



July 7, 2008

Via Electronic Mail

Senator Barbara Boxer
United States Senate
Washington, D.C. 20510

Senator Dianne Feinstein
United States Senate
Washington, D.C. 20510

Representative Elton Gallegly
House of Representatives
Washington, D.C. 20515

Representative Henry Waxman
House of Representatives
Washington, D.C. 20515

Re: Santa Susana Field Laboratory (SSFL)

Dear Senators Boxer and Feinstein and Representatives Gallegly and Waxman:

We write regarding notable recent developments concerning the cleanup of the Santa Susana Field Laboratory (SSFL) in California.

On July 2, 2008 the United States Environmental Protection Agency (EPA) wrote to the Department of Energy (DOE) detailing DOE's concerted efforts to obstruct Congressional intent embodied in the 2008 Appropriations Law (H.R. 2764). See Attachment 1. Specifically, EPA expressed serious concern about DOE's actions with respect to EPA's involvement in a comprehensive radiation survey of SSFL, a key step in ensuring that an adequate cleanup of the contaminated site can take place. EPA revealed that, despite H.R. 2764 and the many months of negotiations with EPA as to how to carry out those Congressional directions, DOE had:

- insisted that DOE alone perform the primary on-site measurements, with EPA relegated to a mere review function;
- intended that some of the sampling would be done by SSFL's operator, Boeing, ending any pretense of independence in the necessary site characterization; and
- spent all but \$500,000 of the \$13 million appropriation on matters unrelated to the survey (which was the only approved expenditure actually identified in the appropriation), making the comprehensive survey for all intents and purposes impossible.

Equally troubling was EPA's identification of DOE mistakes or misunderstandings in the preliminary cleanup goals for the site. Specifically, EPA stated,

We are concerned about DOE handling of issues under NEPA. For example, although DOE stated in their draft EIS Data Gap Analysis Report that EPA default Agricultural preliminary remediation goals (PRGs) for radionuclides would be used as screening levels for radiological work conducted at the site, the

screening levels used in the DOE report to evaluate existing data were in some cases several orders of magnitude higher than published EPA Agricultural PRGs. When DOE was questioned about this issue by the public on June 19, and again in the technical meeting held at DTSC's offices on June 20, DOE representatives failed to explain whether they in fact plan on using EPA's Agricultural PRGs as the basis for detection limits in their radiological investigation.

See Attachment 1 at 2. Understanding this in the best light for the agency, DOE has made an error in its "Gap Analysis" (the analysis that designed to form the basis for the characterization survey) and has used "alternate" numbers in a table of what it purported were EPA's published Preliminary Remediation Goals (PRGs). The "alternate" values were one hundred to a thousand times higher (more lax and less protective of public health and the environment) than the actual EPA figures.

Put simply, EPA's identification of these problems vividly illustrate our concern that DOE has no serious intentions to perform the work that will adequately clean up this site and protect the public health and environment in California. Indeed, a thorough and independent radiation survey is the first crucial step to find the contamination that needs to be cleaned up, and now, unfortunately, it is well passed time for even more explicit Congressional direction than the directions found in H.R. 2764.

On July 3 DOE responded to EPA and stated that while it disagreed with a number of EPA's points in the July 2 letter (with no explanation of specific disagreements or the basis thereof), DOE acceded to EPA's demand that EPA assume the responsibility for radioactivity survey work at SSFL Area IV and adjacent drainages and undeveloped land. See Attachment 2. DOE then went on to note that it would transfer \$1.5 million to EPA as soon as an attached agreement was signed, and that the issue of funding "in future years will depend up (sic) the availability of Congressional appropriations." Id. This last point is notable as DOE has already spent the current appropriation intended for the survey on other matters.

While we applaud EPA trying to constructively move the cleanup process forward, we are dismayed that the situation has come to this dismal state of affairs, where we have two federal agencies scrapping over funding and meaningful protection of public health and the environment. Thus, we respectfully request the searching and careful oversight of your respective offices because, unfortunately, it doesn't look like an adequate radioactivity survey and the subsequent necessary cleanup will happen any other way.

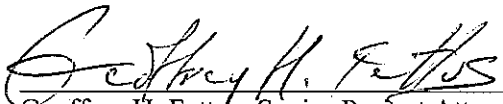
Our first observation for moving forward is that these letters underscore the critical importance of including very tight language in any new appropriation (be it this year's appropriation bill or continuing resolution or an omnibus bill early next year). In light of this observation, we respectfully urge you to take steps in such legislation to ensure:

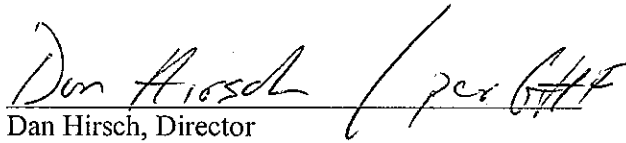
1. EPA has sole and complete authority over the radiation survey;
2. Any radiation survey will cover the whole SSFL site (all four areas and buffer zone);
3. Specific funds allocated to the survey are spelled out in the appropriation, with the ability to carry those funds forward into future years as needed; and
4. The survey will be conducted, for reasons discussed in more detail in Attachment 3, by EPA's Radiation and Indoor Environments National Laboratory.

DOE's refusal to comply with H.R. 2764, with its commitments to the affected community, and with the efforts of the Congressional delegation have resulted in another year of delay in getting the site adequately characterized, a key step toward a thorough cleanup. With DOE's acquiescence to letting EPA perform the survey, we can now move forward, but it will take help from those of you in the Congressional delegation representing the area. We respectfully urge prompt action along the lines identified above, and provide background below underscoring its importance.

If you have any questions, please do not hesitate to contact us at the numbers noted below. Thank you very much for your consideration of this matter.

Sincerely,


Geoffrey H. Fettis, Senior Project Attorney
Natural Resources Defense Council
1200 New York Avenue, NW #400
Washington, D.C. 20005
(202) 289-2371


Dan Hirsch, Director
Committee to Bridge the Gap
605 Waldeberg Road
Ben Lomond, CA 95005
(831) 336-8003

cc:

Mr. Michael M. Montgomery, USEPA
Ms. Cynthia Anderson, DOE Deputy Chief Operations Officer for Environmental Management
Ms. Linda Adams, Cal-EPA Secretary
Ms. Cindy Tuck, Cal-EPA Under-Secretary
Mr. Norman Riley, Cal-Dept. of Toxic and Substances Control, Project Manager SSFL



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

July 2, 2008

Desi Crouther, Chief
Office of Small Sites Projects
Office of Environmental Management
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0001

Re: Santa Susana Field Laboratory, Ventura County, California,
Implementation of H.R. 2764

Dear Mr. Crouther:

I am writing to express concerns about the approach we have been taking on the radiological survey at the Santa Susana Field Laboratory (SSFL) site. The 2008 Appropriations Law (H.R. 2764) appropriated \$13M to the Department of Energy (DOE) for environmental remediation activities at SSFL Area IV (the site). This legislation requires that DOE use a portion of this funding to enter into an interagency agreement with EPA to conduct "a joint comprehensive radioactive site characterization of Area IV."

History of Negotiations Between EPA and DOE

In early 2008, EPA and DOE initiated discussions regarding scoping and completing a radiological survey in Area IV per the requirements of H.R. 2764. Initially, EPA offered to develop a scope of work for this comprehensive radiological survey with the starting point being the work done by EPA's RCRA program a number of years ago. The projected cost of that work was estimated to be at least \$18 million.

In March 2008, DOE forwarded a draft MOU to EPA which proposed that DOE contractors would conduct the work under a joint DOE/EPA decision-making structure.

In April 2008, EPA proposed, as an alternative, that a reimbursable interagency agreement (IAG) be issued designating EPA as the Lead Agency, under CERCLA, for this work. Under the IAG proposal, EPA

would perform a comprehensive radiological survey using DOE funding. This proposal was rejected by DOE.

In early June 2008, DOE made another proposal under which DOE would do an *initial* radiological survey of Area IV work (and SSFL Buffer Zone areas adjacent to Area IV) and EPA would conduct a background study with funding through an IAG. DOE proposed that the DOE work would be done pursuant to an EPA Administrative Order on Consent (AOC) and EPA would provide oversight for all work conducted by DOE.

While this DOE proposal was not what the public desired nor what the congressional staff have indicated they had in mind when drafting H.R. 2764, EPA was willing to consider this alternative because it was consistent with EPA's "enforcement first" approach under which Potentially Responsible Parties (PRPs) often conduct work under EPA oversight at National Priorities List (NPL) sites. Critical to the success of such an approach was DOE's articulated commitment to be transparent to EPA and the public on how the work will be conducted. We also agreed to defer discussion of later phases of the sampling and analysis work necessary to complete a "comprehensive" radiological survey of Area IV per H.R. 2764. Together, we presented the DOE proposal to Congressional staff and the public in June.

Recent Events

Recent events have led EPA to re-evaluate the DOE proposal that we have been considering for SSFL. We are concerned about DOE handling of issues under NEPA. For example, although DOE stated in their draft EIS Data Gap Analysis Report that EPA default Agricultural preliminary remediation goals (PRGs) for radionuclides would be used as screening levels for radiological work conducted at the site, the screening levels used in the DOE report to evaluate existing data were in some cases several orders of magnitude higher than published EPA Agricultural PRGs. When DOE was questioned about this issue by the public on June 19, and again in the technical meeting held at DTSC's offices on June 20, DOE representatives failed to explain whether they in fact plan on using EPA's Agricultural PRGs as the basis for detection limits in their radiological investigation.

In addition, during the technical meeting on June 20, DOE informed EPA for the first time that some of the radiological sampling proposed to be done by DOE would actually be done by Boeing, so that sampling efforts and costs could be shared. DOE's plans to have Boeing conduct radiological sampling were never disclosed before the meeting and are contrary to DOE's representations to EPA that DOE radiological sampling would be conducted by DOE's contractor, CDM.

These recent events demonstrate a significant lack of transparency in DOE's interactions with EPA and the public. These events have damaged DOE's credibility and DOE has misrepresented EPA's role as an oversight agency.

During the public meeting on June 19, community members repeatedly and strenuously objected to the proposal that DOE conduct sampling under EPA oversight. These members and representatives of the community stated that, given DOE's history at the site, any sampling work conducted by DOE would not be accepted by the community as credible or reliable data.

Finally, in a conference call on June 30, 2008, EPA learned that DOE could only transfer \$500,000 to EPA in FY 08 to implement the provisions of H.R. 2764. DOE also indicated that DOE views the provisions of H.R. 2764 as limited to FY 08 and that DOE's appropriations planning for FY 09, to date, does not include any provision for additional funding for EPA activities begun in FY 08 to implement H.R. 2764. From the outset, EPA has made clear that EPA's willingness and ability to move forward was dependent on commitments from DOE to provide EPA with all funding needed to begin and complete the work. To learn from DOE, after five months of negotiations, that DOE does not have the money to fund EPA's work is inconsistent with DOE's statements during our negotiations.

EPA's New Approach

At this point, EPA sees that there is one viable approach for making some progress. In that approach, EPA would conduct the radiological survey work as the Lead Agency under Superfund and in accordance with EPA's, not DOE's, schedule. DOE would make a commitment, in writing, to provide funding to EPA, now or in the future, in order that EPA can to perform the rest of the initial phases of radiological survey work for SSFL Area IV and adjacent Buffer Zone Areas. Should this approach be acceptable to DOE, EPA would plan to share a draft scope of work, cost estimate and schedule for the gamma walkover and shallow soil sampling with DOE in September 2008.

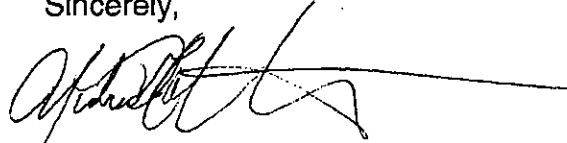
At the very least, DOE should enter into an IAG by August 1, 2008 to transfer at least \$1.5 million to EPA so that EPA may conduct the SSFL site specific study to determine background values for radiological contaminants. EPA understands that DOE may have to redirect FY 08 funds from other DOE activities to meet EPA's funding needs of \$1.5 million. However, EPA is not willing to undertake this important and significant work without all or most of the funding being provided

contemporaneously. EPA notes that FY 08 Appropriations Law provided DOE with \$13 million and clearly envisioned a reasonable portion of that funding would be transferred to EPA by DOE.

If DOE cannot agree to this approach, EPA will have no choice but to inform the public and interested elected officials that while EPA has tried its utmost, EPA and DOE have failed to reach agreement regarding the implementation of H.R. 2764. Until SSFL is added to the CERCLA National Priorities List, EPA's role at SSFL would then be limited to providing technical assistance to the State of California.

I would like to discuss the path forward with you and your staff as soon as practicable. EPA requests that DOE provide a written response to this letter by July 11, 2008. Should you have any questions or comments, please contact me at 415-972-3438.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Montgomery", with a long horizontal flourish extending to the right.

Michael M. Montgomery, Chief
Federal Facilities and Site Cleanup Branch

cc: Mr. Norman E. Riley, SSFL Project Director, California Department of
Toxic Substances Control



Department of Energy
Washington, DC 20585

July 3, 2008

Michael M. Montgomery, Chief
Federal Facilities and Site Cleanup Branch
U.S. Environmental Protection Agency – IX
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Montgomery,

Thank you for your July 2, 2008, letter. We disagree with a number of the points that you made. Nevertheless, to expedite the work, DOE accedes to EPA's demand that EPA assume the responsibility for radioactivity survey work at SSFL Area IV and adjacent drainages and undeveloped land. We will notify Congress of your decision, and will also notify the federal district court, as appropriate, with respect to potential impacts on the schedule for completing the court-ordered EIS.

In accordance with Pub. L. No. 110-61, we will transfer \$1.5 million to EPA as soon as the attached Interagency Agreement is signed. The issue of funding in future years will depend up the availability of Congressional appropriations.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia V. Anderson".

Cynthia Anderson
Deputy Chief Operations Officer
for Environmental Management

cc: Norm Riley



Background for why the characterization of the SSFL Site must be conducted by EPA's Radiation and Indoor Environments National Laboratory

For decades there has been concern about the ability or willingness of the Department of Energy (DOE) to conduct an adequate cleanup of the radioactive and chemical contamination it created at the Santa Susana Field Laboratory. DOE's persistent breach of environmental rules, resulting in accidents, spills, releases, and illegal disposal resulted in pollution of soil, surface water and groundwater. Because DOE is a self-regulating entity under the Atomic Energy Act (AEA), the agency has had no incentive to disclose or remedy these problems.

In 1989, the press obtained an internal DOE report showing widespread contamination at the site. The resulting public furor led Congressman Gallegly to ask that EPA be brought in to provide independent oversight.

EPA sent a top radiation expert from its National Radiation Laboratory in Las Vegas, Mr. Gregg Dempsey, to review the SSFL radiation monitoring program. The EPA findings were troubling. Mr. Dempsey called into question the validity of much, if not all, of DOE's environmental data. He found, for example, that DOE was washing off vegetation samples before monitoring them (thus washing off radioactivity), then heating the samples to a very high temperature (thus potentially driving off the volatile radioactivity in the sample) and measuring only the ash. Mr. Dempsey found that DOE was similarly heating to high temperature the soil samples, again potentially driving off the volatile radioactivity before monitoring. It was subsequently revealed that DOE and its contractor Rocketdyne were also filtering water samples before monitoring them (i.e., filtering out the radioactivity before measuring for it.) They weren't even measuring for tritium; when Mr. Dempsey took a water sample and measured for it, he found tritium contamination. He concluded, "Rocketdyne does not have a good 'handle' on where radiation has been inadvertently or intentionally dumped onsite."

These revelations led to public calls for EPA to be brought in to conduct comprehensive radiation monitoring at the site. In 1993-5, Mr. Dempsey was permitted to oversee the first monitoring effort designed to determine if contamination had migrated offsite. This initial study looked for – and unfortunately found – contamination at Sage Ranch (parkland part of the Santa Monica Mountains Conservancy), and the Brandeis Bardin Camp Institute, both of which abut SSFL.

From then on DOE balked at permitting EPA – and particularly Mr. Dempsey and his office – to perform or oversee any soil measurements at SSFL. Over the objections of the local community, the site characterization task was given to the DOE contractor that created the contamination in the first place and whose radiation monitoring program had been so criticized by EPA.

The contractor performed for DOE an "Area IV Radiological Survey," that, when evaluated by Mr. Dempsey for EPA in 1997, was rejected as inadequate and incapable of finding contamination that might be present. EPA urged DOE to withdraw the survey and permit a valid radiation survey to be conducted. After substantial resistance, DOE agreed to let Mr. Dempsey and EPA perform the survey. This promise by DOE and EPA for an independent and thorough survey of SSFL was repeated numerous times in the latter 1990s, including in written

commitments to Senator Feinstein. But, by the early part of this decade, DOE reneged. Long negotiations between DOE and EPA led nowhere.¹ For years now, DOE has refused to permit an independent radiation survey of the site, particularly one led by Mr. Dempsey.

The core of this problem is DOE's refusal to abide by a 1995 joint DOE-EPA Policy on cleaning up DOE nuclear sites, which commits that all sites, regardless of Superfund status, will be cleaned up to EPA Superfund criteria. Instead, DOE, in a brief Environmental Assessment (EA) for the SSFL site, chose to use cleanup standards orders of magnitude more lax and less protective of public health. Our organizations, along with the City of Los Angeles, challenged the EA in federal court; the court found DOE to have violated the National Environmental Policy Act and has ordered the preparation of an adequate Environmental Impact Statement. See NRDC v. DOE, No. C-04-04448-SC (BZ), 2007 WL 1302498. The Court was particularly concerned with EPA's criticisms of DOE's inadequate radiation characterization of the site. Id at 21.

For many years the community surrounding SSFL has worked to get the federal government to live up to two promises that were repeatedly made: (1) to permit EPA's Mr. Dempsey to perform a comprehensive independent radiological survey of the site to identify contamination; and (2) for the contamination to be cleaned up to the strictest of EPA's Superfund standards. Last year, two developments occurred that gave the community hope that those two longstanding promises might finally be carried out. The State Legislature approved, and the Governor signed, SB 990 by Senator Sheila Kuehl, which mandates the cleanup of SSFL to EPA's most protective CERCLA standards (for rural residential/agricultural land use). [It is these cleanup standards that DOE did not use in its "Gap Analysis"] And the Congress approved, and the President signed, H.R. 2764, including a provision by Senator Feinstein requiring a comprehensive radiation survey of the site, with extensive EPA involvement and reliance on EPA's CERCLA procedures. Unfortunately, DOE has continued to circumvent the efforts of its sister federal agencies and flout the clear intent of Congressional direction on these matters. Thus, we respectfully urge that that the survey be directed by Mr. Dempsey and his office of EPA's Radiation and Indoor Environments National Laboratory, as long ago promised by EPA to the community and the Congressional delegation. Given his long experience with the site, the community's confidence in him, and the promises that he would perform the survey, this would help bring closure to this long controversy.

¹ DOE did permit one minimal aspect of a confirmatory survey by an EPA contractor of a handful of buildings at the site. But when EPA and its contractor arrived on site to take its measurements, it found to its astonishment that DOE had torn down half of the aforementioned buildings weeks before EPA's site visit, making independent confirmatory measurements impossible, something which EPA complained about vociferously to DOE.