

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
13)

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.

12 The Permit authorized storage and treatment of alkali metals such as sodium
13 metal and potassium metal. The HWMF consists of two separate sub-facilities:
14 Building 029 and Building 133, both located in Area IV of the Santa Susana Field
15 Laboratory. Building 029 was used to store alkali metal waste and contaminated
16 equipment generated from various research projects. When enough waste was
17 available, the waste was transported to Building 133 for treatment. Some of the
18 contaminated equipment was cut down to size. Then, the waste and contaminated
19 equipment were placed in a steel-lined chamber where it was heated with natural gas
20 and then sprayed with water. The process produced a caustic (high pH) wastewater
21 primarily potassium hydroxide (KOH) and sodium hydroxide (NAOH) The wastewater
22 was collected in an open, below-ground tank and then pumped to an above-ground
23 tank. The wastewater was transferred to a tank truck for offsite disposal. Boeing
24 notified DTSC on July 21, 1998 that HWMF operations would cease immediately and
25 that Boeing would submit a revised Closure Plan. The Department reviewed and
26 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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19 Watson Gin, P.E.,
20 Deputy Director
21 Hazardous Waste Management Program
22 Department of Toxic Substances Control
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