



Santa Susana Field Laboratory The Role of Public Review of Contractual Agreements Including the 2010 AOCs

Introduction

In compliance with public participation requirements of the California Health & Safety Code 25356.1 and 25358.7 and consistent with the DTSC SSFL Public Participation Plan,¹ DTSC routinely makes available for public review and comment, drafts of regulatorily-required plans and data reports prepared by the responsible parties (Boeing, DOE and NASA).

Over the last 20 years, DTSC has also entered into a variety of “contractual agreements” with some or all of the principal responsible parties (RPs) at SSFL. These contracts are not laws, regulations, guidance or rules in the usual regulatory meaning of those terms. The contracts are negotiated agreements between the lead agency, DTSC and the RP(s), and are more akin to business contracts. Typically, the contracts include existing regulatory requirements, additional non-regulatory DTSC mandates, and schedule commitments. The contracts are legally binding in that either party is subject to civil penalties if it is determined that either party is in “breach of contract.” Of course, any violation of federal or state environmental law would also incur criminal penalties, but that is outside the scope of the contract itself. As with any contract, the parties may at any time mutually agree to modify, or even terminate, the contract. Each of these contractual agreements includes similar verbiage, e.g. *“This Order may be modified by the mutual agreement of the parties.”* Such modification and/or termination does not require California legislative approval, federal congressional approval, or public approval, and does not result in any civil and/or criminal penalty so long as federal and state laws continue to be complied with.

At SSFL, these contracts are ...

- DTSC, Boeing, DOE and NASA
 - 2007 Consent Order for Corrective Action²
- DTSC, DOE and NASA
 - 2009 Draft Revised Consent Order for Response Action (never executed or implemented)³

¹ DTSC. SSFL Public Participation Plan.” March 2009.

https://www.dtsc-ssfl.com/files/lib_pub_involve/other_docs/64776_SSFL2009FinalPPPlan.pdf

² DTSC. “Consent Order for Corrective Action.” August 16, 2007.

https://www.dtsc-ssfl.com/files/lib_correspond/orders/188_AR-M620N_20070820_104426.pdf

³ DTSC. “Draft Revised Consent Order for Response Action.”



- 2010 Administrative Orders on Consent for Remedial Action (AOCs)⁴
- DTSC and DOE
 - 2020 Order on Consent for Interim Response Action at the RMHF Complex⁵
 - 2020 Amendment to Order on Consent for Interim Response Action on the RMHF Complex⁶
- DTSC and Boeing
 - 2022 Boeing/DTSC Settlement Agreement⁷

2010 AOCs

As with most DTSC and RP generated SSFL documents, the public may play a review/comment role in the implementation of the 2010 AOCs.

Section 3.1 of the 2010 AOCs discusses DTSC's requirements for public review of draft plans and reports prepared by DOE and NASA. DTSC commits to *"consider any comment received from the public,"* and commits to *"prepare a response to the public comments, explaining the disposition of DTSC's actions regarding the comments received."* However, neither DTSC nor DOE/NASA commits to actually implementing any recommendation received from the public.

- 3.0. PUBLIC PARTICIPATION [Extracted from the DOE AOC]
 - 3.1. In conjunction with DOE, DTSC shall implement the public review process specified in DTSC's Public Participation Policy and Guidance Manual and as detailed in the final SSFL

https://dtsc.ca.gov/wp-content/uploads/sites/31/2017/11/SSFL_DRAFTConsent-Order_DOENASA.pdf. August 19, 2009

https://dtsc.ca.gov/wp-content/uploads/sites/31/2017/11/SSFL_D-NOE_DOENASA.pdf. September 2009.

https://dtsc.ca.gov/wp-content/uploads/sites/31/2017/11/SSFL_Draft-CO_for-response-action.pdf. November 3, 2009

⁴ DTSC. "Administrative Order on Consent for Remedial Action." December 6, 2010.

https://www.dtsc-ssfl.com/files/lib_correspond/agreements/64791_SSFL_DOE_AOC_Final.pdf

https://www.dtsc-ssfl.com/files/lib_correspond/agreements/64789_SSFL_NASA_AOC_Final.pdf

⁵ DTSC. "Order on Consent for Interim Response Action at the RMHF Complex." May 19, 2020.

https://www.dtsc-ssfl.com/files/lib_doe_area_iv/2020RMHF_Consent_Order/69145_2020.05.19_Signed_DOE_Order_on_Consent_for_Interim_Response_Action_at_RMHF_with_DN.pdf

⁶ DTSC. "Amendment to Order on Consent for Interim Response Action at the RMHF Complex." October 30, 2020

https://www.dtsc-ssfl.com/files/lib_doe_area_iv/Demo_HWMF_six_DOE_Bldgs/69345_2020.10.30_Signed_ETEC_Amendment_to_Order.pdf

⁷ DTSC. "Settlement Agreement." May 9, 2022.

[https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Fdeliverable_documents%2F2026541471%2FSSFL%20DTSC-Boeing%20Settlement%20Agreement%20\(Final\).pdf](https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Fdeliverable_documents%2F2026541471%2FSSFL%20DTSC-Boeing%20Settlement%20Agreement%20(Final).pdf)



*Public Participation Plan dated March 2009. In accordance with the Site Public Participation Plan, opportunities shall be provided for the public to review and comment on all draft plans and reports prepared by DOE. DTSC shall **consider any comment received from the public** as it evaluates draft plans and reports prepared by DOE. In response to comments received, DTSC shall **prepare a response to the public comments, explaining the disposition of DTSC's actions regarding the comments received.** If requested by DTSC, DOE shall submit within two weeks, if practicable, of any request the information necessary for DTSC to prepare its responses to the public comments.*

Note that the above extract from the 2010 AOCs applies only to draft plans and reports generated during implementation of the 2010 AOCs. It does not, and could not, refer to the initial drafting or issuance of the 2010 AOCs themselves. On the contrary, we know that drafting of the 2010 AOCs did not include a formal public review process or a peer review process as stated explicitly by Dr. Valerie Hanley of DTSC in her response to STREAM submission SCF000780.⁸

- **Question 2:** *If DTSC believes that the peer review process is so good, why were similar reviews not used prior to the 2007 Consent Order, the 2010 AOC, the 2017 draft PEIR, the 2020 Amendment to Order on Consent, the 2022 DTSC/Boeing Settlement Agreement, and the 2023 Final PEIR?*
- **DTSC Response 2:** *The 2007 Consent Order, 2010 AOC, and 2022 Settlement Agreement are all negotiated contractual agreements between the parties that signed those agreements; thus, there is no public review process. The 2017 draft PEIR was subject to public review, as required by the California Environmental Quality Act. No additional review was warranted or required.*

Therefore, generation of the 2010 AOC “contracts” did not require a public review process, neither did a public review occur. **In the same vein, any future termination or modification of the 2010 AOC contracts would be a joint decision of the signing parties, and would not require a public review process, and certainly not public approval.**

2007 Consent Order

2009 Revised Consent Order

Dr. Hanley’s response above stated that the 2007 Consent Order was also a contractual agreement between DTSC and the RPs with no legal requirement for a public review process. To my knowledge, the 2007 Consent Order was not subject to a public review process.

⁸ DTSC. “Response to STREAM submission SCF000780.” April 30, 2026.

https://philrutherford.com/SSFL/DTSC/STREAM/SCF000780/2026-04-30_DTSC_Response_SCF000780.pdf



During early 2009 (January through August), during initial negotiations between DTSC, Boeing, DOE and NASA, on incorporating new conditions of SB 990 into the 2007 Consent Order, there was no public involvement, review or approval. Neither did Dan Hirsch participate in the negotiations, much to the chagrin and displeasure of local and State legislators expressed in their letter to CalEPA Secretary, Linda Adams.⁹ There is, however, evidence that DTSC and CalEPA management kept Dan Hirsch informed about the status of negotiations during this period.¹⁰ There was also an attempt by DTSC Acting Director, Maziar Movassaghi to implement a multi-phase review by initially, legislators and then by the general public.¹¹ There is no evidence that his plan was ever implemented. However, following Norm Riley's removal from his post as DTSC SSFL Project Director on August 18, 2009, by Movassaghi,¹² and replacement with Rick Brausch, a request for public review of the Movassaghi/Brausch revised Consent Order was issued the following day on August 19, 2009.¹³ During the closing months of 2009, various subsequent drafts of the revised consent order were generated in an attempt to incorporate "public" comments, however this revised Consent Order was never signed, executed, or implemented. Less than a year later it was supplanted by the 2010 AOCs which did not go through any public review process.

2020 Order on Consent for Interim Response Action at the RMHF

2020 Amendment to Order on Consent for Interim Response Action at the RMHF

DTSC did not solicit public comment on the drafting or issue of the 2020 Orders on Consent^{5,6} related to demolition of remaining DOE buildings in Area IV. This should not be confused with DTSC's request for public comment on the various draft implementing plans called for in the Orders on Consent, including the draft Demolition Standard Operating Procedure, and the draft RCRA Closure Plans.

⁹ Brownley to Adams. "Santa Susana Field Lab. Cleanup - Negotiation of a new Consent Decree." March 9, 2009.
https://philrutherford.com/SSFL/2010_AOC/2009-03-09_Julia_Brownley_to_Linda_Adams.pdf

¹⁰ Hirsch to Brausch. "April 9th Meeting." March 30, 2009.
https://philrutherford.com/SSFL/DTSC/2010_AOC_PRA/OneDrive_1_11-21-2025/2009.03.30%20April%209/2009.03.30%20April%209.pdf

¹¹ Movassaghi. "Time Sensitive: SSFL: Consent Order Public Participation Plan." May 7, 2009.
https://philrutherford.com/SSFL/2010_AOC/2009-05-07_TIME_SENSITIVE_SSFL_Consent_Order_Public_Participation_Plan.pdf

¹² Movassaghi to Adams. "Firing of Norm Riley." August 18, 2009.
https://philrutherford.com/SSFL/2010_AOC/2009-08-18_Firing_of_Riley.pdf

¹³ DTSC. "Draft Consent Order with DOE and NASA for the Santa Susana Field Laboratory." August 19, 2009.
https://philrutherford.com/SSFL/2010_AOC/2009-08-19_Request_for_Review_of_Consent_Order.pdf



2022 Boeing/DTSC Settlement Agreement

Since Boeing declined to sign the 2010 AOC, twelve years later following 18 months of secret mediation between Boeing and DTSC, DTSC issued the 2022 Settlement Agreement.⁷ This obviously did not undergo any public review process.

Conclusion

Plainly, CalEPA's/DTSC's position on public review/approval of these contracts has proven to be schizophrenic in the past. The Adams/Movassaghi/Brausch era's desire for public review of the 2009 revisions of the 2007 Consent Order doubtless was motivated by the demands of Dan Hirsch. That clearly deviates from the most recent statements of Dr. Hanley. For all other contractual agreements, including the original 2007 Consent Order, the 2010 AOCs, the 2020 Orders on Consent for remaining DOE buildings in Area IV, and the 2022 Boeing Settlement Agreement, the public had no role in reviewing or approving the drafting or execution (signing) of these agreements. Furthermore, none of these agreements include any requirements for legislative or public review/approval of potential modification/termination of the said agreements.

The public therefore should have no role in the termination of the 2010 AOCs. The decision to terminate the 2010 AOCs rests solely on the shoulders of DTSC and DOE/NASA alone.