

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2004-0014

In the Matter of the Petition of
COMMITTEE TO BRIDGE THE GAP
For a Stay of Waste Discharge Requirements Order No. R4-2004-0001
[NPDES No. CA0001309]
for Boeing Company's Santa Susana Field Laboratory
Within the Los Angeles Region
Issued by the
California Regional Water Quality Control Board,
Los Angeles Region

SWRCB/OCC FILE A-1653(a)

BY THE BOARD:

The Los Angeles Regional Water Quality Control Board (Regional Board) issued waste discharge requirements Order No. R4-2004-0001 [NPDES No. CA0001309] (Permit). The Permit regulates discharges of wastewater and storm water from Boeing Company's Santa Susana Field Laboratory (SSFL) in Ventura County. The Committee to Bridge the Gap (CBG) filed a petition with the State Water Resources Control Board (State Board) challenging the Permit.¹ With its petition CBG has asked for a stay of the Permit to the extent it supersedes and eliminates water quality based effluent limitations (WQBELs) that existed in the prior permit for seven of Boeing's outfalls. For the reasons discussed below, CBG's request for a stay is denied.²

I. BACKGROUND

Boeing's SSFL consists of approximately 2,700 acres, in the Simi Hills in Ventura County. It is co-owned by the National Aeronautical Space Agency (NASA), and in the past was the location of numerous activities by the United States Department of Energy (DOE). Currently, Boeing uses the site for research, development, assembly, disassembly, and testing of rocket engines,

¹ Boeing also filed a petition challenging aspects of the permit, but the State Board has placed that petition in abeyance at Boeing's request.

² The Regional Board filed a motion to limit the use of any extra record evidence only to this hearing and to exclude such evidence from consideration during the merits of the petition. A ruling on that motion will be deferred to and ruled upon if necessary at the State Board's consideration of the merits of the petition.

missile components, and chemical lasers. The DOE's past operations included research and development of energy related programs and seismic testing experiments, but current DOE activities onsite are limited to facility decontamination, decommissioning, and environmental remediation and restoration. In addition to regulation by the State and Regional Board, the site is also under the active jurisdiction of the Department of Toxic Substances Control (DTSC), which is supervising a cleanup pursuant to the Resource Conservation and Recovery Act (RCRA) relating to soil and groundwater contamination.

In pertinent part, the new Permit, issued on July 1, 2004, eliminates WQBELs for 13 volatile organic compounds (VOCs) and boron at outfalls 001 and 002, and for eight metals at outfalls 003 through 007 on the site. On July 30, 2004, CBG filed its petition challenging various aspects of the Permit and also requested a stay of the Permit to the extent it supersedes the previous permit that contained these WQBELs. On August 20, 2004, the State Board issued a notice of public hearing with respect to the stay request, and thereafter held a hearing on September 9, 2004.

In order to issue a stay of the Permit, the State Board must find that the Petitioners have alleged facts and produced proof of: (1) substantial harm to the Petitioners or to the public interest if a stay is not granted; (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted; and (3) substantial questions of law or fact regarding the disputed action. (Cal. Code Regs., tit. 23, § 2053. See, State Board Order WQO 2002-0007.)

II. CONTENTIONS AND FINDINGS

1. **Contention:** CBG contends that it will be damaged by the elimination of the WQBELs in that there will be no opportunity to enforce, and therefore less incentive to comply with the WQBELs that have been eliminated.

Finding: The relevant standard is not damage, but substantial harm, and CBG has failed to demonstrate that it or the public interest will suffer such harm. Initially, review of the substantial harm requisite for a stay must be viewed in the context of the appropriate time frame. Specifically, the question is whether CBG or the public interest will suffer such harm while the Petition is under consideration. Harm that might occur subsequent to the resolution of the Petition is directed to the merits of the Petition, and not to whether a stay should issue.

CBG produced witness Matthew Hagemann, who testified that he had concluded there was a reasonable potential that the effluent could cause or contribute to an excursion above California Toxics Rule criteria for the constituents no longer subject to the WQBELs. He testified that contaminants exist in the soil and groundwater under the site, and that these contaminants could

mobilize during storm events and migrate into the surface water. The Regional Board produced evidence, however, that during the past five years of effluent monitoring, including between 71 and 74 data points per constituent for outfalls 001 and 002, not a single VOC for which WQBELs had been removed was detected in any of the samples. Similarly, for outfalls 003 through 007, with between 122 and 131 data points per relevant constituent, not a single detect occurred for three of the eight metals (beryllium, selenium, silver), and in the few detects as to the others, the maximum effluent concentration was well below the applicable water quality standards. In all cases, the detection level was lower than the applicable water quality standard.

On cross-examination, Mr. Hagemann was asked to explain his conclusion in light of these data. Mr. Hagemann could not. Nevertheless, he insisted that the likelihood of offsite migration would be increased by the failure to issue the stay, because of his belief that eliminating the WQBELs will eliminate necessary compliance incentives. His conclusion is unpersuasive for a number of reasons.

First, focusing on the pertinent time frame, it is highly unlikely that Boeing Company would not do everything possible to avoid excursions above criteria for the relevant constituents during the time the petition is under review. The fact of any such excursion would no doubt be presented to the State Board as extra-record evidence to demonstrate why the Petition should be granted on the merits.

Moreover, Boeing Company is performing a RCRA cleanup of the groundwater, and therefore treatment processes related to these constituents will necessarily continue while the Petition is pending, even in the absence of the WQBELs, until the DTSC determines that remediation has been completed. Finally, the Regional Board imposed extensive additional measures to ensure no harm would befall the public interest during the life of the permit. These include requiring ongoing monitoring for the constituents that are no longer subject to WQBELs, requiring Boeing Company to report within 24 hours any exceedance of the detection limit for any monitored constituent, requiring staff to schedule a permit modification within 90 days of determining that reasonable potential exists, and a requirement that staff conduct an annual reasonable potential analysis. In fact, these measures are precisely what Mr. Hagemann admitted would create appropriate incentives for Boeing to ensure its effluent does not cause or contribute to excursions above criteria.

CBG finally argued that eliminating the WQBELs would encourage Boeing Company remove compliance efforts directed to these constituents. The permit, however, shows that outfalls 001 and 002 continue to contain WQBELs for other VOCs, and that outfalls 003 through 007 continue to contain WQBELs for other metals. On cross-examination Mr. Hagemann conceded that

the treatment processes for the WQBEL-regulated VOCs would continue to remove the VOCs for which no WQBEL applies, and the best management practices (BMPs) applicable to the metals regulated by WQBELs are also applicable to the metals for which WQBELs were removed. In other words, these treatment processes and BMPs are not constituent specific, but apply to all of the relevant constituents.

In short, CBG was unable to produce evidence that elimination of the WQBELs will in any way result in an increased risk to water quality during the review of the Petition. The State Board has previously recognized the “extraordinary nature of the stay remedy,” and it has ruled that section 2053 “place[s] a heavy burden on the seeker of a stay.” (*In re: The Ventura County Citizens to Stop Toland Landfill*, SWRCB Order No. WQ 97-05 (Jun. 4, 1997) at 4.) CBG has not met its burden with respect to substantial harm to itself or to the public interest.

2. Contention: CBG contends both that there will not be substantial harm to interested persons and to the public interest if a stay is granted, and that the petition raises substantial issues of law or fact.

Finding: Since CBG has failed to prove that it will suffer substantial harm in the absence of a stay, it is not necessary to rule upon whether CBG has met its burden with respect to the remaining two prerequisites to a stay.

III. SUMMARY AND CONCLUSION

CBG has failed to demonstrate that it or the public will suffer substantial harm while the petition is under review if a stay is not granted. Accordingly CBG’s request for a stay must be denied. (Cal. Code Regs., tit. 23, § 2053.)

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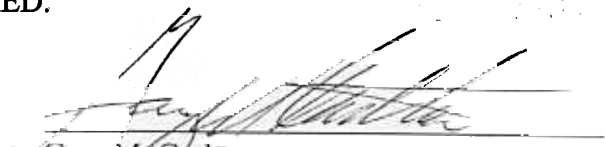
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IV. ORDER

IT IS HEREBY ORDERED that the request for a stay of the effect of Waste Discharge Requirements Order No. R4-2004-0111, insofar as it eliminates water quality based effluent limitations for outfalls 001-007, is DENIED.

Date: September 17, 2004



Gary M. Carlton
Board Member/Hearing Officer