

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 2006-0002

In the Matter of the Petition of

THE BOEING COMPANY

For Review of Waste Discharge Requirements Order No. R4-2006-0008
[NPDES No. CA0001309] (Amending Order R4-2004-0111)
for Boeing Company's Santa Susana Field Laboratory,
Issued by the
Los Angeles Regional Water Quality Control Board

SWRCB/OCC FILE A-1737

BY THE BOARD:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted waste discharge requirements for the Santa Susana Field Laboratory (Field Lab) in the Simi Hills near Canoga Park, a site that is owned and operated by the Boeing Company (Boeing). The Field Lab has been used for testing rockets and other devices for over 50 years. There are numerous sources of pollution on the site, which involves 2800 acres, 90 percent of it undeveloped. Some sources are thought to be natural but many others represent the loci of earlier testing, disposal, or other operations on the site. The Los Angeles Water Board issued requirements in 2004 and amended those requirements in January and March of 2006. Boeing filed a timely petition for review of the 2004 requirements but asked that the State Water Resources Control Board (State Water Board) hold that petition in abeyance while Boeing continued to work with the Los Angeles Water Board on the issues it presented. After the January 2006 hearing to amend the 2004 requirements, Boeing filed another petition, seeking both to reactivate the 2004 petition and to address amendments to the 2004 order. After the March 2006 hearing, at which a few additional changes were made to the 2004 requirements, Boeing submitted a final revised petition.

Boeing has requested a stay of the numeric effluent limitations placed in the requirements by the Los Angeles Water Board. Boeing has indicated that it will continue to

work diligently on implementing best management practices to limit or eliminate the discharge of pollutants from the site. Boeing also will continue to fully monitor all discharge points to assess the quality of the discharge. Finally, Boeing has promised that it will conduct no further rocket testing on site unless and until it obtains the necessary permits to capture and transport off-site all the process water used in such tests.

Boeing does not wish to subject itself to enforcement, either by the Los Angeles Water Board or by others, for violation of the effluent limitations. Boeing asserts that it cannot do more than is being done to limit the discharges and that it should be allowed time to come into compliance with the limitations.

For the reasons discussed below, the Request for Stay is granted effective today.

I. BACKGROUND

To qualify for a stay, a petitioner must allege facts and produce proof of three things:

- (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 and fact regarding the disputed action.¹

Boeing presented sufficient information, in written support of its request, to justify holding a hearing. A notice of the hearing was sent to the parties and provided to interested persons on March 17, 2006. Each party submitted information to the State Water Board in support of its position on the Request for Stay. A hearing was held on April 3, 2006 before Gerald D. Secundy, Vice Chair of the State Water Board, sitting as hearing officer.²

II. CONTENTIONS AND FINDINGS

Contention No. 1: Boeing contends that it will suffer substantial harm if a stay is not granted.

¹ (Cal. Code Regs., tit. 23, § 2053.)

² Because this order is issued by a single State Water Board member sitting by appointment of the Chair, this order will not be considered precedential by the State Water Board.

Finding: The harm Boeing alleges is speculative but may possibly be realized. If there is no substantial rainfall between now and the time the petition is resolved on its merits, there will be no discharges and Boeing will not be concerned with violating the numeric effluent limitations. However, if there is a substantial storm and discharges do occur, Boeing is potentially facing administrative or judicial civil liability assessments from the Los Angeles Water Board, additional citizen's suits, possible criminal charges, and potential debarment from federal contracts. The ability of Boeing to pay fines or finance legal defenses is beside the point; such actions are inherently harmful to the company and ought not to be an issue unless and until the petition has been resolved on its merits.

Contention No. 2: Boeing contends that no substantial harm will result to others or to the public interest if a stay is issued.

Finding: Boeing has shown, and no one has provided substantial evidence to rebut, that no harm will result to the public interest if a stay is granted. During the six to eight months that will pass between today and the resolution of the petition on the merits, it is apparent that all that can be done to protect the public interest will be done to protect the public interest. The work that Boeing is doing to limit or prevent the discharge of pollutants from the site will continue without abatement, as will all monitoring of the discharge points. If there is any indication that Boeing is doing less than it has committed to do in this regard, the Los Angeles Water Board is entitled to request that this stay be revisited.

Contention No. 3: Boeing contends that it has raised substantial issues of law and fact in its petition.

Finding: The question of whether the Los Angeles Water Board abused its discretion in not adopting a time schedule for compliance with the waste discharge requirements merits the consideration of the full State Water Board.

III. SUMMARY AND CONCLUSIONS

To justify a stay of a Los Angeles Water Board action, a petitioner must meet all three requirements of our regulations. Though the chances of discharge may be relatively small during the next few months, any discharge places Boeing in the position of suffering harm. Given the level of activity by Boeing in assuring that best management practices are in place and

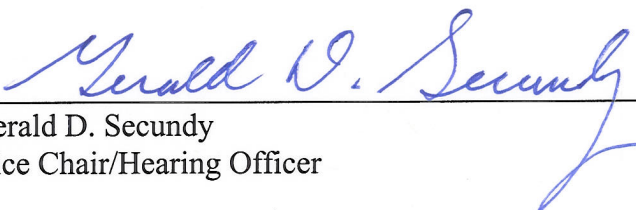
are being constantly revised and improved, it is evident that no harm will result to the public interest during the time this stay remains in effect.

This case presents highly unusual facts and the conclusions drawn here should not be used in resolving other stay requests.

IV. ORDER

IT IS HEREBY ORDERED that the requested stay of the numeric effluent limitations in the waste discharge requirements is granted. The specific elements of the requirements of the Los Angeles Water Board's order that are stayed are listed in Attachment A to this order.

Date: April 7, 2006



Gerald D. Secundy
Vice Chair/Hearing Officer

EXHIBIT A

Outfalls 1 & 2

Chromium
Copper
Iron
Lead
Manganese
Mercury
Nitrate-N
Nitrite-N
Selenium
TCDD

Outfalls 3-10

Antimony
Cadmium
Copper
Lead
Mercury
TCDD
TDS

Outfall 8

Ammonia as Nitrogen (N)
Nitrate-N
Nitrite-N
Selenium
Zinc

Outfalls 11 & 18

Ammonia as Nitrogen (N)
Chromium
Copper
Iron
Lead
Manganese
Mercury
Nitrate-N
Nitrite-N
Selenium
TCDD