

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

TENTATIVE RESOLUTION NO. 2022-XX

**APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD AND THE
BOEING COMPANY ESTABLISHING THE PROCESSES, METHODOLOGIES, AND
STANDARDS FOR ASSESSING STORMWATER DISCHARGES AND APPLICABLE
REQUIREMENTS FOLLOWING THE BOEING COMPANY'S SOIL CLEANUP AT THE
FORMER SANTA SUSANA FIELD LABORATORY SITE AND AUTHORIZING THE
EXECUTIVE OFFICER TO SIGN THE MOU ON BEHALF OF THE LOS ANGELES
REGIONAL WATER QUALITY CONTROL BOARD**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) finds:

1. The former Santa Susana Field Laboratory (SSFL) site occupies approximately 2,850 acres and is located at the top of Woolsey Canyon Road in the Simi Hills, Ventura County, California. A portion of the site is owned by Boeing and a portion is owned by the federal government. The portion owned by the federal government is currently administered by NASA. For many years, the U.S. Department of Energy (DOE) leased an area of the site owned by Boeing. Historically, industrial activity at the site included research, development, assembly and testing of rocket engines, small-scale nuclear reactors and chemical lasers. Though all industrial activity at the site has ended, significant soil and groundwater contamination remains and must be cleaned up.
2. The California Department of Toxic Substances Control (DTSC) and the Los Angeles Water Board share jurisdiction over the site. Specifically, the entirety of the site is subject to a comprehensive remediation program under the regulatory oversight of the DTSC, including remediation of contaminated soil and groundwater. In addition to its own statutes and regulations, DTSC is required to ensure any remedy it requires will be consistent with all relevant California State Water Resources Control Board and Los Angeles Water Board statutes, regulations and policies governing the protection of groundwater. Accordingly, DTSC has made the State Water Resources Control Board's Resolution No. 92-49 (as amended, April 21, 1994 and October 2, 1996), *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, an "applicable or relevant and appropriate requirement" (ARAR) for the cleanup of the site.

T
E
N
T
A
T
I
V
E

3. The Los Angeles Water Board regulates the stormwater runoff from the site through a National Pollutant Discharge Elimination System (NPDES) permit, issued pursuant to the Clean Water Act (CWA), its implementing regulations, and the California Water Code.
4. Currently, Boeing, NASA and DOE are each responsible for cleaning up different areas of the site; and each is obligated to clean up their respective areas under consent orders for corrective action entered into with DTSC. DTSC issued a consent order for corrective action (Consent Order) in 2007, for cleanup of all areas of the site. Pursuant to this 2007 Consent Order, the cleanup of the site was to have been finished by 2017. At this time, cleanup of the site generally, including the Boeing areas of responsibility (Boeing Area), has not been completed.
5. The Los Angeles Water Board began permitting stormwater runoff from the site in 1998, while Boeing, NASA and DOE were still conducting industrial activities at the site. By 2006, all industrial activities at the site had ceased.
6. In most cases, once industrial activity has ceased, there is no longer a requirement for an NPDES permit, since there are no longer stormwater discharges associated with an industrial activity. However, because the soil cleanup has not been completed at the site, the Los Angeles Water Board continues to require an NPDES permit for stormwater discharges associated with the past industrial activity. This is because there is significant soil contamination on the site from the past industrial activities, which has the potential to pollute stormwater and be carried offsite in stormwater runoff. The Los Angeles Water Board has the authority to permit these stormwater discharges associated with past industrial activity pursuant to CWA section 402 and 40 C.F.R. §§ 122.26(b)(14) and 122.26(c).
7. Since 1998, the NPDES permit for stormwater discharges from the site has required rigorous controls for stormwater runoff using advanced treatment systems and distributed best management practices to ensure that stormwater leaving the site is not polluted despite the onsite soil contamination. Boeing has been implementing and must continue to implement these controls as required.
8. In January 2021, the California Environmental Protection Agency (CalEPA) and the Department of Toxic Substances Control (DTSC) entered into confidential mediation with Boeing to resolve disputes over Boeing's remediation obligations for the soil and groundwater cleanup at the site; to develop a process to achieve comprehensive cleanup in the Boeing Area; and to limit further delays that could result from litigation. The mediation was an outgrowth of a dispute that began in 2019 between DTSC and Boeing related to the 2007 Consent Order.

9. The Los Angeles Water Board has no ongoing dispute with Boeing. The Los Angeles Water Board joined the mediation at the request of CalEPA, DTSC and Boeing, given its jurisdiction over surface water quality at the site under the NPDES permitting program and its role in advising DTSC on the California Water Boards' laws, policies and regulations regarding groundwater protection. The Los Angeles Water Board shares the goal of achieving a comprehensive cleanup at the site without further delays for the protection of both surface water and groundwater quality and, therefore, wished to engage in whatever way it could within the scope of its authorities to achieve this goal.
10. Confidential mediation is a tool routinely used by parties to achieve resolution of complicated environmental disputes. The cleanup of the SSFL has been the subject of complicated disputes. All participants in the mediation, including the Los Angeles Water Board, were subject to a confidentiality agreement regarding all matters discussed in the mediation, including the MOU. The Legislature has found that confidentiality is essential for mediation to allow for frank, candid and effective discussions to resolve disputes, and has enacted mediation confidentiality provisions as part of the California Evidence Code that apply in this situation.
11. As a result of the mediation, a comprehensive framework emerged that involves two separate but interdependent agreements. The first agreement is a settlement agreement between DTSC and Boeing, settling the disputes between them (the DTSC-Boeing Settlement Agreement). Although the DTSC-Boeing Settlement Agreement does not make or prescribe any remedy decisions, it sets forth a path designed to expedite soil cleanup moving forward and to ensure a highly protective cleanup is achieved. Under the DTSC-Boeing Settlement Agreement, Boeing has agreed that if, following the required processes for environmental review, remedy decision-making, and public notice and comment, DTSC selects soil and groundwater remedies for the Boeing Area that are consistent with the processes, methodologies and schedule set forth in the DTSC-Boeing Settlement Agreement, and are within the range of exposure scenarios and associated estimates evaluated for the Boeing Area in the 2017 Draft Program Environmental Impact Report, then Boeing will not challenge soil and groundwater remediation in accordance with the terms and provisions of the DTSC-Boeing Settlement Agreement. One remedy that DTSC anticipates these processes and methodologies will support is a cleanup standard of "resident with 100% garden." This public health-protective standard means it would be safe for people to live onsite and to consume homegrown produce from a backyard garden. Further, under the DTSC-Boeing Settlement Agreement, Boeing will clean up radionuclides in the Boeing Area to "background," meaning levels that would exist locally without industrial activity.

12. DTSC and Boeing entered into the DTSC-Boeing Settlement Agreement on May 9, 2022. Thereafter, on June 2, 2022, a public meeting was held at which DTSC presented and explained the DTSC-Boeing Settlement Agreement to the public.
13. The second agreement in the comprehensive framework is the “Memorandum of Understanding Establishing the Processes, Methodologies and Standards for Assessing Stormwater Discharges and Applicable Requirements Following The Boeing Company Soil Cleanup at the Santa Susana Field Laboratory Site” (MOU) between Boeing and the Los Angeles Water Board. The MOU imposes multiple conditions that must be satisfied before the Los Angeles Water Board will consider relieving Boeing of its obligations under the NPDES permit, including:
- Boeing must complete its cleanup of soil in the Boeing Area under DTSC’s oversight and regulation;
 - DTSC must issue Boeing a Corrective Action Complete Determination for Soil, confirming that Boeing has completed its soil cleanup according to DTSC’s specifications;
 - Modeling must show that stormwater from the Boeing Area will no longer be polluted by contamination from past industrial activities;
 - Post-cleanup confirmation stormwater testing, including chronic toxicity testing, as required and overseen by the Los Angeles Water Board, must demonstrate that the stormwater is in fact no longer polluted by contamination from past industrial activities in the Boeing Area;
 - A human health risk assessment must be conducted based on this post-cleanup stormwater testing, and it must show that the stormwater runoff from the Boeing Area will not impact human health; and
 - Both DOE and NASA must be permitted under the NPDES program, so that there is no gap in permit coverage for industrial stormwater discharges from the site.
14. As set forth in section 6.0 of the MOU, notwithstanding any other provision contained in the MOU, the MOU does not dictate, prescribe, or require any particular decision by the Los Angeles Water Board at a future hearing to consider releasing Boeing from its NPDES permit obligations, once Boeing has completed its soil cleanup and other conditions in the MOU are satisfied. The Los Angeles Water Board’s consideration will be subject to all applicable requirements regarding public notice and comment and a public hearing, and the Los Angeles Water Board will exercise its discretion and decision-making authority on the matter based on the public hearing, public workshops that may be held prior to the hearing, and the administrative record in accordance with applicable federal and state laws.

15. Both the DTSC-Boeing Settlement Agreement and the MOU between Boeing and the Los Angeles Water Board, are designed to achieve the collective objectives of CalEPA, DTSC and the Los Angeles Water Board: A robust cleanup of the site, a process for decision-making with no further delays, and protection of human health and ecological resources from potential exposure to contaminated soil, groundwater and stormwater from the Boeing Area.
16. Both the DTSC-Boeing Settlement Agreement and the MOU between Boeing and the Los Angeles Water Board are designed to work together: Neither the MOU nor the DTSC-Boeing Settlement Agreement are effective unless and until the MOU is approved and executed by the Los Angeles Water Board.
17. The Los Angeles Water Board expressly finds that the cleanup of the site is long overdue. Entering into the MOU as part of the comprehensive cleanup proposal will accelerate the cleanup of the Boeing Area of the site in a safe and sound regulatory manner subject to the terms and conditions of the MOU and the authority of the Los Angeles Water Board.
18. The MOU is designed to ensure that, unless and until the Boeing Area is cleaned up and the federal parties have NPDES permit coverage for the site, Boeing will remain subject to the Los Angeles Water Board's regulatory oversight for stormwater discharges from the site.
19. On May 9, 2022, the Los Angeles Water Board provided notice of its intention to consider this Resolution and the MOU at a public meeting and invited interested persons to comment at the public meeting on the Resolution, the MOU, and the attachments thereto.
20. The public meeting occurred on June 9, 2022. At this meeting, the Los Angeles Water Board heard and considered all comments pertaining to this matter.

THEREFORE, BE IT RESOLVED THAT the Los Angeles Water Board hereby approves the MOU and authorizes the Executive Officer to sign the MOU on behalf of the Los Angeles Water Board.

I, Renee Purdy, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on June 9, 2022.

Renee Purdy
Executive Officer

T
E
N
T
A
T
I
V
E