

From: [Daniel O Hirsch](#)
To: [MSFC-SSFL-EIS](#)
Subject: CBG EIS comments
Date: Wednesday, October 02, 2013 1:58:34 AM
Attachments: [CBG comments NASA DraftEIS.doc](#)
[CBG EIS comments by section.docx](#)

Please find attached supplemental comments on the EIS by Committee to Bridge the Gap.



BRIDGING THE GAP BETWEEN
NUCLEAR DANGERS & A SAFE,
SUSTAINABLE FUTURE

Board of Directors

Daniel Hirsch, President

Susan Clark, Board Chair

Dr. Sheldon C. Plotkin, Secretary

Cindi Gortner

Professor Jack Miles

Pauline Saxon

Anthony Zepeda

1 October 2013

Allen Elliott
SSFL Program Director
NASA MSFC AS01, Building 4494
Huntsville, AL 35812

by email to: msfc-ssfl-eis@mail.nasa.gov

Re: Supplemental Comments on Draft EIS for Cleanup of NASA Property at the Santa Susana Field Laboratory

Dear Mr. Elliott:

These comments supplement the oral testimony and associated written statement by the Committee to Bridge the Gap (CBG) presented at the 28 August 2013 NASA hearing on the Draft Environmental Impact Statement (EIS) for the cleanup of the contamination at NASA's property at the Santa Susana Field Laboratory (SSFL).

In December 2010, NASA executed a binding Administrative Order on Consent for Remedial Action (AOC) with the California Department of Toxic Substances Control (DTSC), in which NASA committed to cleaning up all detectible contamination to background levels. The contamination by and cleanup of the hazardous materials at SSFL is regulated under the federal Resource Conservation and Recovery Act (RCRA). The authority to implement and enforce in California RCRA has been delegated by the United States Environmental Protection Agency (EPA) to DTSC. NASA is subject to RCRA and thus to DTSC's regulatory authority over the cleanup of the toxic contamination at NASA's SSFL property.

Northern California: PO Box 4, Ben Lomond, CA 95005-0004 (831) 336-8003 Fax (831) 336-9441

Southern California: 13400 Riverside Drive, Suite 308, Sherman Oaks, CA 91423 (818) 907-9260

www.committeetobridgethegap.org

Under RCRA and its delegation of authority to California, it is DTSC that determines the cleanup standards to be applied by a regulated entity such as NASA. In short, the polluter does not get to decide how much of the pollution it created it wishes to clean up; the regulator decides how much pollution the polluter must clean up. NASA thus has no discretion in the matter. It is a regulated entity and must comply with the directives of the regulator or face enforcement action.

Pursuant to that enforcement authority, DTSC entered into an Agreement on Consent for Remedial Action with NASA in 2010, requiring NASA to clean up its site to background. The AOC has a provision which indicates that NASA will conduct an Environmental Impact Statement on *how to implement the cleanup to background requirements of the AOC*. In other words, NASA has no discretion not to clean up to background, but it does have some discretion as to how to meet that requirement—for example, via *in situ* treatment for some constituents of concern versus disposal of contaminated soil. The EIS is supposed to address those discretionary matters of how to comply with the cleanup to background, not whether to. To repeat: the choice of cleanup standard is not within NASA's discretion, only the means of achieving it. And enforcement actions, like the AOC, are not subject to NEPA.

The National Environmental Policy Act (NEPA) requires Environmental Impact Statements for *discretionary* actions of federal agencies that can significantly impact the environment. As the Council on Environmental Quality correctly directed, and as the AOC requires, the present NASA EIS must be about *how* to implement the cleanup to background requirement of the AOC, not whether to comply.

What is troubling is that NASA seems to have trouble complying with such direction and its own promises to comply. Despite having committed to not include alternatives that would violate the AOC, it nonetheless has done so. And it has not merely mentioned the alternatives as ones not considered further, it has gone ahead and included the very analysis that was supposed to be avoided, trying to hype the number of trucks that could be eliminated if NASA could get out of the commitments it made in the AOC.

But even were there no AOC, NASA would not have the discretion to choose any of those less protective options anyway. Under RCRA, and California's longstanding implementing statutes and regulations, the cleanup standard is picked by the regulator, not the polluter, and is based on potential prospective land use. That in turn is to be based largely on current zoning and general plan permitted uses. NASA's SSFL property is zoned agricultural; the use of the land before NASA took it over was agricultural; and the County General plan designation allows agricultural uses. Indeed, land near the NASA property is used for such purposes.

So, NASA has no discretion to not clean up to background. The AOC requires it. The decision is in the hands of the regulator, not NASA, and DTSC made clear in the discussions that led up to the enforcement consent order that it would require cleanup to the agricultural exposure scenario. And RCRA and implementing statutes and regulations require it, because of current zoning. In the DTSC analyses of comments about the proposed AOC, DTSC pointed out that because of elevated background values of contaminants at SSFL, cleanup to background and cleanup to the agricultural scenario would be comparable. And one needs to be clear: this is all based on RCRA and longstanding California law and regulation unrelated to SB990, the SSFL site-specific statute. The cleanup to background/agricultural levels is required because of local zoning by statute, regulation and guidance completely apart from SB990.

The NASA EIS thus is restricted to that which NASA has the discretion to implement, and it cannot choose to clean up to a lesser standard than background. The inclusion of non-compliant alternatives it cannot in fact choose, after promising not to, is improper and should be withdrawn.

Furthermore, the discussion of potential impacts from the legally impermissible alternatives is conclusory, without any technical basis provided, and clearly erroneous. The Draft EIS throws in soil volumes and truck trips for what it describes as residential, industrial, or recreational cleanup standards. But no basis is provided for the estimates, no source given, just an ‘air grab,’ pulling numbers out of the air. And the very estimates demonstrate a fundamental lack of understanding of cleanup standards.

There is no such thing as a “residential standard,” an “industrial standard,” or a “recreational standard.” These are exposure scenarios, not standards, and the actual cleanup standard for those scenarios varies by at least a factor of one hundred for each scenario, and depending on the input values employed for the calculation, by considerably more than that. This fundamental technical error raises serious questions about the competence or veracity of the preparer of the estimates. (And who in fact did? Did by any chance Boeing, which is lobbying against the cleanup, have a hand in these numbers? We don’t know, because all one sees is the out-of-the-blue figures, with no basis or source provided.)

The cleanup standard for any exposure scenario is in fact a range. The standard risk range required under RCRA is to aim for a one in a million risk and fall back to no more than one in ten thousand if one can demonstrate to a regulatory some over-riding reason why one can’t readily make the one in a million level. So, if the exposure scenario were, say, residential, the cleanup standard can’t be known today. The regulator would have to decide whether to insist on a one in a million risk, or allow say three in a million, or 2 in 100,000 etc.

Did whoever came up with those air grab estimates base them on a one in a million risk, as generally required. Or did s/he in fact assume that NASA could get out of the basic requirement for one in a million risk and get an exception to a hundred times higher? One cannot tell. There can be no basis for assuming one would be allowed anything other than the one in a million level.

But the story doesn’t even end there. Which residential exposure scenario is assumed? Under EPA guidance, there are two such basic scenarios, the suburban residential and the rural residential, the same as the agricultural. Which is meant here? I would bet that one is using suburban residential, despite the rural residential nature of the area and the zoning. The former is orders of magnitude less protective than the latter.

But again the story doesn’t end there. Even within a specified exposure scenario, the resulting cleanup numbers are dependent upon the inputs. For example, EPA’s standard assumption for suburban residential use is someone has a backyard garden that produces 25% of one’s fruits and vegetables. Did that assumption get employed, or did one ignore it and assume no backyard garden at all. Such an assumption dramatically relaxes cleanup standards, inappropriately. Were standard inputs employed, or did the person who came up with the numbers weaken the inputs from what is generally used so as to relax the cited “cleanup standards” further and thus decrease further the estimated soil that would be remediated?

The brief discussion of these numbers refers to “lookup table” values for residential, industrial, or recreational standards. There is no such thing as a lookup table for them, unless the phrase is being misused.

But at the end of the day, the inclusion in the EIS is grossly improper. These are not alternatives; they would violate the AOC, as well as RCRA and the state enabling statutes and regulations; and NASA doesn’t have the discretion to pick its own cleanup requirements in the first place. If the polluter could do

that, it would always opt for a restricted presumed future use that would permit it to avoid most of its cleanup obligations. The entire section should be removed.

A few additional points:

The EIS should make clear that the County of Ventura, the City of Los Angeles, and the City of Simi Valley have all gone on record supporting the AOC. Those within NASA trying to sabotage the AOC may wish to point to a couple of tiny “neighborhood councils” that Boeing has been working through to oppose the cleanup. But they are not legal representatives; the Los Angeles City Council, which has passed resolutions supporting the AOC, is the legal representative. Neighborhood councils are tiny advisory groups with no formal power or authority; there are dozens of them in LA.

US EPA has submitted comments that suggest it has not fully understood the situation at hand. EPA says it is “imperative” that the radioactivity at SSFL be cleaned up to background, but then suggests that in other situations one might leave uncleaned up two-thirds of the chemical contamination rather than cleaning it up to background. There is of course no technical rationale for cleanup to background for radioactivity to be imperative, but not so for the chemicals. The only reason given by EPA is that it understands that DTSC has put forward a policy of reducing by 50% the amount of hazardous waste sent for disposal in California, and to do that one might need to back up the contamination at polluted sites rather than clean them up. But the DTSC idea was a proposal, not a policy, and it was part of a bill put forward late in the most recent legislative session that failed and was withdrawn. There is no such policy and thus no reason to consider forcing contaminated sites to not get cleaned up. And in any case, it would violate the AOC.

If NASA were to prepare an EIS on a proposed action to strip the native vegetation of SSFL when it was in its pre-NASA pristine state, grade much of the site for construction of test stands and other buildings, and then pour a million gallons of TCE into the soil and groundwater, dump tons of perchlorate on the soil, spread large amounts of dioxins, PCBs, heavy metals, etc. in soil, groundwater, released to the air, and into surface water, NASA would have to conclude that such a proposed action would have significant negative environmental impacts. But here, the beneficial impacts of remedying that environmental damage are essentially ignored, and the negative impacts of the No Action alternative, refusing to clean up, are also not addressed in any serious fashion.

CBG Comments on Specific Sections of Draft EIS

ES-1.0 add "under the Administrative Order of Consent (AOC) with the State of California" at the end of the first sentence.

ES-2.0 add "as well as some solid rocket fuel work" at the end of the first sentence in the second paragraph. Perchlorate contamination arose in part from the solid fuel activities.

2nd ¶ deeded by whom? Who owned the land prior to 1958? Was work for the US government conducted on the land prior to the deeding to USAF?

explain also what that work was – development and testing of nuclear missiles? Was work done for other DOD entitites (e.g., Navy for SLBMs?)

3rd ¶ 1st sentence. This needs to be greatly expanded, even in the Executive Summary. What contaminants? How much of the pollutants (e.g., 1 million gallons of TCE)? What are the health effects of the different contaminants--cancers, leukemias, genetic effects, neurological disorders, immune impacts, etc. How did USAF and NASA manage to produce so much contamination? Were environmental standards not rigorously applied? What environmental media are contaminated? The entire DEIS creates the impression of suppressing discussion of the environmental damage done by the contamination and trying to divert attention to trucks needed for remediating the toxic mess. NASA seems desperately in this EIS to be trying to hide the fundamental environmental issue—the contamination—and divert attention to the tertiary issues of trucks. NASA contaminated its site extraordinarily, damaging the environment; the cleanup is necessitated by NASA's breach of fundamental environmental controls; there must be detailed discussion of the damage to the environment NASA created, as that created the need for the action, and informs what would be the effect if the No Action alternative—no cleanup—were to occur, in breach of all of NASA's obligations.

p. ES-2 at bottom. Only discusses communications received pushing for EIS to consider breaking the AOC, not the various communications insisting that NASA comply with its obligations under the AOC and evaluate in the EIS how to implement the AOC.

p. ES-3 mentions comments from DTSC about the EIS scope regarding non-compliant alternaives. One should describe those comments in more detail. DTSC is NASA's regulator, and informed NASA in strong language that doing what it originally proposed would breach the AOC.

ES-4 asserts the AOC requires cleanup to background or laboratory detection limits. This is not correct. It requires cleanup to background, and the background study obviously includes detection limits. What NASA and DTSC now propose to do is use a Lookup Table that violates the AOC by, even when there are measured background values, throwing them out and using instead hypothetical detection limits from some future lab, and adding to that various inflated statistical uncertainty values. This is at variance with the AOC, which requires the use of the measured background values, and bars the use of uncertainty for the on-site measurements which are to be compared to the background values.

p. ES-7 Claims proposed action would have significant impacts on the burro flats cave paintings. NO. AOC expressly exempts Native American artifacts. This statement thus is completely false.

Assertion that the entire 2850 acre site is a sacred site is absurd, and that the cleanup would have a significant negative impact on the sacred site is equally absurd. What would have a significant negative impact is failing to clean up the vast quantities of contaminants.

The environmental impact of cleaning up the pollution at SSFL is BENEFICIAL, not NEGATIVE. The impact of the NO Action alternative is significant and negative. NASA has it backwards.

Similarly about biological resources. The impact of cleaning up contamination is beneficial to biological resources, not negative.

p. ES-7 Admits the truck estimates are heavily inflated, using the values that would produce the absolutely highest estimates.

ES-8 Absurdly, the EIS claims the effect of cleaning up groundwater and soil contamination that has been creating surface water pollution is negative. No, it is positive. Leaving the groundwater contaminated and allowing continued surface water contamination is what would be negative.

ES-9 Again, for health and safety, the EIS amazingly claims that cleaning up contamination results in negative impacts on health and safety; it is the pollution that is producing the negative impacts, leaving it in place would have negative impacts.

ES-10 Again, NASA has it backwards, claiming that the cleaning up hazardous materials has negative effects whereas it is the pollution by the hazardous materials that has the negative effects.

ES-15 again, absurd; says removing the contamination produces significant negative impacts on biological resources and remediation of pollution only moderate beneficial impacts. NASA's efforts to sabotage its commitments in the AOC are clear here. Under such an argument, no polluter would ever have to clean up the toxic mess it created.

Again, claims negative impact on EJ; but the pollution from the site, which apparently has caused cancers in the communities nearby, is a negative impact of NO ACTION, and eliminating that risk is a beneficial effect.

Exec Summary does not analyze impacts of the No Action alternative—major failure. Leaving the soil and groundwater polluted would have significant negative impacts.

ES-3.2 Give a single small paragraph describing the No Action alternative, but not a word of analysis about its environmental impacts, of leaving all the toxic contamination not cleaned up.

says only beneficial effects are hazardous waste and biology; not water quality, air quality, public health. This stuff is toxic pollution; cleaning it up is beneficial; without cleaning it up, water will continue to be polluted, toxic material will continue to spread when the wind blows; people's health will be at risk.

p. 1-7 Yet this fundamental need – protecting human health and the environment” is barely discussed in the EIS. No detail is provided.

4.2.3 No Action Alternative; again, just a few sentences; nothing about the significant impact if NASA doesn't clean up the polluted site.

p. 4-15 in passing acknowledges that recognized Native American artifacts are protected by the AOC and exempted from the cleanup to background requirement if it would place them at risk. yet NASA nonetheless hypes the issue of the artifacts as a significant negative impact, when it isn't, as the AOC exempts them.

p. 4-44 claims no action alternative would have negligible effect on biological features such as birds from contamination; no evidence provided, crazy. claim big effects from cleanup and ignore pollution effects. similarly for vegetation, they don't even identify effect of toxic materials on the vegetation.

4-81 claims no action alternative would have only moderate impacts on groundwater or surface water quality. this is absurd. the groundwater is heavily contaminated, causing its loss as a beneficial water source. surface water is continually contaminated at levels the LA RWQCB finds violates the NPDES discharge permit. Those are significant negative impacts. On the other hand, the EIS claims the minimal negative effects of cleaning up on water would be in fact “moderate.” The beneficial impacts are similarly understated. No technical basis whatsoever is provided for these seat of the pants claims.

4-111 absurdly claims major impacts to air quality from cleanup, no impacts whatsoever from No Action, even though leaving all that contamination means constant resuspension and airborne release to neighboring communities of the toxic material.

4-122 again, absurdly claims cleanup would have impacts on EJ communities and that failing to clean up the contamination would have none.

4-128 crazily asserts that the health impacts of not cleaning up the contamination are not significant. Pure assertion, no technical basis provided. What are the contaminants? Very toxic materials.

4-152 similarly absurdly asserts that just walking away from the hazardous waste and contamination would not have significant environmental impacts. EPA recommended the site for consideration as a Superfund site, one of the most contaminated areas in the country. Leaving the contamination without cleanup would not have a significant environmental impact? Give us a break.