

Boeing Files Lawsuit To Challenge Limitations On Discharges From Its Santa Susana Field Laboratory

By Daniel Kelly

In mid-January, 2007, Boeing Company ("Boeing") filed a lawsuit challenging the State Water Resources Control Board's Order WQ 2006-0012, upholding the Los Angeles Water Quality Control Board's decision to impose numeric effluent limitations on discharges from Boeing's Santa Susana Field Laboratory in Ventura County.

Background

In July 2004, the Los Angeles Regional Water Quality Control Board (Los Angeles RWQCB) re-issued a permit to Boeing for its discharges from the Santa Susana Field Laboratory (SSFL). In August 2004, Boeing filed a petition with the State Water Resources Control Board challenging the permit, which was, at Boeing's request, held in abeyance. In January 2006, the Los Angeles RWQCB modified Boeing's permit revising, among other things, the effluent limitations contained in the permit. In February 2006, Boeing filed a petition challenging the modified permit. Boeing also challenged the Los Angeles RWQCB's failure to adopt a cease and desist order, which would have provided Boeing with a compliance schedule and interim effluent limitations. The Los Angeles RWQCB again amended Boeing's permit in March 2006, adding additional effluent limitations. Boeing challenged the additional modifications and requested a stay of the effluent limitations. Though a hearing officer

originally granted Boeing's request for a stay of the permit pending a ruling on the merits of its petition, the SWRCB later overturned the stay. SWRCB Order WQ 2006-0012 and Boeing's Challenge

On December 13, 2006, the State Water Resources Control Board adopted Order WQ 2006-0012, upholding, for the most part, the Los Angeles RWQCB's actions, including the imposition of various monitoring requirements and numeric effluent limitations. Of note, Boeing contended that most, if not all of its discharges consisted of storm-water, and that Boeing should be "regulated in a similar manner as the State Water Board's General Permit for Industrial Activities." Notably, the Boeing permit provides for numeric effluent limitations, as opposed to requiring best management practices and other control measures, normally imposed on industrial facilities.

The SWRCB disagreed with Boeing's arguments, based, in part, on the unusual nature of Boeing's discharges and the "unique" nature of the SSFL site. The SSFL has a history of contamination, is the subject of ongoing RCRA cleanup, and has the potential to discharge significant amounts of storm-water runoff during large storm events. While the SWRCB did uphold the limitations in the permit, it also determined that the Los Angeles RWQCB "acted inappropriately in refusing to issue

Boeing a [Cease and Desist Order], with a compliance schedule and interim effluent limitations." The SWRCB ordered the Los Angeles RWQCB to issue a Cease and Desist Order "with the shortest possible compliance schedule."

In response, Boeing filed a lawsuit in Los Angeles County Superior Court, challenging the limits provided in the permit. Boeing's contentions include, among others, that the numeric effluent limitations in the permit are not appropriate for storm-water discharges. Boeing's suit also reportedly seeks a stay of the numeric effluent limitations pending judicial review.

Conclusion And Implications

The SWRCB's Order WQ 2006-0012 is a Precedential Decision that imposes numeric effluent limitations on what Boeing contends are storm-water discharges. The SWRCB justified imposing numeric effluent limitations based, in part, on the "unique" site conditions. If upheld, the various Regional Water Quality Control Boards would arguably have the power to impose numeric effluent limitations for storm-water discharges if the "unique" nature of a particular site warranted such limitations. Order WQ 2006-0012 can be found on the SWRCB's website at http://www.waterboards.ca.gov/resdec/wqorders/2006/wqo/wqo2006_0012.pdf.