

Consent Order for Corrective Action, Docket No. P3-07-08-003

to demonstrate that Boeing is financially capable of implementing the operations and maintenance of the response action(s) and to enable DTSC to undertake implementation of the operations and maintenance of the response action(s) in the event that Respondents are unable or unwilling to undertake the required actions. Boeing shall annually adjust the mechanism(s) for inflation in accordance with California Code of Regulations, title 22, sections 66264.142 or 66265.142, as those sections apply to owners and operators of facilities and sites subject to Health and Safety Code section 25355.2.

3.9. Land Use Covenants. A land use covenant shall be executed and recorded if limitations or restrictions are to be placed on any portion of the Site because residual hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property or in the groundwater at levels which are not suitable for unrestricted use of the land. If the approved remedy in the Final RAP includes deed restrictions, Boeing and NASA shall record, or cause to have recorded, the appropriate deed restrictions. Use of Land Use Covenants or any other institutional controls that prohibit use of groundwater shall not be a sole determining factor for any groundwater remedy decisions or prevent the transfer of land under Health and Safety Code section 25359.20(d).

3.10. Site Access. Recognizing the open nature of the Site, Respondents shall maintain reasonable precautions to restrict the possibility of unknowing or unauthorized entry of persons or livestock onto the Site.

3.11. Public participation activities shall be conducted in accordance with Health and Safety Code sections 25356.1 and 25358.7. DTSC issued a final Public Participation Plan (PPP) for the

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Norman E. Riley 5/27/09 9:45 AM

Inserted: constitute a remedy or sole justification for a remedy

Norman E. Riley 8/7/09 2:14 PM

Comment: This is an important matter for DTSC. This concept was originally embodied in 3.4.14. It was removed by Respondents with the explanation that "Similar language occurs in 3.9 that captures Respondents' objectives." **Without the change proposed today, 3.9 does not capture DTSC's objective.** The imposition of a land use covenant cannot not constitute a remedy or become the SOLE basis for selecting a remedy. We understand your preferred option for the tritium plume may be to allow it to decay. That may be deemed acceptable, but the covenant by itself is not what makes it seem reasonable. It seems reasonable in conjunction with the anticipated covenant because we know the half-life of tritium is 12 years and therefore can estimate that the tritium contamination will reach acceptable levels in about 30 years. Too further illustrate the point, the TCE plume will not similarly degrade and so the recordation of a land use covenant restricting GW use cannot be cited as the sole reason for taking no action to remove or otherwise treat the TCE plume.

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