

Los Angeles Regional Water Quality Control Board

December 24, 2014

Dawn Kowalski, Rocketdyne Cleanup Coalition
Denise Duffield, Southern California Federation of Scientists
Sheldon Plotkin, Ph.D., P.E., Physicians for Social Responsibility-Los Angeles
Daniel Hirsch, Committee to Bridge the Gap
Davis Gortner, Teens Against Toxins
info@rocketdynecleanupcoalition.org

Via email only

RE: OBJECTIONS TO BOEING SETTLEMENT

Dear Ms. Kowalski, Ms. Duffield, Dr. Plotkin, Mr. Hirsch, and Mr. Gortner:

The Los Angeles Regional Water Quality Control Board (Regional Board) received your letter dated December 11, 2014, whereby you object to the Amended and Restated Consent Judgment and Final Order (Amended Consent Judgment) in *The People of the State of California, ex rel., Regional Water Quality Control Board, Los Angeles Region v. The Boeing Company* (Boeing), Case No. 56-2010-00371686-CU-MC-SIM, lodged with the Superior Court of the State of California, County of Ventura. The Regional Board's responses to your specific comments are below.

Comment #1: Public input on important matters such as this is merely a *pro forma* exercise that can have no real effect on the outcome.

In your letter, you raise concerns regarding the sequence of the lodging of the Amended Consent Judgment with the court and the Regional Board's solicitation of public comments. Although the Amended Consent Judgment had already been signed by the Regional Board and Boeing when it was lodged with the court, the Amended Consent Judgment was not final when the Board solicited public comments. The Amended Consent Judgment specifically referred to federal regulations and the State Water Resources Control Board's (State Board) Water Quality Enforcement Policy, which required that the Amended Consent Judgment be subject to a 30-day public notice and comment period. In the Amended Consent Judgment, the Regional Board reserved the right to withdraw or withhold its consent if the comments regarding the Amended Consent Judgment disclose facts or considerations indicating that the Amended Consent Judgment is inappropriate, improper, or inadequate.

The Regional Board disagrees with your statement that the Board's solicitation of comments "is merely a *pro forma* exercise that can have no real effect on the outcome." Public input on these types of matters is very important. The Board will often make changes to settlements based on comments prior to the settlements becoming effective. In fact, the Board made changes to the 2010 Consent Judgment based on comments pertaining to the Supplemental Environmental Project. While the Regional Board has determined that your comments do not disclose facts or considerations indicating that the Amended Consent Judgment is inappropriate, improper, or

inadequate, please know that your comments are taken seriously and were considered by the Regional Board.

Comment #2: The commenters ask that their letter be provided to the court, and to the Regional Board members, with the exception of Regional Board Chair Charles Stringer.

Your letter, as well as this response, will be provided to the court, and to the Regional Board members, with the exception of Regional Board Chair Charles Stringer.

Comment #3: The tiny fines have not worked to bring Boeing into compliance because it is far cheaper to violate the limits than to comply.

The Regional Board disagrees that it has taken weak actions and that the Board has not taken significant steps to bring Boeing into compliance. In response to Regional Board requirements, Boeing has taken several significant actions at the Santa Susana Field Laboratory site, including implementation of recommendations from the Stormwater Expert Panel, Interim Source Removal Action ("ISRA"), best management practices at Outfalls 008 and 009, and installation of permanent stormwater conveyance and treatment systems. Boeing has indicated to the Regional Board that it will continue to improve the existing stormwater management program at the site to eliminate or reduce violations of its NPDES permit. Boeing further indicated that its annual stormwater control budget for the site is approximately \$6 million.

In addition, while there have historically been a significant number of violations at the Boeing site, Boeing's effluent data beginning with the 1st Quarter 2010 shows a general decrease in the number of effluent limit violations. The 2nd Quarter 2010, 3rd and 4th Quarters 2012, and 1st Quarter 2013 had enough rain to produce sufficient flow to allow the discharge to be sampled and no violations were recorded during those events. While this data set appears to indicate improvement in water quality as a result of the actions taken by Boeing, there is insufficient data to make a direct correlation due to several years of drought conditions. However, the Amended Consent Judgment is only a 2-year extension during which time the Regional Board will continue to evaluate the data to determine the effectiveness of the actions Boeing has taken at the site to come into compliance with its NPDES permit.

Further, the Amended Consent Judgment contains a sliding scale of stipulated penalties for each violation of an effluent limitation that ranges from a mandatory minimum penalty of \$3,000 up to a maximum of \$15,000 per violation depending on the pollutant. The primary purpose of the escalating stipulated penalty framework is to provide: (1) an incentive for Boeing to proactively implement compliance activities, and (2) an efficient and immediate enforcement mechanism. The possibility of automatic escalating penalties serves as an incentive to Boeing to institute systems to ensure that no violations of its permit occur. Also, the Regional Board's authority to assess administrative civil liability or request a court to impose judicial civil liability is statutorily capped. Thus, it is important to note that the maximum stipulated penalty for most pollutants represents an amount greater than what could be administratively imposed by the Regional Board or State Board. Therefore, the Regional Board does not consider these fines to be insignificant or trivial based on its statutory authorities.

Lastly, the Regional Board has not agreed to handcuff itself from taking other enforcement actions against Boeing for violations of its permit. Section 6 (page 11) of the Amended Consent Judgment states: "For any NPDES permit violation occurring between (and including) January 1, 2010, and December 31, 2016 that is not a type of violation subject to stipulated penalties as set forth in section 6.1 below, the Regional Board shall not be constrained in any way by the

terms of this agreement, and may seek to recover any penalties or enforce the terms of this agreement, and may seek to recover any penalties or enforce the terms of the NPDES Permit as permitted by law.” Furthermore, in certain defined circumstances, section 6.7 (page 14) states that “The Regional Board may move the court to award penalties in excess of the stipulated penalty amounts listed above, up to the limit allowed by law...”

Comment #4: There have been apparent conflicts of interests between key Regional Board officials and Boeing.

Your letter alleges conflicts of interest on the part of former Executive Officer Tracy Egoscue and Regional Board member Charlie Stringer in the settlement between Boeing and the Regional Board. As to Ms. Egoscue, the purported conflict appears to stem from Ms. Egoscue going to work for Paul Hastings LLP in its Environmental Practices Group, headed by Boeing’s attorney Peter Weiner, after she left the Regional Board. Your letter “suggests that the Board should disclose whether Ms. Egoscue played any role on behalf of the [Regional] Board in negotiating the original consent decree with Mr. Weiner and/or others at Paul Hastings LLP.” I have consulted with other Regional Board staff, as well as counsel, on your request. To the best of our collective recollection, Ms. Egoscue had little to no role on behalf of the Regional Board in negotiating the original Consent Judgment with Boeing. As we recall, the Consent Judgment was negotiated on behalf of the Regional Board by the Board’s attorneys at the Attorney General’s Office and the State Board’s Office of Enforcement, as well as the Regional Board’s enforcement staff (which included me). It is important to note, however, that even if Ms. Egoscue had been involved in the negotiations with Boeing, there would have been no conflict of interest as Ms. Egoscue was the Executive Officer of the Regional Board at the time and did not start working for Paul Hastings LLP until July 2010.

As to Mr. Stringer, in response to previous inquiries, I have been told by Mr. Stringer that his employer, Renewable Resources Group (RRG), is a consultant to Boeing at the site, providing environmental policy support for Boeing’s desire to see its land protected as open space parkland after it has been safely remediated. In addition, I understand from Mr. Stringer that he is not a principal or owner of RRG, but rather an employee, and he does not directly profit from RRG’s contract with Boeing. Regardless, to the extent any Boeing matters come before the Board, Mr. Stringer has always recused himself from participating in any and all related discussions or decisions, including any interaction with Board staff and on informational items presented to the Board.

There is no requirement that the Regional Board post a public recusal on the Board’s website. Mr. Stringer’s recusals are, however, noted in public records consisting of transcripts and disclosable minutes from Regional Board meetings noting Mr. Stringer’s recusal from Boeing items before the Board, or his absence from Board meetings where a Boeing item was discussed. In addition, in Mr. Stringer’s responses in August 2011 to various questions posed by the Senate Rules Committee regarding his appointment to the Regional Board, Mr. Stringer disclosed his employer’s business relationship with Boeing and noted that he will recuse himself from participating in any and all discussions and decisions concerning Boeing, which he has done. I have asked Regional Board counsel to separately provide these public records to you.

In addition, there was no written announcement to Board staff that Mr. Stringer recused himself from Boeing matters before the Board, or any written direction to Board staff, as there is no such requirement to do so. Mr. Stringer decided to recuse himself from Boeing matters before the Board when he was first appointed to the Board. To the extent any announcement was made to Board staff, it would have been a verbal announcement. All Regional Board staff who work on

Boeing related matters have been aware of Mr. Stringer's recusal since his appointment to the Regional Board.

Your letter also alleges that Mr. Stringer's recusal "can have a chilling effect on coming down hard on a company with which the Board Chair is so financially entwined." Such an allegation is baseless. Not only did Mr. Stringer not participate in the Regional Board's decision to amend the Consent Judgment, but his recusal from Boeing matters and/or his employer's relationship to Boeing plays no role whatsoever in the Board's enforcement of Regional Board orders.

Lastly, if you would like information concerning the work RRG and/or Mr. Stringer have and/or are doing for Boeing, I suggest you contact RRG or Mr. Stringer directly as they are in the best position to provide that information to you.

In conclusion, as previously noted, public input on these types of matters is very important and we have carefully considered your comments. Your letter, however, does not disclose facts or considerations indicating that the Amended Consent Judgment is inappropriate, improper, or inadequate. The Regional Board continues to believe that the Amended Consent Judgment is reasonable, fulfills the Board's enforcement objectives, and that entry of the Amended Consent Judgment is fair and in the best interests of the public. I have therefore requested the Regional Board's attorneys to proceed with seeking court approval of the Amended Consent Judgment.

If you have any questions or would like to discuss this matter, please contact me at (213) 576-6605 or at Samuel.Unger@waterboards.ca.gov.

Sincerely,


Executive Officer
Samuel Unger, P.E.