December 21, 2004

Mr. Watson Gin, P.E.
Deputy Director
Hazardous Waste Management Program
Department of Toxic Substances Control
1001 I Street, P.O. Box 806
Sacramento, California 95812-0806

ADMINISTRATIVE APPEAL OF DECISION ON APPROVAL OF THE CLASS II PERMIT MODIFICATIONS FOR TWO POST-CLOSURE HAZARDOUS WASTE FACILITY PERMITS COVERING FACILITIES IN AREA I, III [EPA ID NO. 093 365 435] AND AREA II [EPA ID NO. 180 009 010] AT THE SANTA SUSANA FIELD LABORATORIES, BOEING COMPANY [EPA ID NO. CAD 990 665 432]

Dear Mr. Gin:

This letter is a petition, in accordance with the California Code of Regulations, title 22, section 66271.18 for review of the November 19, 2004, decision for approval of the request by Boeing Company (Boeing), dated May 28, 2003, for a class 2 permit modification covering the post-closure permit for Area I and III [PERMIT NO. PC-94/95-3-02] and the post-closure permit for Area II [PERMIT NO. PC-94/95-3-03] at the Santa Susana Field Laboratory (SSFL).

The Department of Toxic Substances Control (DTSC) has apparently made significant changes from the original version of its decision, circulated for public comment from June 3 to August 4, 2003. DTSC states in Attachment A to the Letter of Determination for the class 2 permit modification request that "...following determinations and/or modifications..." were developed **after** "...DTSC

reviewed the information submitted with Boeing's request, information available in the Administrative Record, and public input received during the public comment period." Although the differences between before/after changes is not clear, for purposes of this appeal it is assumed that this means the material cited under the subheading of **DTSC MODIFICATION**. Because I did not comment upon the original public notice, I restrict myself to those items that appear to have been developed following the public comment period.

INAPPROPRIATE USE OF NOTICE OF EXEMPTION FOR CLASS 2 PERMIT MODIFICATION FOR THE TWO BOEING HAZARDOUS WASTE FACILITIES

The use of a notice of exemption for this discretionary action on the part of DTSC is inappropriate. DTSC is making significant changes to the monitoring and response programs for both Boeing facilities. No basis has been provided as to why reduced sampling frequencies, for example, would not jeopardize early detection and response to additional releases form the units to media or from one medium to another---such as from the fractured bedrock into groundwater. In other words, the impacts of the proposed permitted activity are unknown at the time of the permit decision. I petition that DTSC reconsider its use of a notice of exemption.

INAPPROPRIATE AND DECEPTIVE DTSC POLICY OF CHANGES TO THE GROUNDWATER SAMPLING FREQUENCY FOR POINT OF COMPLIANCE, BACKGROUND, DETECTION, EVALUATION, AND CORRECTIVE ACTION MONITORING AND RESPONSE PROGRAMS

The DTSC has a policy of setting sampling frequencies at longer intervals than a quarterly frequency, which is the minimum sampling frequency allowable for all media covered under California Code of Regulations, title 22, chapter 14, article 6. It exercises this again throughout the two post-closure permits:

> p. 3, ¶ 2 - **[POINT OF COMPLIANCE]** (06)
> **".....may be changed to semi-annual...."**

p. 4, ¶ 4 - [BACKGROUND] (11) **"Background wells shall them be tested for Table 3 and Table parameters annually."**

p. 8, ¶ 1 - (30) [APPENDIX IX] **"...on the frequency and...."** listed in Table 2.

p. 12, ¶ 2 - (34) **[DETECTION MONITORING] "...may be reduced to semi-annual..."**

p. 13, ¶ 4 - (37) **[DETECTION MONITORING] "...may be sampled semi-annually...and annually...**
p. 15, ¶ 4 - (41) **[EVALUATION MONITORING] "...may be sampled semi-annually..."**

p. 16, ¶ 5 - (43) **[EVALUATION MONITORING] "..on a semi-annual basis..."**

The regulations are clearly being abused and misinterpreted in a fashion contradictory to the intent of Health and Safety Code, in that DTSC interprets these regulations as allowing the selection of any groundwater monitoring frequency it so chooses to require in operating and post-closure permits and corrective action. The mechanism of a variance exists in the regulations and statutes if DTSC has a reasonable basis for reducing the groundwater monitoring frequencies. California Code of Regulations, title 22, section 66264.97(e)(12)(states that B) (1) either four samples be obtained **at least** semi-annually from each monitoring point or (B)(2) that not less than one sample quarterly be obtained form each monitoring point. This applies to each medium. The Department shall require more frequent samples as necessary. With the ground water medium, such increases in frequency shall be based on rate of groundwater flow, etc. DTSC has twisted this language to carve out a special exemption for ground water as opposed to other media where

somehow groundwater sampling can become less frequent. This is inappropriate and contrary to the meaning and intent of the regulations. If DTSC doesn't like a regulation, it should engage in rulemaking not circumvention.

I appeal each and every instance where the groundwater sampling frequency has bee arbitrarily reduced. These actions have the effect of undercutting existing regulations to specify particular environmental monitoring details. In doing so, DTSC policy of sampling frequency reduction becomes an underground regulation. I petition that DTSC either issue a variance from the existing regulations [California Code of Regulations, title 22, section 66264.97(e)(12)(B)(1)] or rewrite the permit to include the required quarterly monitoring fro the wells in the various monitoring and response programs. I also petition that DTSC submit this question of this continuing subversion of existing regulations by policy to the Office of Administrative Law for determination.

SPECIFICATION PROBLEMS

p. 11, ¶ 3 - (32)- DTSC fails to provided specification---it merely states that some specification exists in California Code of Regulations, title 22 66264.97 (b)(4) through (b)(7). However, California Code of Regulations, title 22, section 66270.31 (a) states in part, that **all** permits shall specify "requirements concerning proper use, maintenance, and installation, when appropriate, of monitoring

equipment or methods..." and 66264.91(b) which states, in part, "The Department shall specify in the facility permit the specific elements of each monitoring and response program." By reducing the amount of specification, DTSC contravenes its own regulations again. More detail, rather than less should be provided. I petition that adequate detail be provided in the permit as to what the Permittee must do to properly construct wells, etc.

WQSAP USAGE

p. 12, ¶ 4 - (35) I petition that DTSC discard the use of WQSAP when a facility is being regulated under California Code of Regulations, title 22, section 66264. This term is not mentioned therein. The regulations clearly refer to monitoring and response programs under article 6, e.g. California Code of Regulations, title 22, section 66264.91(a).

APPENDIX IX TWISTS

p. 8, ¶ 8 - (29) - DTSC mistakes what the regulations mean by "affected medium". In the second of two paragraphs, DTSC states that "Appendix IX sampling is not required for monitoring points outside of the affected medium until and/or unless releases from a regulated unit reach or is suspected to have reached the monitoring point." The regulations say nothing like this. Medium refers to either ground water, surface water, or soil-pore liquid. Therefore affected medium means if ground water is contaminated. The medium in that instance is **all** ground water not just ground water where monitoring points have exhibited contamination. DTSC is attempting to artificially restrict the

California Code of Regulations, title 22, (section 66264.99(e)(6)which states that "the owner or operator shall analyze samples from all monitoring points in the affected medium." This means all wells that are called out as monitoring points not just the ones that are dirty. DTSC is attempting another underground regulation to save Boeing money with respect to the expensive Appendix IX monitoring. DTSC should use the variance process rather than trying twist and contort regulations in an end run. I petition that DTSC remove the last sentence from the paragraph here, and go through the rest of the Appendix IX conditions and properly apply the regulations.

FAILURE TO ADEQUATELY ADDRESS ENVIRONMENTAL MEDIA

P.11, ¶6 to 8 - (33) DTSC has removed the unfortunate impression in the original permits that ground water is the only medium to which environmental monitoring applies at this facility. It is nice to include surface water and soil-pore liquid. However, DTSC cites only the vadose zone monitoring that deals with soil-pore liquid There is something wrong with the decision of DTSC to apparently neglect other media such as soil-pore gas---especially given the constituents such as trichloroethylene. Specifically, if ground water has not been impacted but is threatened by continuing waste discharge, it would be prudent to have instituted vadose monitoring to determine if contaminants in the landfill are in fact migrating towards ground water. If so, actions should then be taken to prevent discharge into ground water or the WDRs need to reflect the amount of such discharge that will be allowable (a seeming conflict with the anti-degradation policy). Vadose zone monitoring is the early warning system

is most preferable----groundwater monitoring is in effect a backup.

Damning as well is the failure of DTSC to provide the soil-pore liquid and surface water protection specifications, etc. required by the regulations for these media. For example, DTSC fails to specify concentration limits for either surface water or soil-pore liquid, as required by California Code of Regulations, title 22, section 66264.94(b), which states in part, "...each concentration limit and each statement shall be specified in the facility permit."

In addition to petitioning DTSC to include in the permit modification those elements required by the regulations but missing from the original permit with respect to the additional media---surface water and soil-pore liquid [see California Code of Regulations, title 22, section 66264.94(b), 66264.92(a),66264.91(b), 66264.93, 66264.95(a), 66264.98(d), (e), (f), (g), 66264.99(e)(2) and (3), 66264.100(b), (c), (e),]. The permit modification(s) is incomplete. I also petition DTSC to sort out the issue of gas-phase monitoring since that medium appears totally ignored for the vadose zone.

DTSC has avoided pore liquid and pore gas monitoring in fractured bedrock. DTSC continues to ignore that under Porter-Cologne, it has no right to allow discharge or threat of discharge into ground water from its waste units. Detection monitoring in ground water is not an acceptable substitute for vadose zone monitoring which may lead to prevention or amelioration of discharge into ground water. I petition that a pore liquid monitoring response program (MRP) be included in the permit for the unsaturated fractured rock and that a pore gas program be added in accordance

with article 17.

FAILURE TO SPECIFY POTENTIAL ENVIRONMENTAL CONTAMINANTS FOR THE VADOSE ZONE AND SURFACE WATER MONITORING AND RESPONSE PROGRAMS

P.11, ¶4 TO ¶8 - (33)A groundwater protection standard (GWPS) is required to be established by DTSC under title 22 CCR §66264.92 which shall consist of the list of constituents of concern (COCs) [title 22 CCR §66264.93], concentration limits [title 22 CCR §66264.94], and the points of compliance (POCs) and all monitoring points [title 22 CCR §66264.95]. However, in accordance with title 22 CCR §66264.93, DTSC is particularly required to specify in the permit---not in the permittee's application out in the ether somewhere--- those COCs for the post-closed unit to which the GWPS shall apply. These 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 closed unit. DTSC fails to do that in this permit modification for the media that it has properly added. I petition that the inappropriate practice of failing to meet regulatory requirements to specify the GWPS be reviewed and the permit rewritten to fulfill the §66264 regulations.

FAILURE TO ADEQUATELY ADDRESS ASSURANCE OF FINANCIAL RESPONSIBILITY FOR NEW POST-CLOSURE CARE CONDITIONS AND CORRECTIVE ACTION IN THE PERMIT MODIFICATIONS

P.12, ¶1 and 2 - The assurance of financial responsibility (AFR) for corrective action is

required by statute to be included in permits issued by DTSC. Since new monitoring and response programs are being required, why isn't this addressed? Why isn't the assurance of financial responsibility for post-closure care addressed? It is believed that these permits, together with the modifications, are inconsistent with and contradictory to the intent of H&SC) §25200.10(b). 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)] I petition that this permit modification be rewritten and the permittees required to have in place an updated AFR for post-closure care changes brought by conditions in the modifications as well as corrective action AFR and a compliance schedule before issuance.

If you have questions regarding the foregoing comments please call me at (310) 455-1962.

Sincerely,

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