Department of Toxic Substances Control

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June 26, 2007

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DISCONTINUATION OF DOE ACTIVITIES AT THE SANTA SUSANA FIELD LABORATORY, SIMI VALLEY, CALIFORNIA

Dear Mr. Johnson:

On June 1, 2007, the Department of Energy (DOE) wrote to the Department of Toxic Substances Control (DTSC) about DOE's interest in continuing certain activities within the Energy Technology Engineering Center (ETEC) at the Santa Susan Field Laboratory, namely certain inspection and data collection activities, and the evaporation of tritium-contaminated groundwater, notwithstanding the May 2, 2007 federal district court decision affecting DOE.[1] In its June 4, 2007 reply to that letter, DTSC spoke to each of those topics and addressed DOE's questions about the Hazardous Waste Management Facility, the Sodium Pump Test Facility, Building 4024, and waste management.

Following its receipt of DTSC's June 4 letter, DOE requested a June 7, 2007 conference call with DTSC to discuss DOE's activities at the 90-acre ETEC, after which DTSC: (1) asked DOE to send a letter describing in detail those activities that DOE wishes to continue despite the May 2, 2007 federal district court order enjoining DOE from actions at the ETEC until DOE completes an Environmental Impact Statement (EIS) to evaluate the cumulative impacts associated with DOE's activities at the ETEC; and (2) sent DOE an e-mail note requesting that DOE explain what it intends to do following its 45-day suspension of activities at the ETEC.

On June 12, 2007, DTSC met in Sacramento with representatives from Boeing, DOE, and NASA. At that meeting, DOE acknowledged receiving DTSC's June 7, e-mail question and handed DTSC a letter dated June 11, 2007, prepared in response to

[1] DOE has repeatedly said it intends to comply with the court's order. It has not said, however, whether it understands the order to prohibit DOE from continuing with activities to be evaluated in preparing the Environmental Impact Statement.

DTSC's June 7 requests. That letter did not answer DTSC's question regarding "Day 46" and DOE pointedly refused to answer that question during the June 12 meeting. Here DTSC responds to DOE's June 11 letter and places DOE on notice of a possible enforcement action.

On May 24, 2007, DOE announced it would "continue to perform environmental monitoring activities and place operations in a safe and stable configuration" while working with State and federal regulators. DTSC has repeatedly said it interprets the federal district court decision to require DOE to prepare an EIS to address the cumulative impacts from both radioactive and chemical contamination associated with decontamination and decommissioning (D&D) of the ETEC and other related cleanup activities, and reiterates today that environmental monitoring, routine inspections, and RFI report preparations should continue. With the exception of certain waste management activities discussed below, all other activities associated with closure and/or D&D within the ETEC should be suspended pending preparation of the EIS.To be absolutely clear about this, the remainder of this letter addresses each of the specific activities questioned by DOE.

Radioactive Materials Handling Facility (RMHF)

DOE explains that it needs to complete the characterization of the RMHF (i.e., sampling and testing to ascertain the types and levels of contamination) and "had also been interested in completing the decontamination and decommissioning (D&D) of that facility as well." DOE notes that this work began prior to the court order and discloses that there are holes in the roof and walls from earlier sampling conducted in anticipation of D&D. DOE acknowledges that it will have to "fix" contamination within the facility and patch holes in the roof and walls, and represents that this work can be completed within one month. [2]

It is clear from any reading of the federal court order that D&D of the RMHF must stop pending completion of the EIS. DTSC takes the view that any physical removal or other alteration of the RMHF, other than that required to complete the above-mentioned repairs and conduct characterization work is not allowed under the order.

[2] In its conversations with DTSC and in its June 11, 2007 letter, DOE mentioned the need to repair holes in the roofs and walls of the RMHF and Building 4024, and to take some action to "fix" contamination within the facility to place the facility in safe, stable condition. DTSC understands "fix" in this context to essentially mean in-situ encapsulation or the application of some other agent to physically and/or chemically bind contaminated dusts. If the wastes to be treated are hazardous wastes, DOE will need to obtain a permit or other grant of authorization from DTSC for that treatment. In light of the fact that DOE is undertaking this activity at the direction of the federal court, DTSC is prepared to issue, if necessary, an emergency permit to DOE for the required fixation.

Purge/Facility Water Management

DOE would like to evaporate approximately 4,500 gallons of tritiated water which it claims was produced by the installation of monitoring wells. DOE anticipates that additional water will be generated during quarterly sampling events and would like to evaporate that water as well.

DTSC takes the view that DOE's evaporation of tritium-contaminated water is not allowed under the court order. The release of tritium into the environment should be factored into the evaluation of cumulative impacts arising from operations at the ETEC. DOE should make plans to store this water on-site pending completion of the EIS.

Waste Management

At issue are "approximately" [3] ten boxes (1,025 cubic feet) of radioactive wastes generated as a result of characterization work at the RMHF and Building 4024. DTSC does not object to the disposal of those characterization wastes at the Nevada Test Site *provided* such disposal was evaluated and approved in any National Environmental Policy Act (NEPA) analysis that may have been required as part of the characterization project generating those wastes.

In addition, there are four or five containers of lead (Pb) shot and three or four containers of "associated" wastes from Building 4024.[4] DOE asserts that the Pb and associated wastes are not radioactive and that sampling by the Department of Health Services (DHS) confirms that determination. According to DOE's June 11 letter, the Pb shot had to be shipped for disposal by "June 20, 2007" or DOE would "need State relief on the 90-day accumulation limit." DOE's June 11 letter did not state whether DOE was at risk of exceeding the 90-day limit for the remaining three or four drums of associated wastes, but DOE's "Hazardous Waste Storage Extension Application" signed on June 16, 2007, transmitted to DTSC via e-mail on June 18, 2007, and faxed to DTSC on June 19, 2007 answered that question in the affirmative and indicated that the 90-day accumulation limit for all its Pb-bearing wastes would be reached on "June 25, 2007."

It appears that DOE was already in violation of the 90-day accumulation rule when it wrote its June 11 letter and when it requested that DTSC grant an extension to the 90-

[3] From our June 7, 2007 discussion, DTSC was given to understand that there are exactly ten boxes, not "approximately" ten boxes.

[4] The uncertainty arises from inconsistencies in descriptions by DOE and the Department of Health Services (DHS). In its June 11 letter, DOE wrote that it has "four drums of lead waste and four drums of associated waste. In DHS' June 13, 2007 letter to DOE, the wastes are simply described as "lead shielding materials" contained in "four 55-gallon steel drums, three 55-gallon poly drums, and one 20-gallon poly drum." In its June 16, 2007 application to DTSC requesting a 30-day extension to the 90-day storage limit for hazardous wastes, DOE described "five 55-gallon containers of lead shot, two 55-gallon containers of lead, trash, and debris, and one 30-gallon container of lead wool," and in a June 18, 2007 e-mail note to DTSC, DOE wrote that it possesses: four 55-gallon drums of Pb shot; two 55-gallon drums of Pb wool; one 10-gallon drum of Pb wool related trash; and one 55-gallon drum of Pb shot.

day limit. Consequently, this matter is being referred to DTSC's enforcement office for further evaluation.[5]

The situation DOE now finds itself in does not constitute an emergency within the meaning of California Code of Regulations, title 22, section 66270.61 concerning emergency permits. DTSC cannot use it variance authority under Health and Safety Code section 25143 to waive requirements of federal law (storage of RCRA hazardous waste on-site for more than 90 days). The "scrap metal" exemption does not apply and no federal or State recycling law exclusion or exemption applies.

In its June 4, 2007 letter, DTSC asked DOE whether any of the Pb wastes in question contain radioactive materials at concentrations above background levels and whether any wastes with concentrations above background will be shipped to the Class I disposal facility at Kettleman Hills. DOE's June 11 letter did not answer either question directly, but a June 13, 2007 letter from DHS regarding these wastes does inasmuch as it concludes that DOE's "lead shot" is at background level.[6] Based on the determination issued by DHS on June 13, DTSC does not object to the disposal of already-generated

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[5] DTSC asked DOE to provide analytical data supporting DOE's claim that the Pb shot in question is not radioactive. Documents provided with DOE's June 11 letter and received via mail on June 14, 2007 describe the Pb shot as "removed," a term DTSC equates with "generated." DTSC notes that the letter transmitting those data to the DHS and requesting that confirmatory surveys be performed is dated September 9, 2005, and that the samples of Pb shot in question were collected and analyzed between April 27, 2005 and June 1, 2005 (in the case of samples 1-3 from drum #L-1149, the testing was reportedly conducted on April 27, 2005, two days before the drum was sampled). On June 18, DTSC asked DOE to clarify whether the analytical results provided with DOE's June 11 letter are for the same Pb shot on hand today or for Pb shot no longer at the facility. DOE's response to that question confirmed that the Pb shot on hand today was analyzed two years ago. On June 18, DOE sent an application via e-mail to DTSC's Berkeley Office requesting a 30-day extension to allow "five 55-gallon containers of lead shot, two 55-gallon containers of lead, trash, and debris, and one 30-gallon container of lead wool" to be stored on-site for an additional 30 days. According to that request, the wastes are marked with an accumulation start date of March 28, 2007 and will reach the 90-day accumulation limit on June 25, 2007. The associated wastes appear to be the same miscellaneous wastes described in attachments to the September 9, 2005 letter mentioned above. During a June 25, 2007 telephone conference call arranged to discuss this discrepancy, DOE: (1) confirmed that the 2005 data were for Pb shot and miscellaneous wastes on hand today; (2) explained that it originally intended to recycle these wastes pending DHS' confirmation that the wastes were not radioactive; (3) said that the March 28, 2007 accumulation start date reflected the timing of its decision that sending Pb-containing materials to other DOE facilities for recycling was not cost-effective; (4) said that it had never sent Pb shot from SSFL to another DOE facility (a claim consistent with DTSC's review of manifests); and (5) did not clearly explain why it sought or would have sought DHS approval for recycling of Pb-containing materials at other DOE facilities given that Executive Order D-62-02 directs DHS only to evaluate wastes prior to disposal. DTSC explained that if the Pb shot and debris were generated shortly before April or May 2005 (consistent with the sampling date), the speculative accumulation restriction would have rendered the subject materials hazardous wastes by the end of April or May 2006 and the 90-day clock for storage of hazardous wastes on-site without a permit or other grant of authorization would have expired by the end of July or August 2006 at the latest.

[6] Judging from the "Confirmation Survey" prepared by DHS and accompanying its June 13 letter, the term "lead shot" in this context apparently includes other materials that were among the eight drums of Pb shielding materials tested.

Pb shot and associated wastes - other than "wall penetration plugs" - at the Kettleman Hills facility, provided those wastes are transported to the facility by a registered hazardous waste hauler under a properly completed hazardous waste manifest. As noted by DHS, the wall penetration plugs are not ready for release to unrestricted use at this time" and therefore may not be disposed at the Kettleman Hills facility.

Sodium Pump Test Facility (SPTF)

This facility is a non-radiologic, non-permitted facility comprising three buildings at which D&D work, including asbestos removal, commenced prior to the court order. One building has already been completely removed along with portions of another.

DOE does not explain whether there is any residual sodium or other contaminants present that might render wastes generated from D&D activities hazardous. Whether or not that would be the case, DTSC concludes that the SPTF D&D is circumscribed by the May 2 federal court decision because it is within the ETEC. Consequently, DOE should discontinue its D&D operations at this facility pending completion of the EIS.

If you have any questions concerning the above, please contact me at (916) 327-8642 or Ms. Nancy Long, Senior Staff Counsel at (916) 324-3154.

Sincerely,

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