial of review constitutes the Department's final permit decision on this  
7 issue and this decision shall be effective on the date of mailing of this Order denying  
8 review on the merits.

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10 **Appeal Comment (b)**

11 Petitioner contends that until Boeing undertakes a complete investigation and  
12 cleanup of "nuclear waste dumped" at the Bradley Landfill in Sun Valley, Boeing should  
13 not be allowed to continue with dumping at the Bradley Landfill.

14 **Response:**

15 The Department finds that Petitioner has failed to meet the burden to establish  
16 that the Department should grant a review of this issue pursuant to the criteria for  
17 review set forth in California Code of Regulations, title 22, section 66271.18(a), because  
18 Petitioner has failed to demonstrate that this is a permit condition and that it is based on  
19 a finding of fact or conclusion of law which is clearly erroneous or an exercise of  
20 discretion or an important policy consideration which the Department should, in its  
21 discretion, review.

22 As discussed above, the Closure Plan and Transportation Plan state two  
23 disposal options for decommissioned waste. Neither of these options allow for the  
24 disposal of decommissioned waste at the Bradley Landfill. In addition, any closure or  
25 cleanup of the Bradley Landfill itself is unrelated to the closure of the HWMF at Boeing.  
26 Finally, the closure of the HWMF at Boeing should not be halted nor impeded by any  
27 potential closure or cleanup of the Bradley Landfill.

1 This denial of review constitutes the Department's final permit decision on this  
2 issue and this decision shall be effective on the date of mailing of this Order denying  
3 review on the merits.

4 **VI. ORDER**

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6 The Department finds that the Petitioner has failed to demonstrate that the issues  
7 raised in these appeal comments meet the criteria for review. Therefore, the  
8 Department is denying Petitioner's petition for review of DTSC's approval of the Class 2  
9 Permit Modification Request pertaining to the Closure Plan for the HWMF. This Order  
10 constitutes the Department's final decision on the merits of Petitioner's appeal of this  
11 permit decision. The temporary stay of those provisions related to the issues addressed  
12 in Appeal Comments (a) and (b) is hereby lifted, pursuant to California Code of  
13 Regulations, title 22, section 66271.15 (a), and those permit provisions are immediately  
14 and fully effective and enforceable.

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17 DATED: Decemeber 22, 2006

Signed by Watson Gin

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Watson Gin, P.E.,  
Deputy Director  
Hazardous Waste Management Program  
Department of Toxic Substances Control