



Richard Williams <richard.williams@lacity.org>

Please support 19-0145

Jeni Knack <jdknack@gmail.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 11:41 PM

To Whom It May Concern,

I live less than five miles from the Santa Susana Field Lab. I strongly implore you to ensure that the AOC cleanup agreements concerning SSFL are upheld. On February 8, the full city council approved a motion to retain legal council for litigation purposes to this end. I urge you to similarly support item 19-0145 today. The communities surrounding SSFL need the city to fight for us, to continue it's history of support for the SSFL cleanup, as without a full cleanup, we will continue to be subjected to public health risks, as the Woolsey fire has recently shown.

Our communities have needed the remediation of the site for 60 years! We now have support at the state level with Jared Blumenfeld as Secretary of CalEPA, and the DTSC has communicated to DOE that it must comply with the AOC. Please show strong support at the city level by doing all that you can to represent the vast majority of citizens who are desperate for the cleanup to finally take place. Please vote yes on item 19-0145.

My Thanks,

Jeni Knack



Richard Williams <richard.williams@lacity.org>

Support for Item 19-0145

D'Lanie Blaze <dlanieblaze@gmail.com>
To: clerk.budgetandfinancecommittee@lacity.org

Sun, Mar 17, 2019 at 11:35 PM

Please see written comments, attached as a PDF.
I write in support of Item 19-0145.

Sincerely,

D'Lanie Blaze

CORE Advocacy for Nuclear & Aerospace Workers
COREAdvocacy.org
Cell: 818.450.7988 • Msg: 818.835.1431 • Fax: 818.337.0346

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 **CORE_AOC_SUPPORT.pdf**
78K



CORE Advocacy for Nuclear & Aerospace Workers

818.450.7988 speak@coreadvocacy.org 20309 Leadwell Street, Winnetka CA 91306

Budget and Finance Committee
City of Los Angeles
Office of City Clerk Administrative Services
200 N. Spring St., Room 224
Los Angeles, CA 90012

March 18, 2019

Dear Budget and Finance Committee:

I write in support of Item 19-0145. Department of Energy (DOE) must uphold its cleanup agreements at Santa Susana Field Laboratory (SSFL), or face legal action.

I represent SSFL workers and their families under the Energy Employee Occupational Illness Compensation Program (EEOICPA), which was enacted by Congress to provide compensation and medical benefits to sick nuclear workers when it is determined that occupational exposure to radiation and toxic chemicals resulted in cancer and other illnesses.

SSFL workers and their families, many of whom are EEOICPA claimants, reside in every district around Los Angeles and Ventura Counties. As your constituents, they rely on your commitment to public health and safety, and to keeping agencies like Department of Energy (DOE) and contractors like The Boeing Company ("Boeing") honest and accountable.

Based on my extensive review of site history and employee records, I am not confident that DOE intends to uphold its agreements. The Committee must be prepared to act. DOE has had a longstanding dynamic with Boeing to circumvent statutory obligations under EEOICPA for the purpose of downplaying the hazardous nature of site operations and worker exposure at SSFL. These efforts have been undertaken to limit obligations to environmental cleanup of the site.

In 2014, it was discovered that DOE and Boeing had been supplying misleading information to Department of Labor (DOL) and the National Institute for Occupational Safety and Health (NIOSH). DOE and Boeing failed to disclose the existence of 50+ radiological facilities that operated at SSFL for 50 years, and withheld all corresponding environmental and worker incident data from NIOSH. As a result, NIOSH was left with an inaccurate Site Profile and an inability to accurately estimate the likelihood of radiation exposure, leading to the summary disqualification of many workers diagnosed with radiogenic cancers.

It was then discovered that DOE and Boeing had also mischaracterized hundreds of eligible SSFL workers, by depicting them as employees who did not qualify for EEOICPA. This action left sick and dying workers, who should have easily qualified for EEOICPA benefits, unable to access the program. Many died without ever understanding why they had been turned away.

CORE Advocacy discovered these issues and attempted to correct them by involving DOE. The issues only got worse. Under the Trump Administration, Boeing was caught brazenly falsifying and omitting SSFL individual worker radiation data and incident reports to lower the perception of employee radiation exposure. DOE did not gain control of its contractor; instead, the agency enabled the contractor to evade accountability by permitting Boeing to withhold personnel records and radiation data from SSFL workers who, under the law, should be able to obtain their records via the Privacy Act.

While DOE and Boeing have attempted to convince us that SSFL was never dangerous and poses no health risks today, there are undeniable indications that efforts have been made to downplay the scope of site operations that resulted in worker exposure and environmental contamination. By controlling and diminishing the number of sick SSFL workers who can qualify under EEOICPA, DOE and Boeing are able to continue perpetuating the myth that SSFL never made anyone sick; that no cleanup is required; and that DOE never undertook such hazardous operations at the site. Worker records and historical facility documents tell a vastly different story.

Based on DOE and Boeing's willingness to mislead federal agencies in order to highjack EEOICPA, and to use the federal worker legislation program as a vehicle to evade environmental accountability, it is clear that DOE has no intention of upholding its cleanup agreements.

I respectfully urge the Committee to make it clear that legal action will be taken if DOE does not comply. The City of Los Angeles has a long history of supporting the SSFL cleanup, and should stand behind CalEPA Secretary Jared Blumenfeld's requirement that DOE adhere to its agreements.

Further, the City of Los Angeles must not allow the Trump Administration to permit DOE and its contractor to shirk their obligations. It has been established that exposure to radioactive materials and toxic chemicals used at SSFL – and at 300 DOE sites nationwide – can cause cancer and other health conditions. Concerns raised in the aftermath of the Woolsey Fire illustrate the importance of taking environmental contamination, and the need for cleanup, very seriously.

I respectfully urge the Committee to support Item 19-0145, and welcome the opportunity to speak with you about the challenges your constituents currently face under EEOICPA, as a result of DOE and Boeing's attempts to obstruct federal worker legislation. It is a privilege to represent SSFL workers and their families under EEOICPA, and to provide my statement to the Committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "D'Lanie Blaze". The signature is fluid and cursive, with a large initial "D" and "B".

D'Lanie Blaze

Authorized Representative

CORE Advocacy for Nuclear & Aerospace Workers



Richard Williams <richard.williams@lacity.org>

SUPPORT ITEM 19-0145 (SSFL Cleanup)

So Cal Federation of Scientists <scalfedsScientists@gmail.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 11:32 PM

The Southern California Federation of Scientists (SCFS) strongly supports item 19-0145, which would allocate support for outside counsel to assist the City Attorney in challenging the recent action by the Trump Administration breaking cleanup obligations for the former nuclear meltdown site, the Santa Susana Field Laboratory (SSFL). The full Council has already, without objection, voted to direct the City Attorney to file a lawsuit if either the EIS or the EIR for SSFL is finalized, with content that is at odds with those cleanup agreements and the long-held position of the City Council in support of the full cleanup of the site and compliance with the cleanup agreements. Now the Budget and Finance Committee has before it the proposal to provide support so the City Attorney can effectively carry out that directive. We urge its approval. The Trump Administration's anti-science and anti-environmental actions, breaching solemn commitments of the federal government to the state of California and the residents of Los Angeles, must not go unchallenged.

SCFS was formed shortly after the Second World War by Manhattan Project scientists concerned about the nuclear threat. We have been involved in the SSFL matter for forty years.

SSFL had ten reactors, of which suffered accidents, one being a partial meltdown in which a third of the fuel elements experienced melting. None of the reactors had containment structures. Tens of thousands of rocket tests also were conducted, further contaminating the site with toxic chemicals. It is one of the most contaminated places in the state.

In 2010 cleanup agreements were entered into. The City has long supported them. But the EIR and EIS for the cleanup have breached those agreements. The City submitted detailed comments about these failures, in part in order to give it the right to challenge in court any abrogation of the cleanup commitments. The time has now come.

Just before the holidays, the Trump Administration published a Final EIS for SSFL, proposing to not clean up an astonishing 98% of the contaminated soil. This is one more outrageous instance of the Trump Administration breach of environmental obligations, and the City Council is to be applauded for voting a few weeks ago to direct the City Attorney to challenge the Trump Administration if it finalizes those proposals.

We therefore strongly support the current measure, which is to allocate support for outside counsel to assist the City Attorney in such a challenge.

We note that the Boeing Company, which owns much of SSFL and has similarly been breaking its cleanup commitments there, is now in serious trouble because of apparent cutting of safety corners regarding its new airplane, two of which have recently crashed, with great loss of life. The Council is absolutely right in insisting on safety promises at SSFL being kept, and taking what action it can to enforce those promises.

The recent catastrophic Woolsey fire, which began at SSFL a few hundred yards from the site of the partial meltdown and which burned 80% of the site, much of it being contaminated vegetation growing in contaminated soil, is one more reason why the City Council action of a few weeks ago is so important, and why this committee should now take the steps necessary to facilitate carrying it out. The contamination at SSFL has migrated offsite, and will continue to do so until the site is cleaned up. To protect the City's residents, one must defend those cleanup commitments. We urge approval of the measure.



Richard Williams <richard.williams@lacity.org>

SUPPORT for item 19-0145,

Jennie Hilliger <Jennie@hilligerinc.com>

Sun, Mar 17, 2019 at 11:26 PM

To: "Clerk.BudgetandFinanceCommittee@lacity.org" <Clerk.BudgetandFinanceCommittee@lacity.org>

Please force 100% cleanup. So many kids have cancer in the area. It's so scary as a mother. This has gone on for too long

Sent from my iPhone



Richard Williams <richard.williams@lacity.org>

please vote yes on item 19-0145

Allegria Henderson <allegria.henderson@gmail.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 10:11 PM

Dear Budget and Finance Committee,

I write today to urge your support for item number 19-0145, to retain outside counsel for potential litigation regarding the Santa Susana Field Laboratory. The City of Los Angeles has long supported the full cleanup of nuclear and chemical contamination at SSFL. We cannot allow the Trump Administration's Dept. of Energy to walk away from its cleanup commitments and leave 98% of the contamination on site, where it will continue to migrate and threaten public health. Please vote yes on item 19-0145.

Sincerely,
AJ Henderson
Canoga Park, CA



Richard Williams <richard.williams@lacity.org>

Rocketdyne Cleanup Coalition SUPPORT for 19-0145

Rocketdyne Cleanup Coalition <info@rocketdynecleanupcoalition.org>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 9:52 PM

Attached please find a letter of support for item 19-0145 from the Rocketdyne Cleanup Coalition.

 **RCC to Budget and Finance 3-18-19.pdf**
106K



March 18, 2019

Dear Budget and Finance Committee of the Los Angeles City Council:

The Rocketdyne Cleanup Coalition (RCC) strongly supports item 19-0145 regarding the cleanup of the Santa Susana Field Laboratory (SSFL).

RCC is a community-based alliance that was formed in 1989 to prevent the re-licensing of nuclear work at Rocketdyne (now SSFL.) Once we learned about the partial nuclear meltdown and other accidents that were long kept from the public, we were concerned that continued nuclear work at the site would bring additional harm to the health of our communities. Together with other key people and organizations, we helped bring an end to nuclear activities at SSFL.

Many of us live right below the site, so we turned our focus to making sure that all of SSFL's nuclear and chemical contamination was cleaned up. After two decades of fighting, in 2010 we thought we might finally have a full cleanup when both NASA and the DOE signed an Administrative Order on Consent (AOC) with the California Department of Toxic Substance Control (DTSC) which required a cleanup to background levels of contamination.

But the Trump Administration's DOE is now proposing that almost all of the contamination not be cleaned up, meaning our communities will continue to be at risk. That is unconscionable. Please see our attached comments on DOE's Final Environmental Impact Statement, which declares its intention to leave 98% of the contamination not cleaned up, and to walk away from cleaning up most of the groundwater contamination too.

The City of Los Angeles has long supported the full cleanup of SSFL, for which we have been extremely grateful. The City opposed the EIS and its proposed breach of the cleanup agreements. The full City Council voted just weeks ago to direct the City Attorney to sue over the EIS or EIR if either were finalized in a way that violated the cleanup agreements and the City's longstanding position in support of the full cleanup. It's imperative that the City allocate the resources necessary to defend the SSFL cleanup agreements, including litigation if necessary.

We cannot allow the Trump Administration to get away with leaving SSFL contaminated. As the recent Woolsey fire, which started at SSFL and raised concerns about releases of toxic and radioactive materials offsite underscores, the health and well-being of our communities is at stake.

Sincerely,

Marie Mason and Dawn Kowalski
Co-Founders, Rocketdyne Cleanup Coalition



January 27, 2019

Mr. John Jones
Federal Project Director
DOE SSFL Closure Project
4100 Guardian Street, Suite 160
Simi Valley, CA 93063

by email: john.jones@emcbc.doe.gov, stephanie.jennings@emcbc.doe.gov

Re: Final Environmental Impact Statement for Remediation of Area IV
and the Northern Buffer Zone of the Santa Susana Field Laboratory

Dear Mr. Jones:

We cannot begin to tell you how outraged we are by the Trump Administration's Department of Energy (DOE) attempting to break its solemn and legally binding commitments to clean up all the contamination it created over decades of environmentally irresponsible practices at the Santa Susana Field Laboratory (SSFL), right next to where we live. And we must be candid about our anger at your personal breach of your word, publicly given.

On February 5, 2014 at the SSFL Work Group, in front of the community, you stated:

"And at the end of the day, our perspective is that, it's what Dan mentioned. It was Ines Triay who said, I'm tired of fighting. Let's clean up to background, let's get this site closed. And that is what led to where we're at."

"The bottom line is, yes things happened, yes they were unfortunate, and we've made a commitment to clean it up. That's what all this is for. To meet the Administrative Order on Consent, to meet the EIS, and at the end of the day, because its the right thing to do. The right thing to how we get to a full and complete cleanup."

"Is DOE committed to the AOC? Yes."

You were videotaped making these public pledges. Your taped statement can be found at <http://bit.ly/DOE-2-5-14>.

Despite DOE having signed an Administrative Order on Consent (AOC) with the California Department of Toxic Substances Control (DTSC) which binds DOE to cleaning up all its contamination to background, during the holidays a few weeks ago DOE issued a Final Environmental Impact Statement (FEIS) for the cleanup of its portions of SSFL that would abrogate every commitment DOE—and you personally—made. The FEIS selects as its preferred “cleanup” decision to NOT clean up 98% of the soil it contaminated. The AOC requires cleaning up, with extremely limited exceptions, all of the contamination. The FEIS says to do just the opposite, leave almost all of it not cleaned up. We cannot begin to tell you how unethical that is.

The new proposal to only clean up the site to a supposed “open space” standard, so that thousands of times higher concentrations of contaminants should be allowed to remain because people would supposedly only be on the property a few hours at a time for hiking, is indefensible. It isn’t “open space” where we live and work nearby. If the site isn’t cleaned up, contamination will continue to migrate to where people like us live, 24/7. We are especially at risk when SSFL burns in wildfires, as it did in November during the Woolsey Fire that started and burned most of SSFL. Especially given the challenges of climate change, SSFL is likely to burn again and if it is not fully cleaned up, our community will once face increased risk of exposure to SSFL’s deadly contamination.

DOE’s proposed action is also grossly illegal. The alternative chosen in the FEIS, cleaning up to a supposed “open space” standard, was not even considered, identified, analyzed, or discussed in the draft EIS that was made available for public review and formal written comment and oral testimony at the EIS hearings. In fact, nearly 60% of the entire FEIS is new material that the public has never seen before and never had a chance to comment on in the DEIS process. This amounts to more than a thousand pages of entirely new material, much of it fundamentally different, in violation of law. DOE knows that what it is doing is shameful and indefensible, and thus is not even subjecting its outrageous new proposed action and new FEIS material to the public review, comment, and agency response required under the National Environmental Policy Act.

Furthermore, DOE in the FEIS is usurping the authority of its regulator. DOE, as the party responsible for causing the pollution by its irresponsible environmental practices, does not under the law get to decide how much of the damage it created it must remedy. DOE is merely a regulated entity, a polluter, and the decisions as to what it must do to undo the damage it created are not in its authority in the first place. It is bound by the AOC, and bound by the directions of its regulator.

DOE polluted our community through decades of extraordinary failures of basic environmental protection. It promised to clean up all the radioactive and toxic mess it created. A few weeks ago it announced it intends to break its word and its legal obligations. We object more strenuously than we can say.

DOE should withdraw the FEIS; it should issue no Record of Decision based upon it. It should issue a new FEIS 100% compliant with the AOC. And if it refuses to do these things, it should at minimum recirculate for formal public review and comment the FEIS, which is not in fact an

FEIS at all, but an entirely new EIS, which is not permitted under law to escape formal public review, comment, and agency formal response to comments. However, what really must be done is your agency, and you as its representative, must reverse course and live up to your word. Violating the cleanup commitments places all who live in the region around the contaminated site at perpetual risk.

Sincerely,

Marie Mason and Dawn Kowalski
Co-founders
Rocketdyne Cleanup Coalition

cc:

Stephanie Jennings, NEPA Document Manager SSFL Area IV, U.S. Dept. of Energy
California Governor Gavin Newsom
U.S. Senator Dianne Feinstein
U.S. Senator Kamala Harris
Congressmember Julia Brownley
Congressmember Katie Hill
Congressmember Brad Sherman
California Senator Henry Stern
California Assemblymember Jesse Gabriel
California Assemblymember Christy Smith
Ventura County Supervisor Linda Parks
Ventura County Supervisor Steve Bennett
Los Angeles County Supervisor Sheila Kuehl
Los Angeles County Supervisor Kathy Barger
Los Angeles City Councilmember Greig Smith
CalEPA Secretary Jared Blumenfeld
Arsenio Mataka, Special Assistant Attorney General for the Environment



SUPPORT for item 19-0145 Santa Susana Field Laboratory

West Valley Resistance <wvresistance@gmail.com>

Su

To: Christina Walsh <christina@peoplepolicy.org>

Cc: "Clerk.BudgetandFinanceCommittee@lacity.org" <Clerk.BudgetandFinanceCommittee@lacity.org>, Bobbi Rubinstein <bobbi.rubinstein@gmail.com>, Melissa Bumstead <melissabumstead@deniseanneduffield@gmail.com> <deniseanneduffield@gmail.com>, janeen pedersen <janeenrae1@icloud.com>, Isabel Frischman <isabelwf@sbcglobal.net>, "mbregsan.2018@gmail.com" <mbregsan.2018@gmail.com>, Lisa Rosenfield Podolsky <lisarosenfield@icloud.com>

Please share and email legislators tonight or early tomorrow morning. All email addresses are listed below. The subject line should reference SUPPORT for item 19-0145.

3. If you live in Blumenfield or Krekorian district, please also call the office in the morning to voice your support. Blumenfield is 213-473-7003 and Krekorian is (213) 473-7002. Be sure to say that you urge a yes vote on 19-0145.Thanks!!!

PLEASE COME & SUPPORT THE SSFL CLEAN UP

BUDGET AND FINANCE COMMITTEE

Monday, March 18, 2019

ROOM 1010, CITY HALL - 2:00 PM

200 NORTH SPRING STREET, LOS ANGELES, CA 90012

MEMBERS: COUNCILMEMBER PAUL KREKORIAN, CHAIR

councilmember.Krekorian@lacity.org

COUNCILMEMBER CURREN D. PRICE, JR.

councilmember.price@lacity.org

COUNCILMEMBER PAUL KORETZ

paul.koretz@lacity.org

COUNCILMEMBER BOB BLUMENFIELD

councilmember.blumenfield@lacity.org

COUNCILMEMBER MIKE BONIN

councilmember.bonin@lacity.org

Andrew Choi - Legislative Assistant - (213) 978-1080 or email Clerk.BudgetandFinanceCommittee@lacity.org

ITEM NO. (13) 19-0145

Motion (Smith - Wesson) relative to retaining the law firm of Meyers Nave as outside counsel regarding the Santa Susana Field Lab

http://ens.lacity.org/clk/committeeagend/clkcommitteeagend18129303_03182019.html

http://clkrep.lacity.org/online/docs/2019/19-0145_mot_02-08-2019.pdf

If you cannot attend in person, you can submit written public comments by email

NOTE: ALL EMAILS WILL BE PUBLIC RECORD

So please limit personal information

Andrew Choi - Legislative Assistant - (213) 978-1080

Email: Clerk.BudgetandFinanceCommittee@lacity.org

You can also send emails to the council members.

Sample Letter

Dear Budget and Finance Committee,

I write today to urge your support for item number 19-0145, to retain outside counsel for potential litigation regarding the Santa Susana Field Laboratory. The City of Los supported the full cleanup of nuclear and chemical contamination at SSFL. We cannot allow the Trump Administration's Dept. of Energy to walk away from its cleanup cc 98% of the contamination on site, where it will continue to migrate and threaten public health. Please vote yes on item 19-0145.

Sincerely,

Mayor Mayor Eric Garcetti <mayor.garcetti@lacity.org>, Herb Wesson (<councilmember.wesson@lacity.org> <councilmember.wesson@lacity.org>), Councilmember Bob Blumenfield <Councilrblumenfield@lacity.org>, Jose Huizar (<councilmember.huizar@lacity.org> <councilmember.huizar@lacity.org>), Controller Galperin <controller.galperin@lacity.org>, Mike Feuer <Mike.Feuer@lacity.org>, Cc Krekorian <Councilmember.Krekorian@lacity.org>, Curren Price (<councilmember.price@lacity.org> <councilmember.price@lacity.org>), Paul Koretz <Paul.Koretz@lacity.org>, Mike Bonin (<mike.bonin@lacity.org> <mike.bonin@lacity.org>), Gil Cedillo, Sr. (<councilmember.cedillo@lacity.org> <councilmember.cedillo@lacity.org>), David Ryu (<david.ryu@lacity.org> <david.ryu@lacity.org>), Nury Martinez (<nury.martinez@lacity.org> <nury.martinez@lacity.org>), Monica Rodriguez (<Monica.Rodriguez@lacity.org> <Monica.Rodriguez@lacity.org>), Marqueece Harris-Dawson (<Councilmember.Harris-Dawson@lacity.org> <Councilmember.Harris-Dawson@lacity.org>), Mitch O'Farrell (<councilmember.ofarrell@lacity.org> <councilmember.ofarrell@lacity.org>), Joe Buscaino (<Councilmember.Buscaino@lacity.org> <Councilmember.Buscaino@lacity.org>), <Andrew.Choi@lacity.org>

[Quoted text hidden]



Richard Williams <richard.williams@lacity.org>

Fwd: LOS ANGELES CITY COUNCIL FILE # 19-0145 and Council File: 18-0874 - Santa Susana Field Laboratory

Christine Rowe <crwhnc@gmail.com>
To: Andrew.Choi@lacity.org
Cc: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 9:41 PM

Dear Mr. Choi,

Could you please add this file and all of the attachments to Council File 19 - 0145 for tomorrow's Budget Committee meeting.

There should be four new attachments attached as GOOGLE Drive docs.

Thank you.

Respectfully,
Christine L. Rowe

From: **Christine Rowe** <crwhnc@gmail.com>
Date: Tue, Feb 26, 2019 at 3:13 AM
Subject: Re: LOS ANGELES CITY COUNCIL FILE # 19-0145 and Council File: 18-0874 - Santa Susana Field Laboratory
To: <councilmember.smith@lacity.org>, Councilmember Bob Blumenfield <Councilmember.Blumenfield@lacity.org>, Councilmember Paul Krekorian <Councilmember.Krekorian@lacity.org>, Mayor Eric Garcetti <info@lamayor.org>, Mike Feuer <Mike.Feuer@lacity.org>
Cc: Herb Wesson (councilmember.wesson@lacity.org) <councilmember.wesson@lacity.org>, David Ryu (david.ryu@lacity.org) <david.ryu@lacity.org>, Paul Koretz <Paul.Koretz@lacity.org>, Nury Martinez (nury.martinez@lacity.org) <nury.martinez@lacity.org>, <Monica.Rodriguez@lacity.org>, Marqueece Harris-Dawson (Councilmember.Harris-Dawson@lacity.org) <Councilmember.Harris-Dawson@lacity.org>, Curren Price (councilmember.price@lacity.org) <councilmember.price@lacity.org>, Mike Bonin (mike.bonin@lacity.org) <mike.bonin@lacity.org>, Mitch O'Farrell (councilmember.ofarrell@lacity.org) <councilmember.ofarrell@lacity.org>, Jose Huizar (councilmember.huizar@lacity.org) <councilmember.huizar@lacity.org>, Joe Buscaino (Councilmember.Buscaino@lacity.org) <Councilmember.Buscaino@lacity.org>, Gil Cedillo, Sr. <councilmember.cedillo@lacity.org>, Controller Galperin <controller.galperin@lacity.org>

Dear Councilmember Smith, Councilmember Blumenfield, Councilmember Krekorian, Mayor Garcetti, City Attorney Feuer, and Honorable Councilmembers,

Councilmember Smith, you should remember me from your previous service as CD 12 Councilmember. At that time, I was a resident of CD 3 (Zine's) district, but I am now in your district due to the redistricting. Councilmember Blumenfield was then my Assemblymember.

I was a member of the West Hills Neighborhood Council (WHNC) from 2008 to 2012. At the time of my resignation, I was the Public Health Chair and the Environment Committee Chair.

In my capacity at the WHNC, I brought in Dr. Thomas Mack of USC to speak to the WHNC regarding cancer incidence in our community. (December 2010) You can see his presentation (attached).

I later reached out to the California Cancer Registry for a point of contact in Ventura County about cancer incidence there. The Director of that registry copied Dr. Mack, and she said that he was the most qualified to do that study. That presentation was made at a DTSC SSFL Community Open House in April 2014.

Numerous members of the West Hills Neighborhood Council and the Woodland Hills Warner Center Neighborhood Council attended that DTSC meeting to hear Dr. Mack.

Due to the concerns about cancer incidence in children in my community, I again reached out to Dr. Mack. He addressed a letter that he had sent to a physician at Children's Hospital Los Angeles. He addressed the letter as Dr. X so that the doctor's name and the patient's name would be blind. (see attached). He sent this letter to DTSC for their Draft Programmatic Environmental Impact Report Comment Period. His email was addressed to DTSC Director Barbara Lee. He forwarded that email to me which I confirmed that DTSC received.

Finally, as a result of a personal conversation related to the children's cancer, Dr. Mack sent me an email with a letter addressed to me which I have also attached. It discusses what he said to the physicians of Children's Hospital Los Angeles regarding the childhood leukemia incidence around the SSFL site.

It is my opinion that the City Council is reacting to information from the media rather than to the science which I have invested my last 12 1/2 years of my life doing - researching and reading technical documents related to the SSFL site, attending technical meetings, and reaching out to the qualified health experts that understand cancer and other illnesses and their causes better than I do.

At least, unlike some of the people that are writing to you, I do have a background of having studied epidemiology, statistics, biostatistics, and a graduate level course in Environmental Health at CSUN. I therefore have this background, and I know how to do my research in these areas.

Dr. Mack is our State of California Proposition 65 Chair, and he was just reappointed to that position at again before Governor Brown left office. This office is what defines what our carcinogens are for the State of California.

<https://oehha.ca.gov/proposition-65>

I urge you to reach out to Dr. Mack, to Dr. Zeise at the Office of Environment Health Hazard Assessment (OEHHA), and other experts in Epidemiology. Maybe you should even contact Children's Hospital Los Angeles and find out about the statistics related to their pediatric population? Are there more there from around the SSFL site than other parts of Los Angeles and Ventura Counties?

Please see my attachments. He told me that he is compensated for his work with the California Cancer Registry by a small portion of his USC salary coming from the CDC. Dr. Mack is also the author of this book as the former Chair of Cancer Surveillance for all of Los Angeles County:

"Cancers in the Urban Environment -1st Edition":

<https://www.sciencedirect.com/book/9780124643512/cancers-in-the-urban-environment>

I urge you to vote no on this Council File which was originally brought forward by Councilmember Englander.

Respectfully submitted,

Christine L. Rowe
Former West Hills Neighborhood Council Boardmember

[Quoted text hidden]

4 attachments

 **Dr. Thomas Mack WestHillsSlides.pdf**
15122K

 **66362_Santa_Susana_8 Dr. Mack SSFL slides.pdf**
3329K

CRowe letter Dr. Thomas Mack USC 03272018.pdf

3/18/2019

City of Los Angeles Mail - Fwd: LOS ANGELES CITY COUNCIL FILE # 19-0145 and Council File: 18-0874 - Santa Susana Field Laborat...

 260K

 **ssfil childhood ca letter.pdf**
251K

Cancer by Neighborhood

Thomas Mack, M.D., M.P.H.

Keck School of Medicine

University of Southern California

Neighborhood Cancer Problems

- Worry about a local “cancer cluster”
AND/OR
- Worry about a local hazard that could cause cancer cases

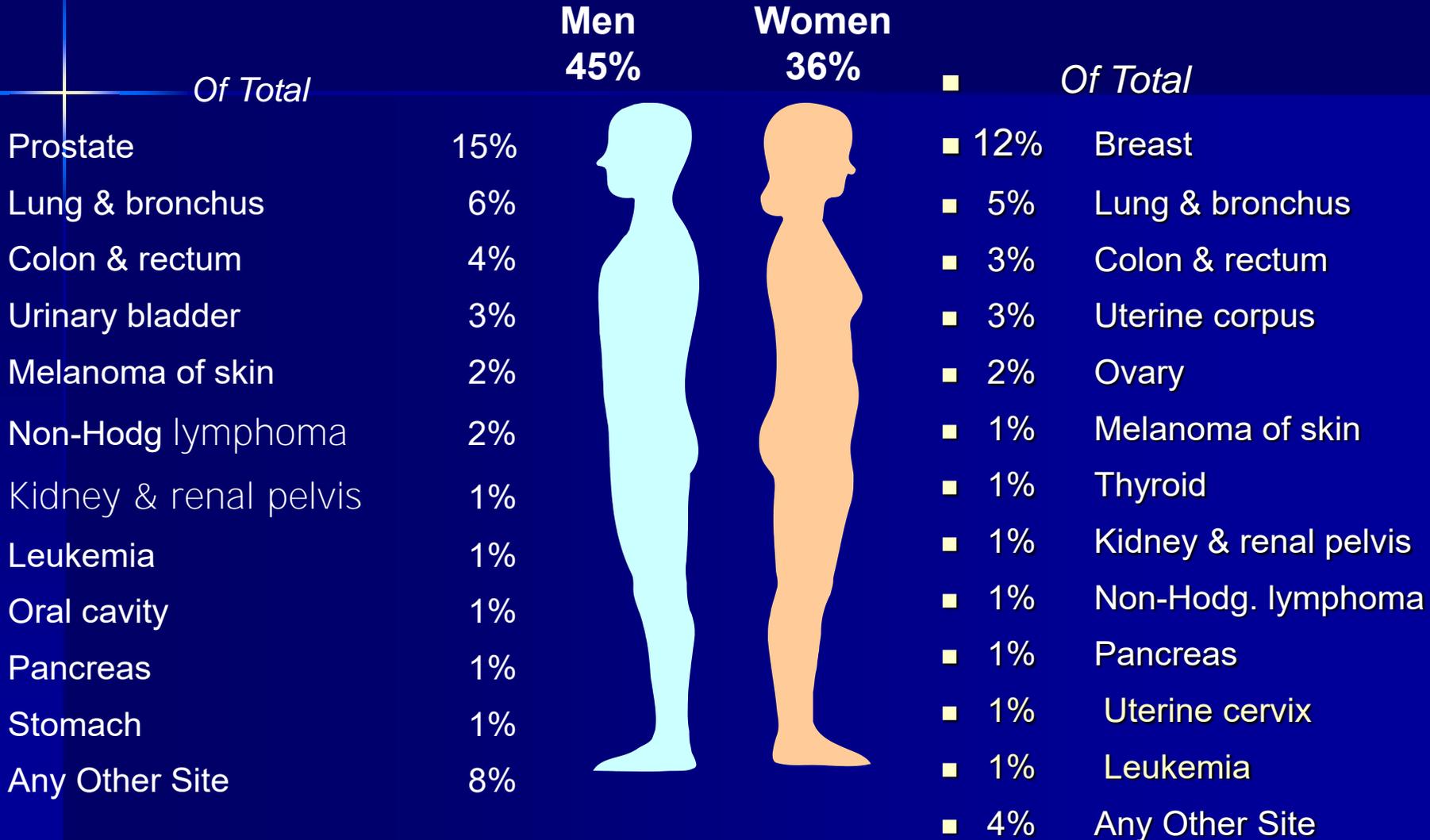
The necessary questions

- How frequently does cancer normally occur?
- What factors predict local cancer frequency?
- How do we identify causes of cancer?
- What are the known causes of cancer?
- What causes are in the residential environment?
- What environmental clusters have occurred?
- What are the problems in assessing clusters?
- What specifics relate to this local concern?

How frequently does cancer normally occur?

- From place to place
- From cancer site to cancer site
- By sex, race, and especially age

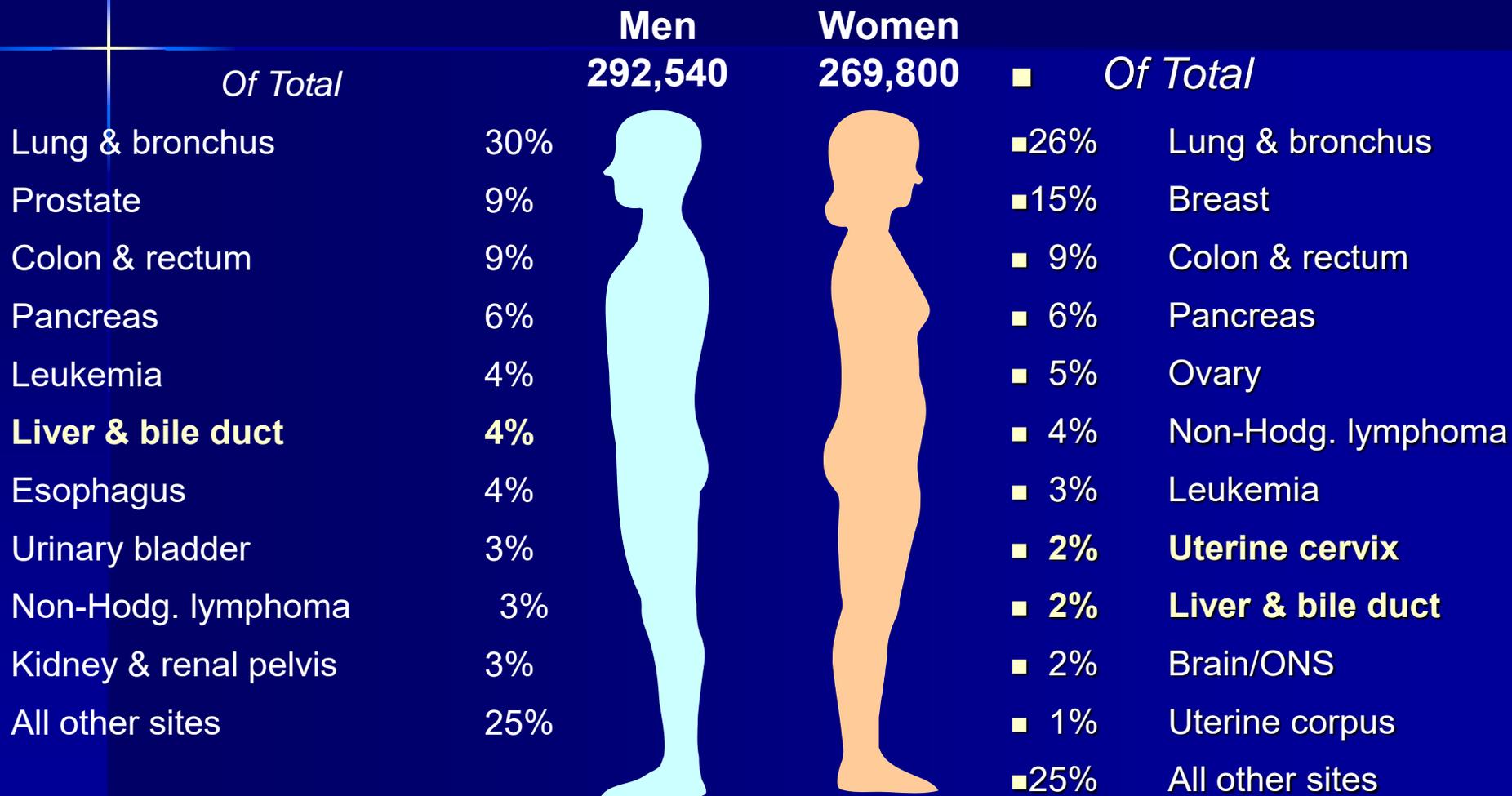
Estimated Lifetime US Cancer Risk*



*Excludes basal and squamous cell skin cancers and in situ carcinomas except urinary bladder.

Source: American Cancer Society, 2009.

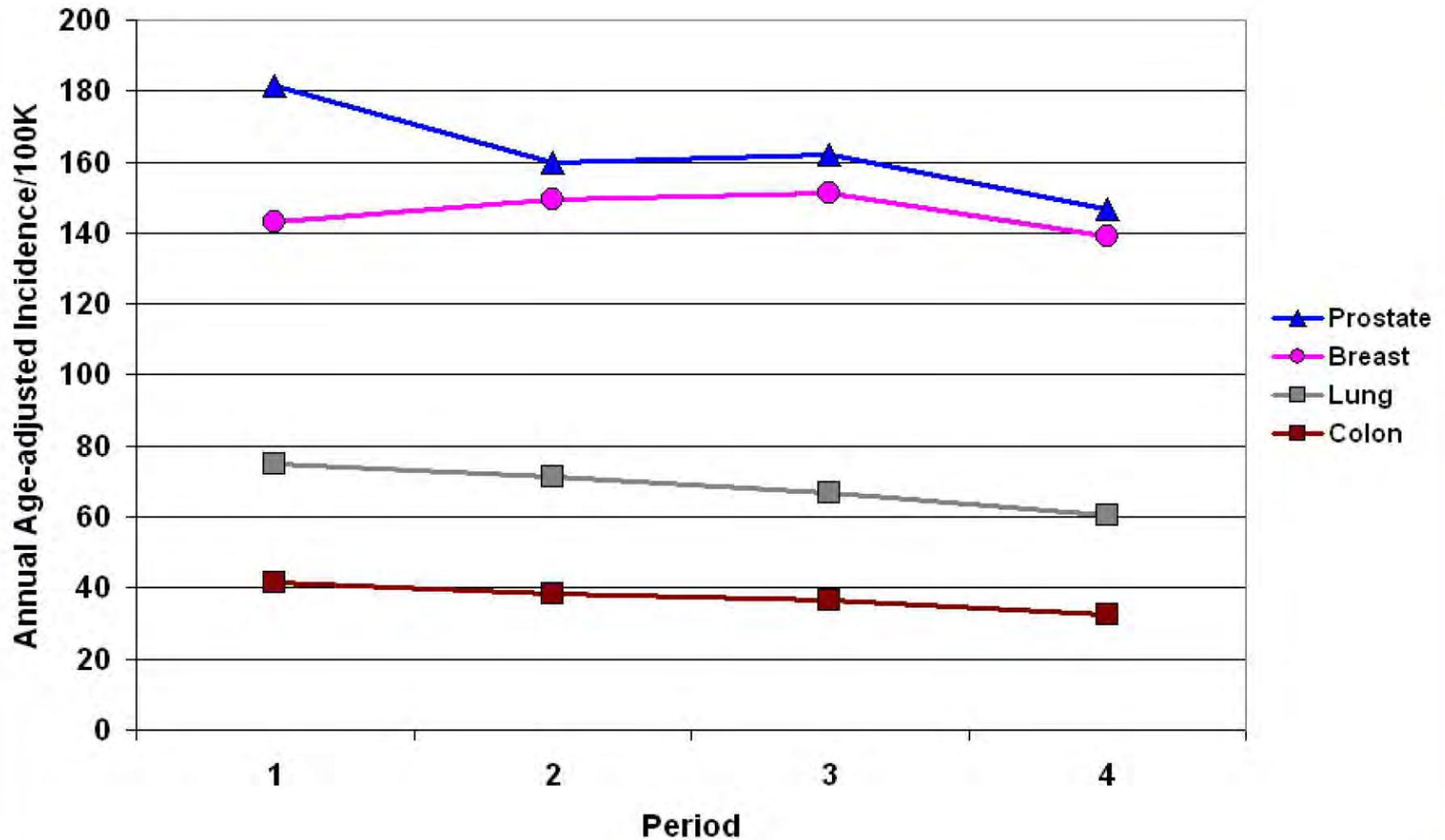
2009 Estimated US Cancer Deaths*



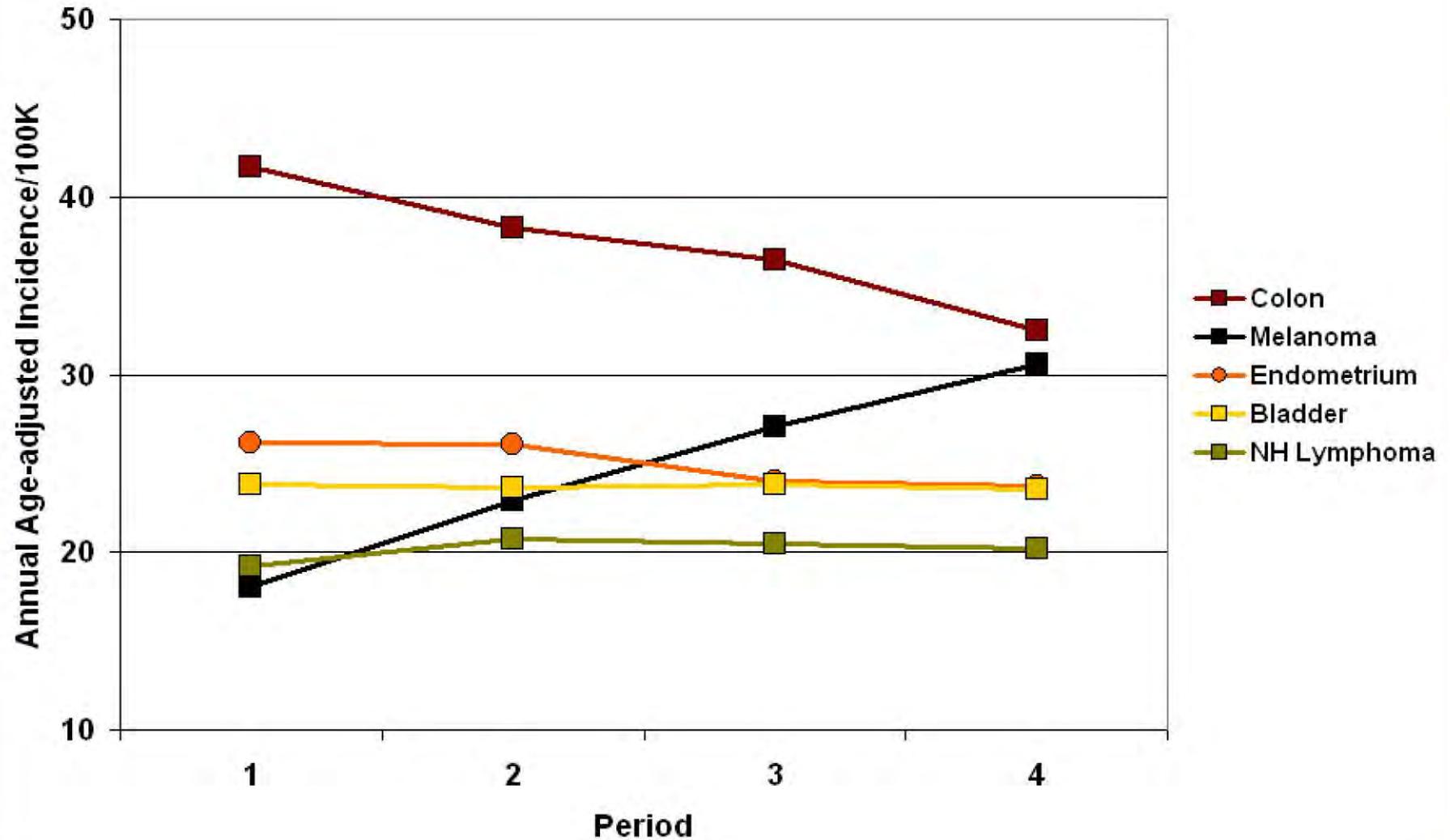
ONS=Other nervous system.

Source: American Cancer Society, 2009.

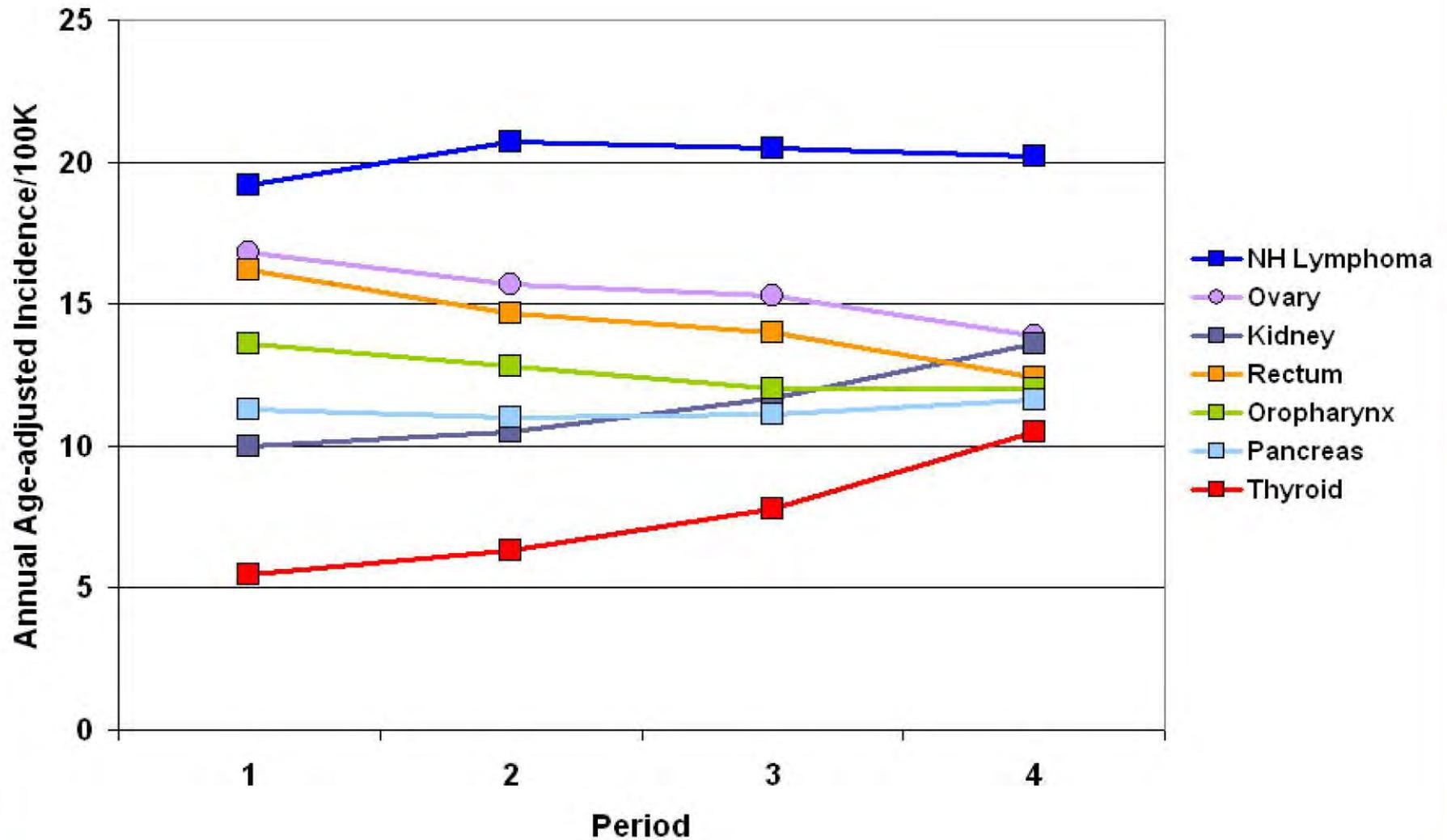
Trends in Incidence of the Most Common Cancers in California



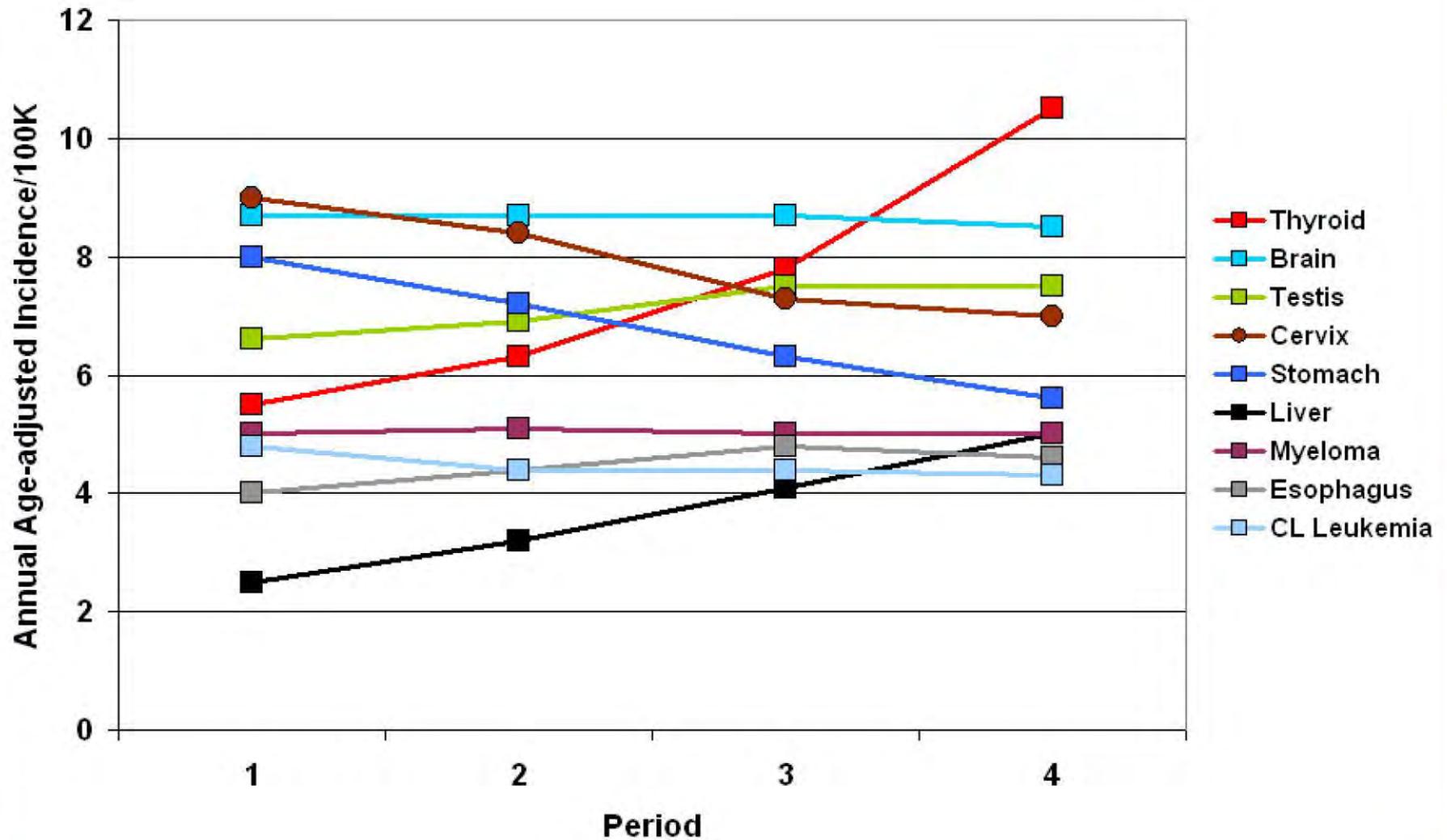
Trends in Incidence of the Next Most Common Cancers in California



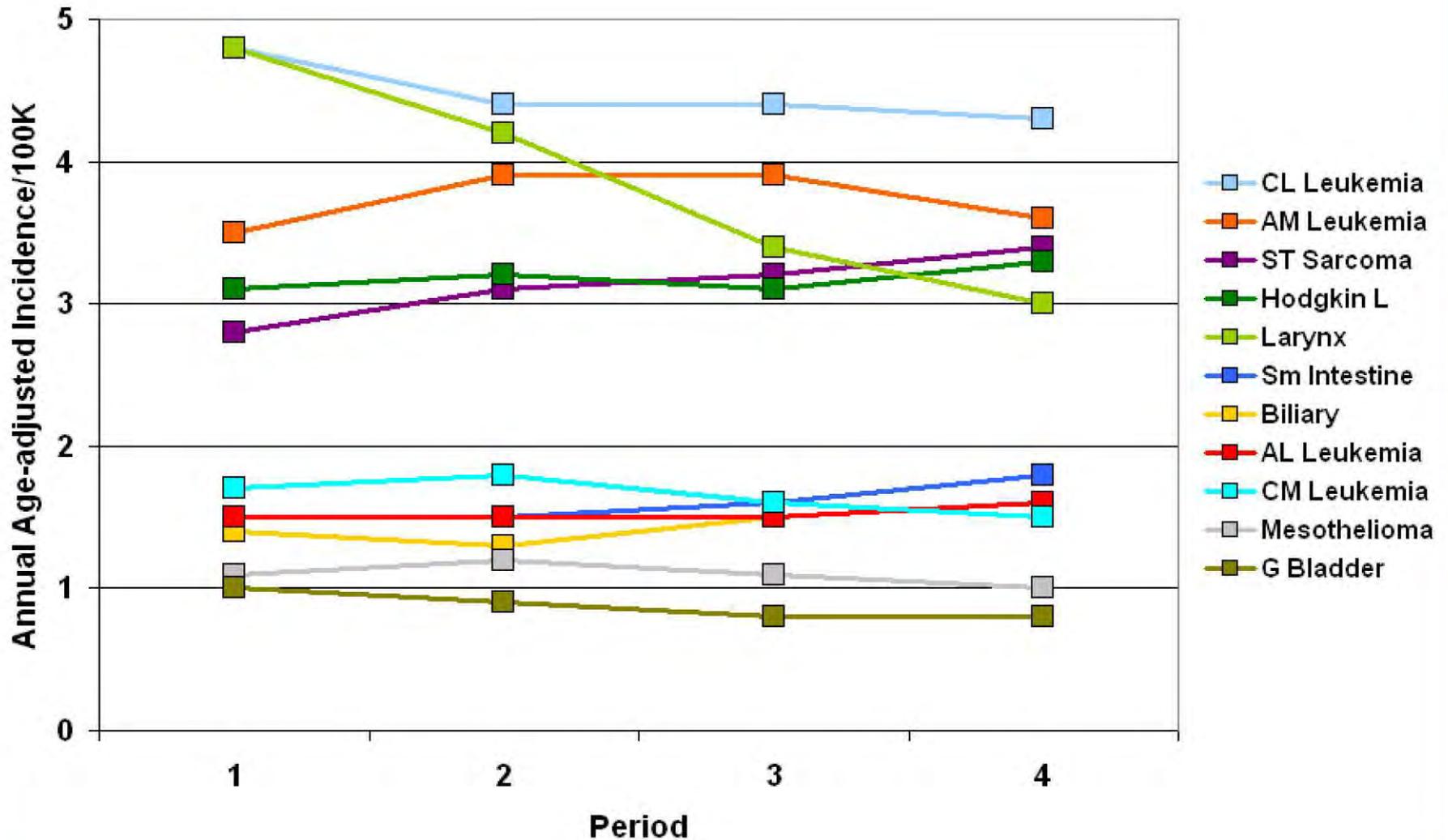
Trends in Incidence of the Other Common Cancers in California



Trends in Incidence of Uncommon Cancers in California



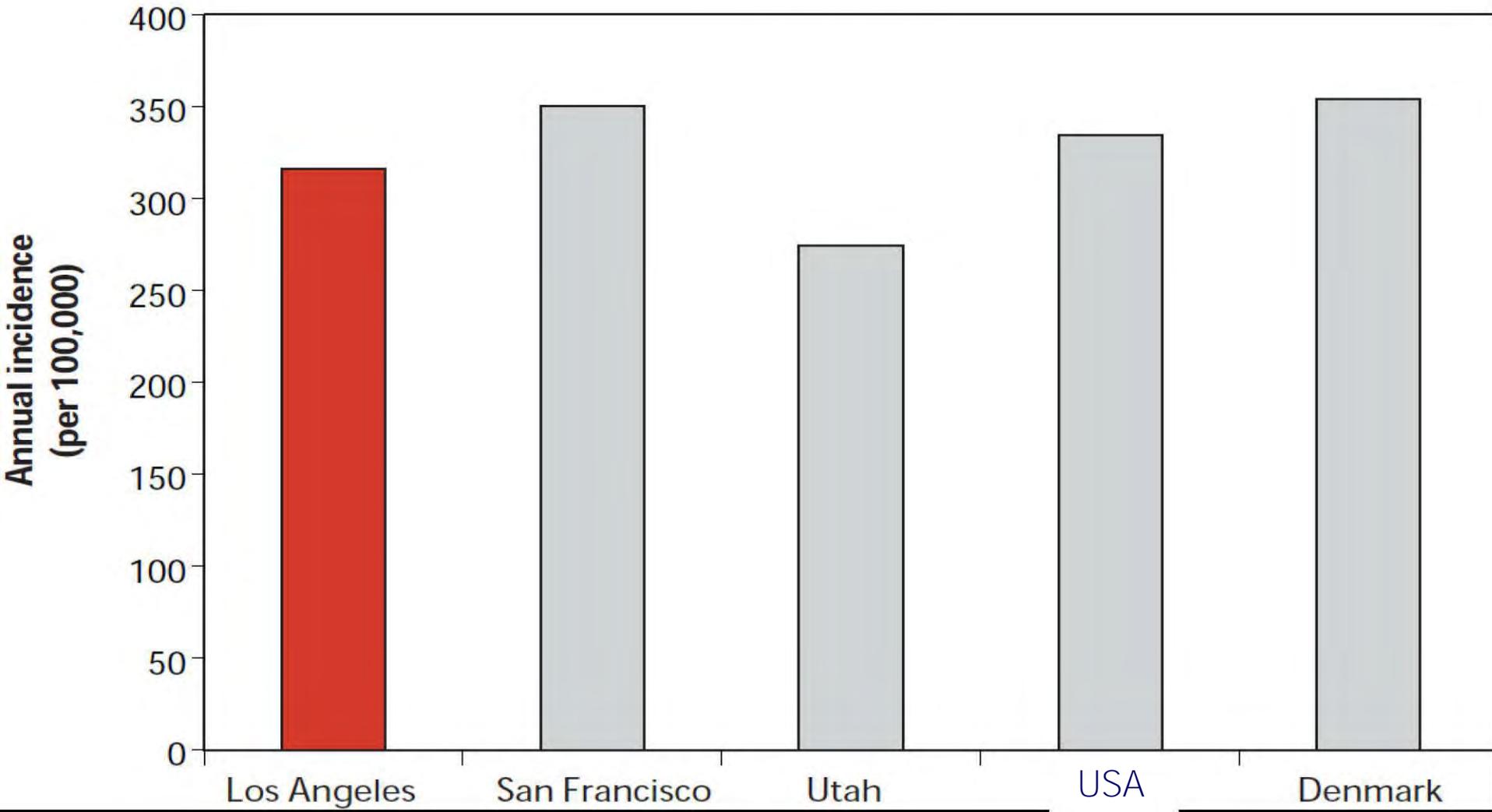
Trends in Incidence of the Least Common Cancers in California



Cancer at All Sites

Los Angeles v. Other Places

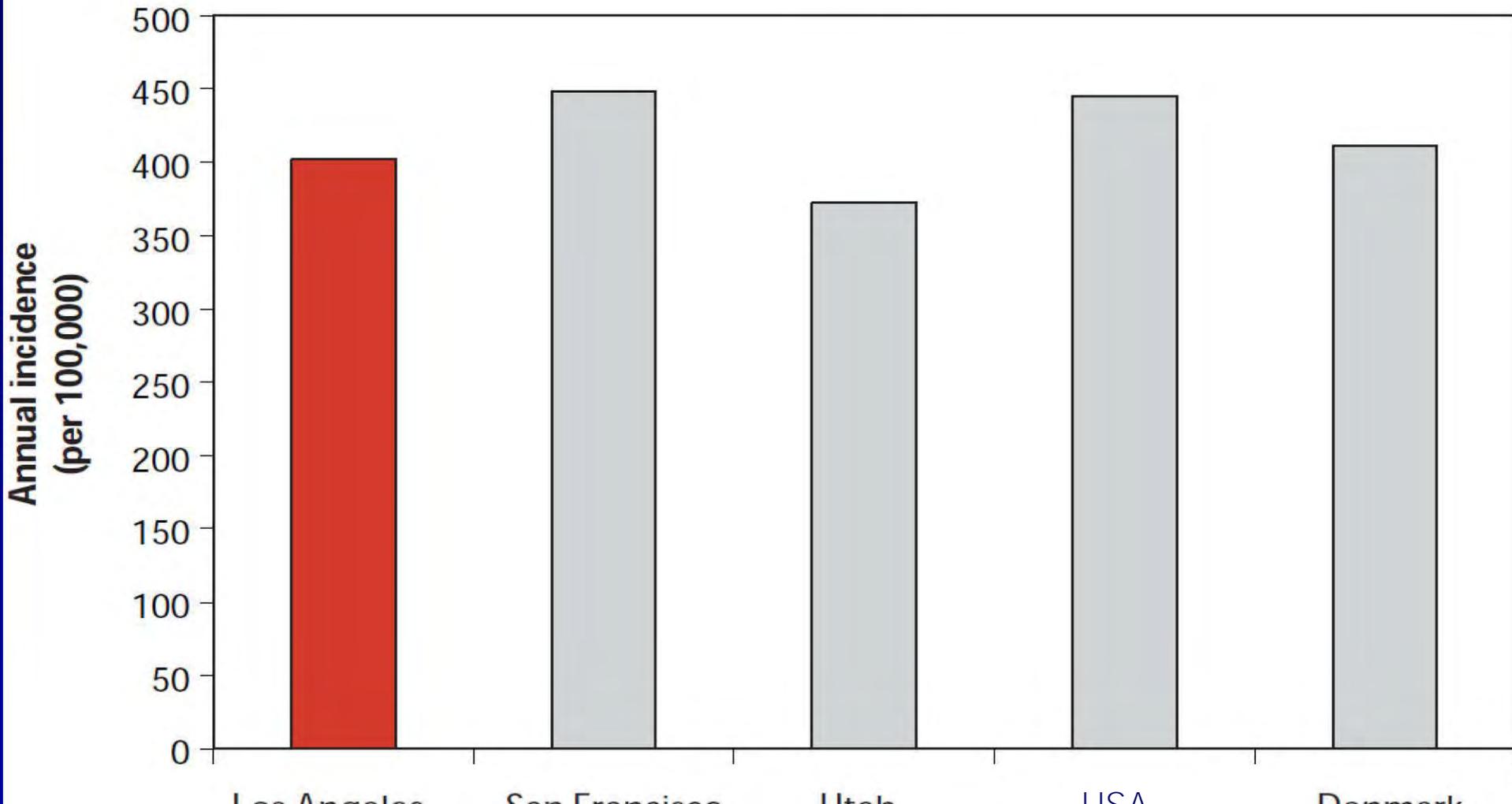
(females)



Cancer at All Sites

Los Angeles v. Other Places

Incidence in Los Angeles County compared to other places (males)

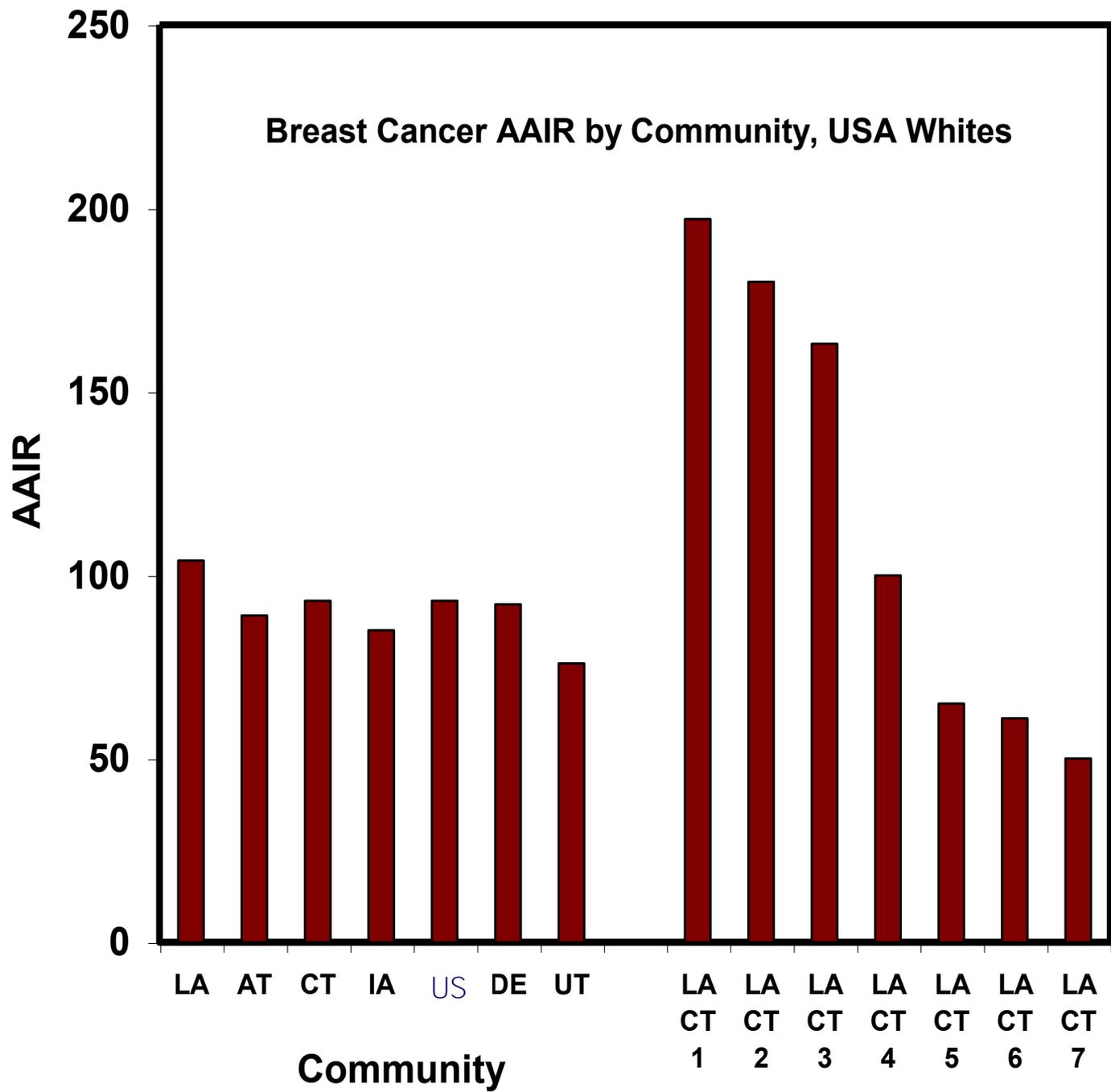


What factors predict local cancer frequency?

- Los Angeles County

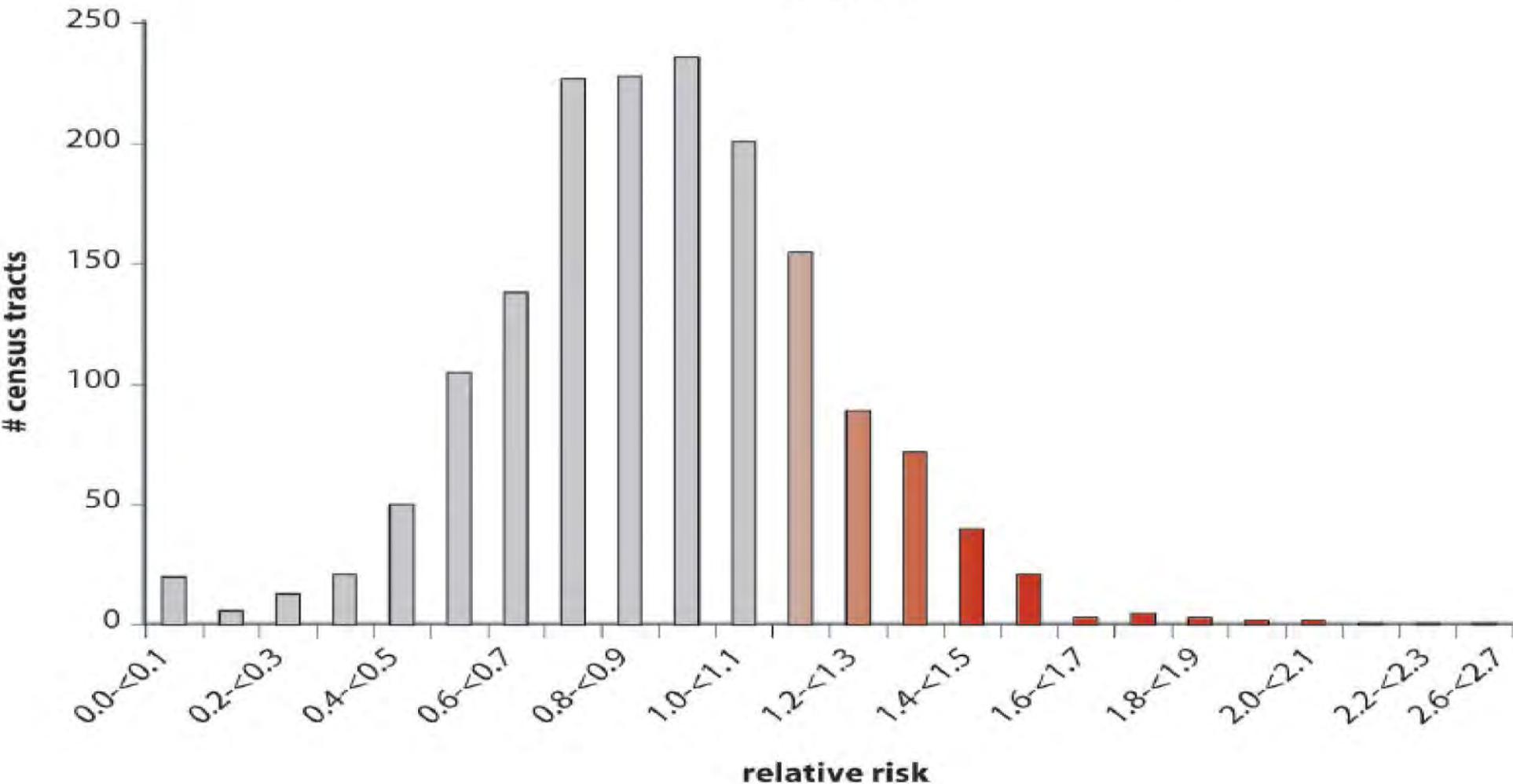
Risk to Neighborhoods is more variable

- Residents tend to be similar
- Smaller frequencies make less stable estimates



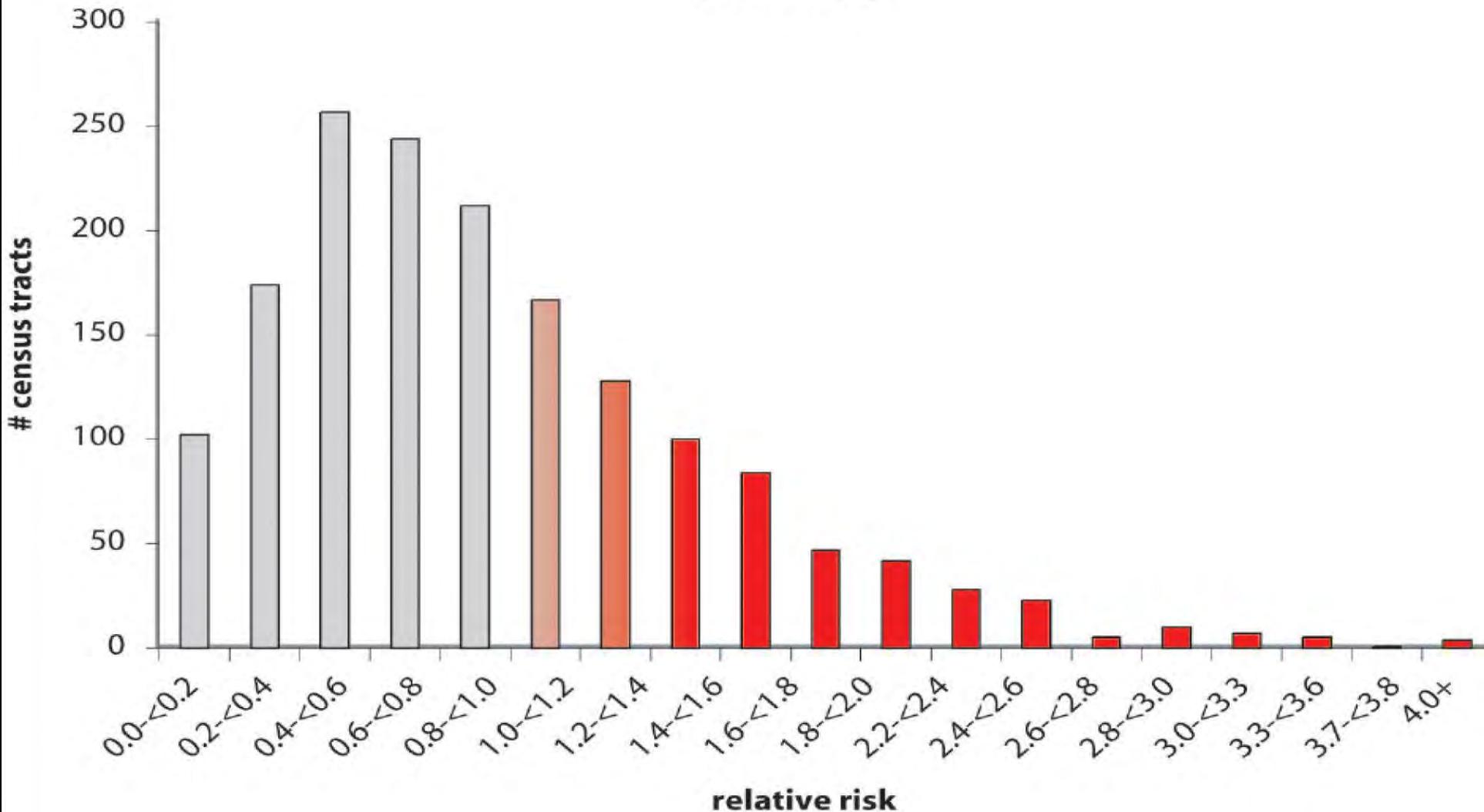
Colon Carcinoma in LA (common)

Distribution of census tracts by relative risk (males)

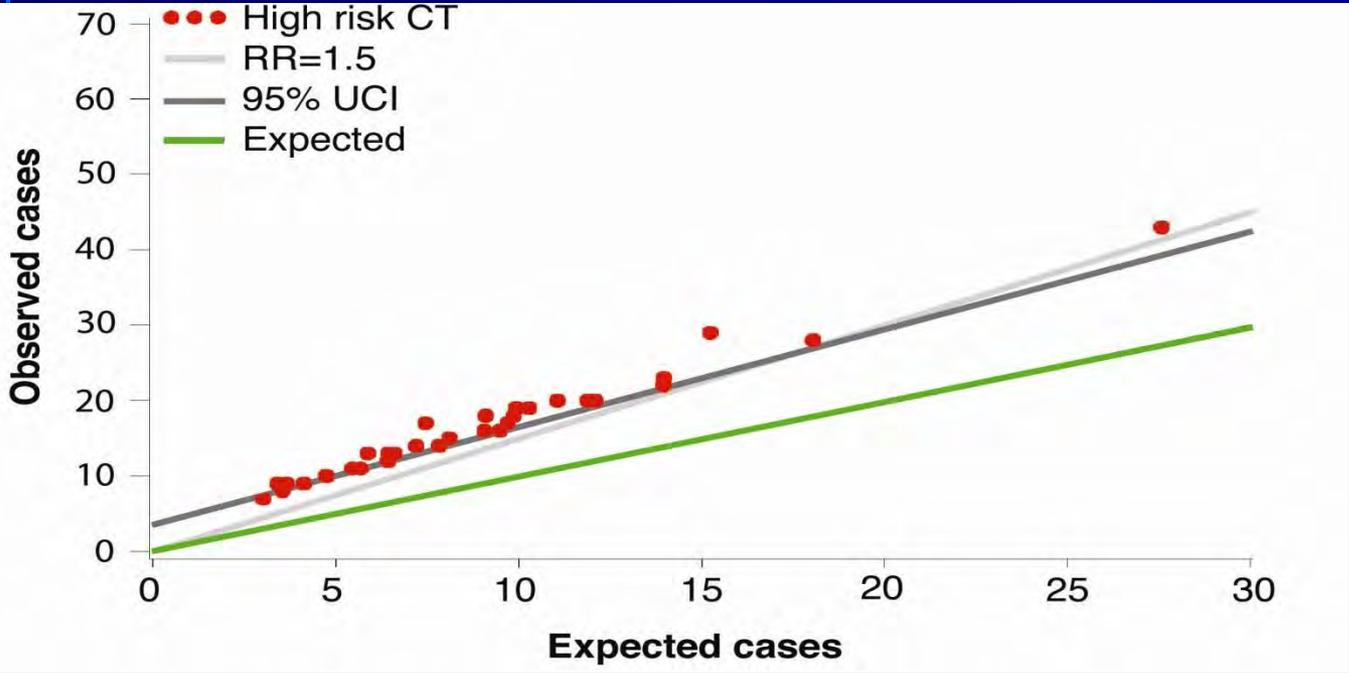


Cervix Carcinoma in LA (rare)

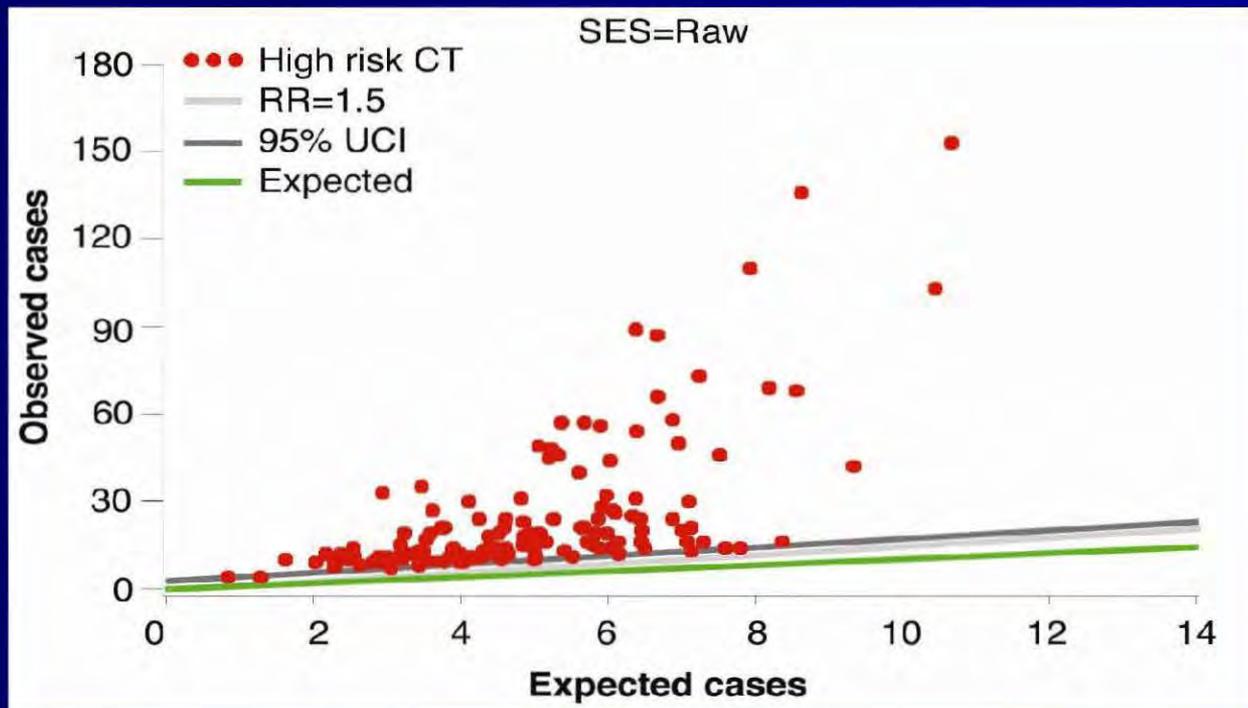
Distribution of census tracts by relative risk (females)



Carcinoma of the Sigmoid Colon, Males



Kaposi Sarcoma, Males



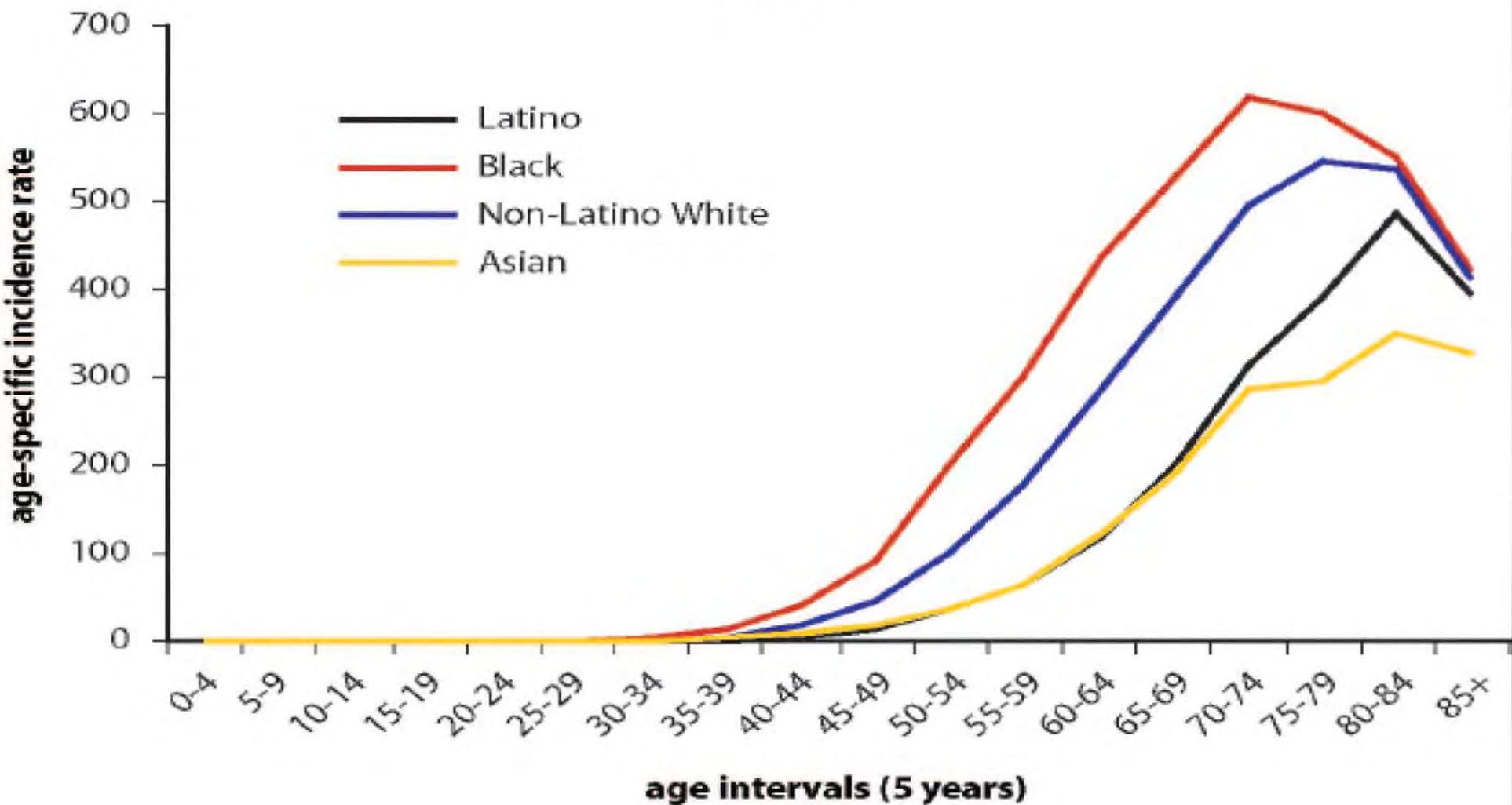
Geographic Variation in Cancer Occurrence

- Chance (especially among small places)
- Demographic gradients
 - Age, Race and Gender
 - Ethnicity and culture
 - Education and income
 - Lifestyle and Occupation
 - Medical care
- Rarely from geographic environment

Age, Race and Gender

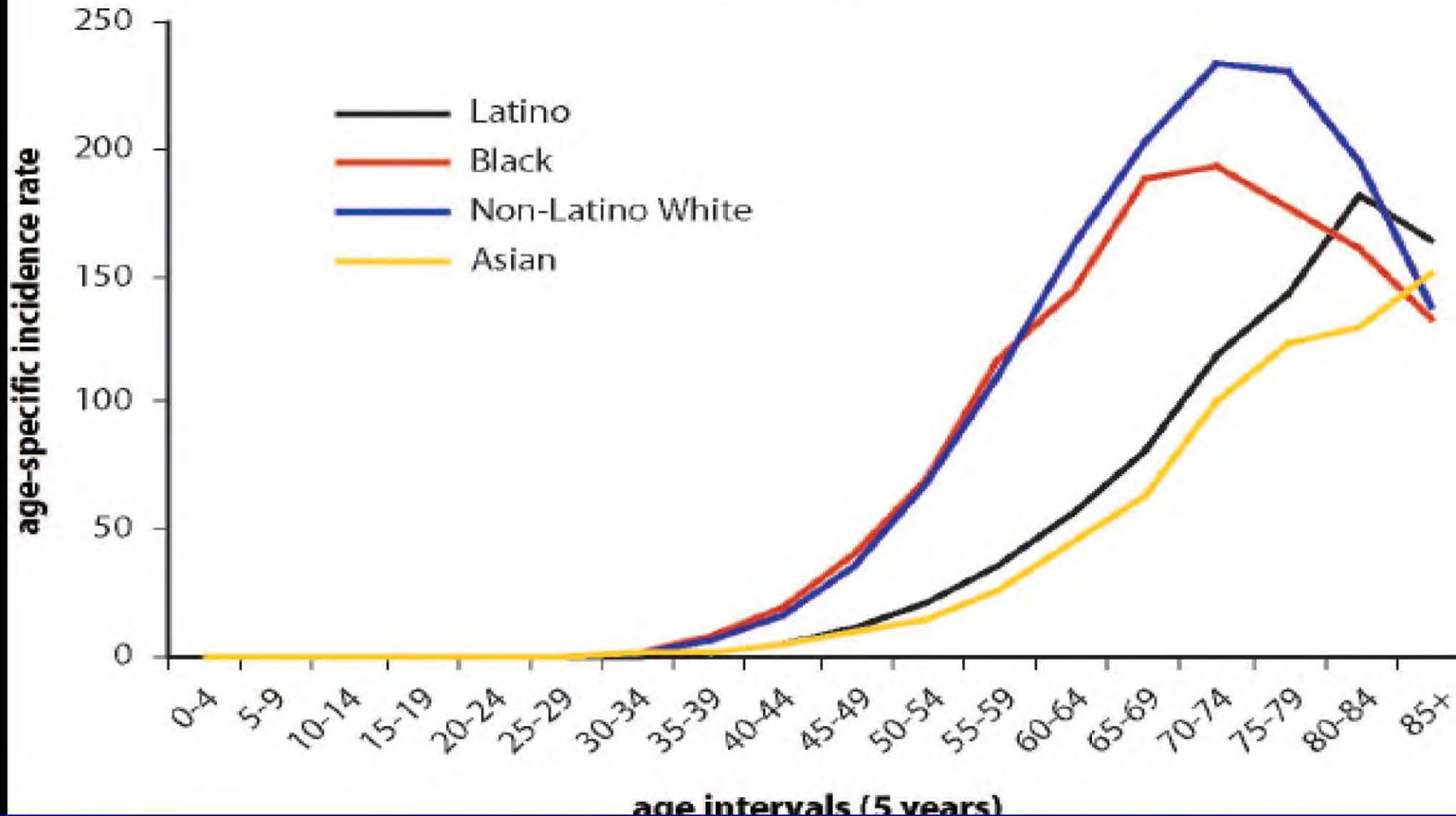
Lung Cancer

**Age-specific incidence by race/ethnicity
(males)**



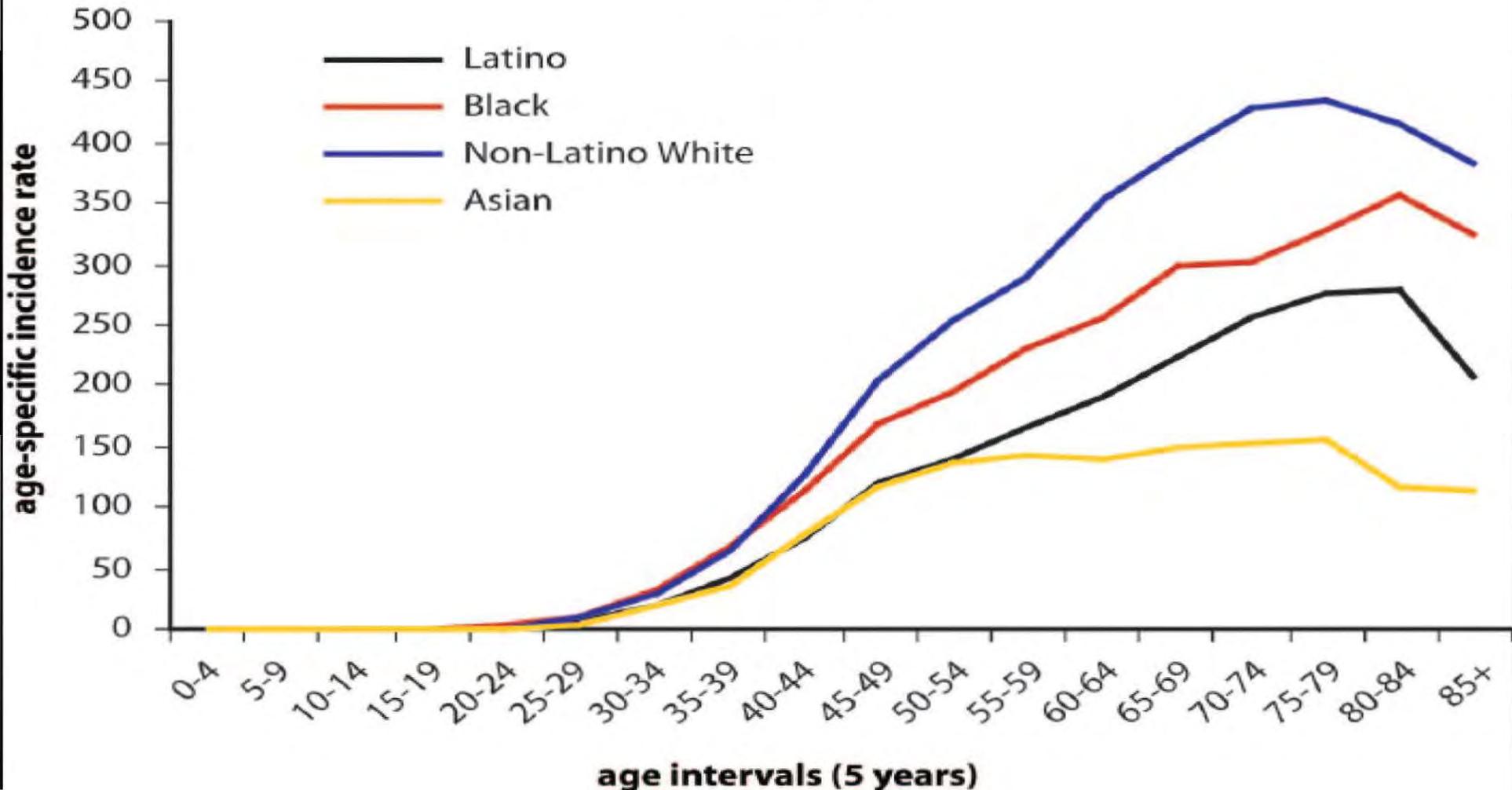
Lung Cancer

**Age-specific incidence by race/ethnicity
(females)**



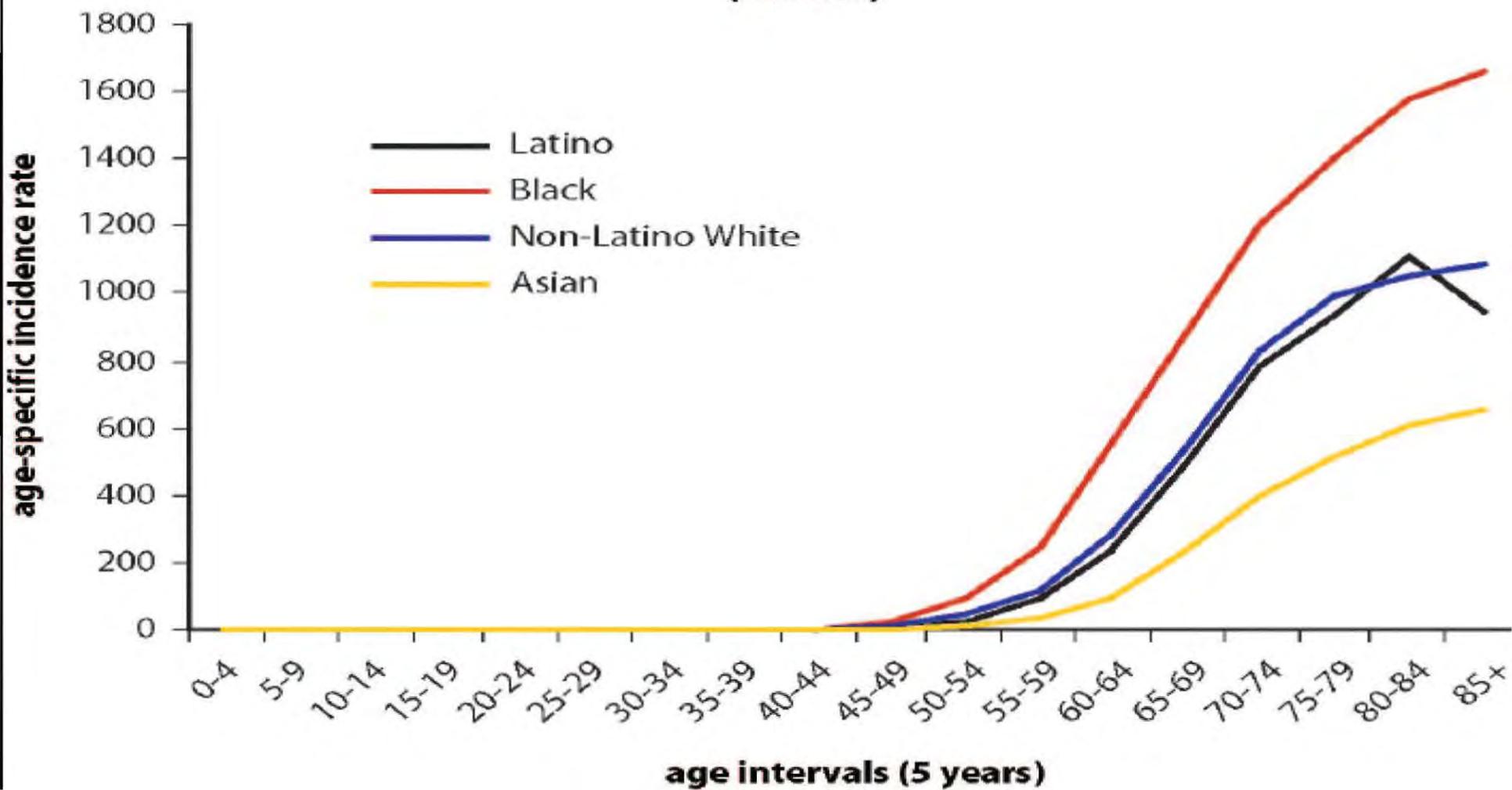
Breast Carcinoma

**Age-specific incidence by race/ethnicity
(females)**



Prostate Cancer

Age-specific incidence by race/ethnicity (males)



Ethnicity and Culture

Specific variation in Los Angeles

Race/Ethnicity

Gall Bladder Cancer in Latinas

Birthplace

Liver Cancer in East Asian-Born

Education and Income

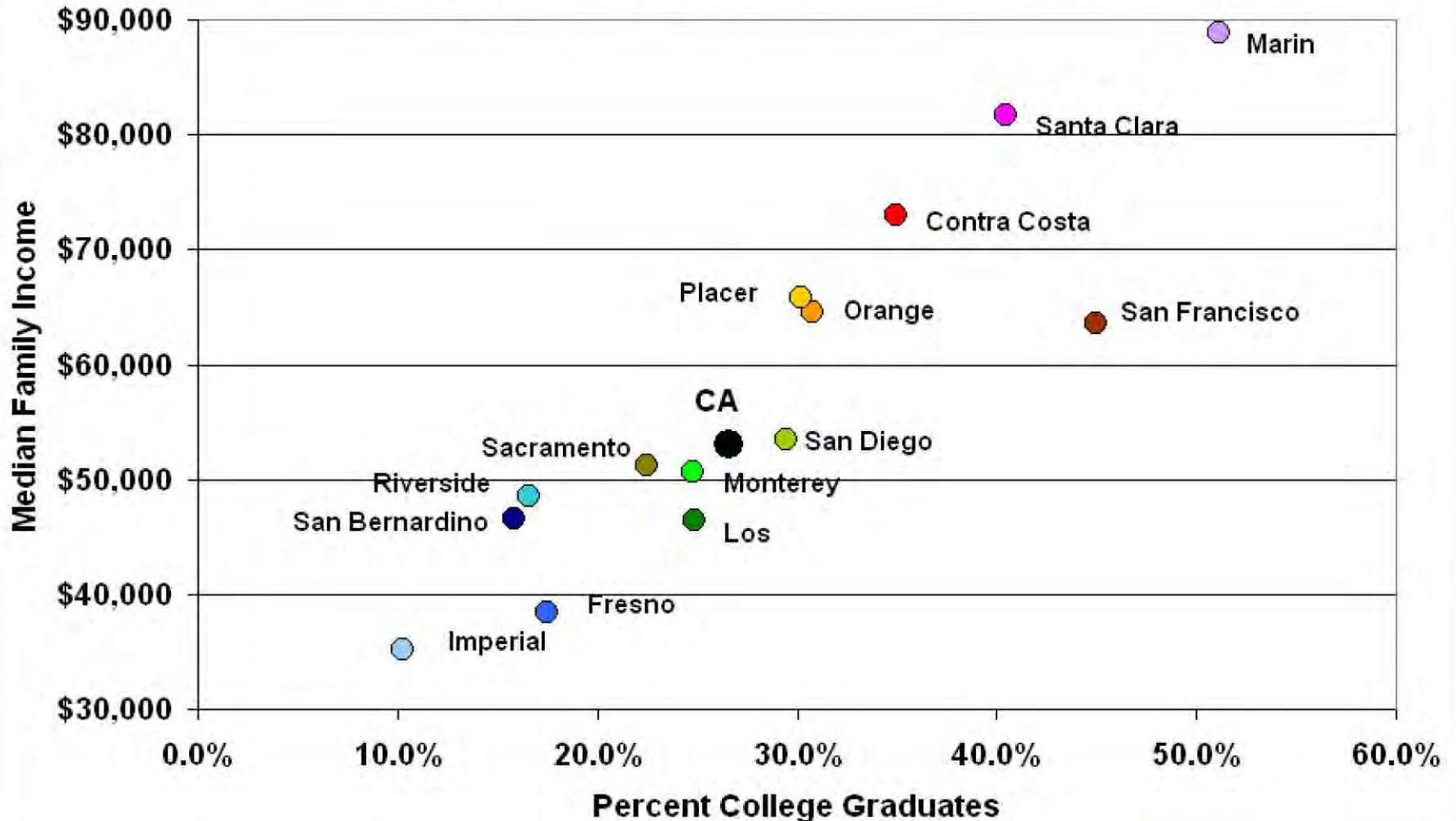
- Variations linked to both extremes
 - High income, much education
 - Unrestricted consumption
 - Abundant medical care, medications
 - Late reproduction
 - Low income, little education
 - Ignorance of risk (tobacco, infections, etc)
 - Paucity of medical care, advice
 - Early Reproduction

SOCIAL CLASS AND CANCER

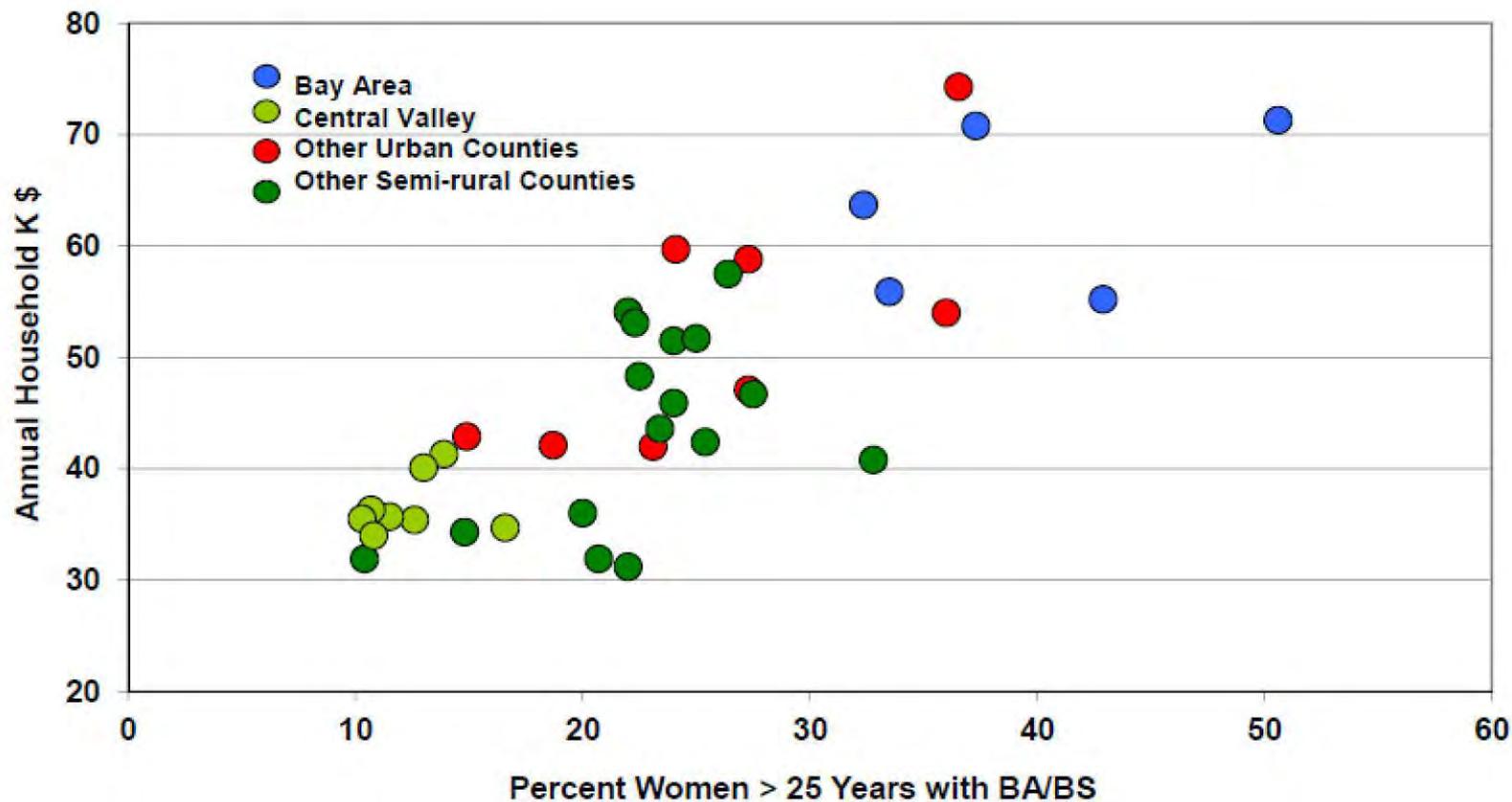
Breast Cancer: High educated tracts, strictly because of social class

Cervical Cancer: Low income tracts, strictly because of social class

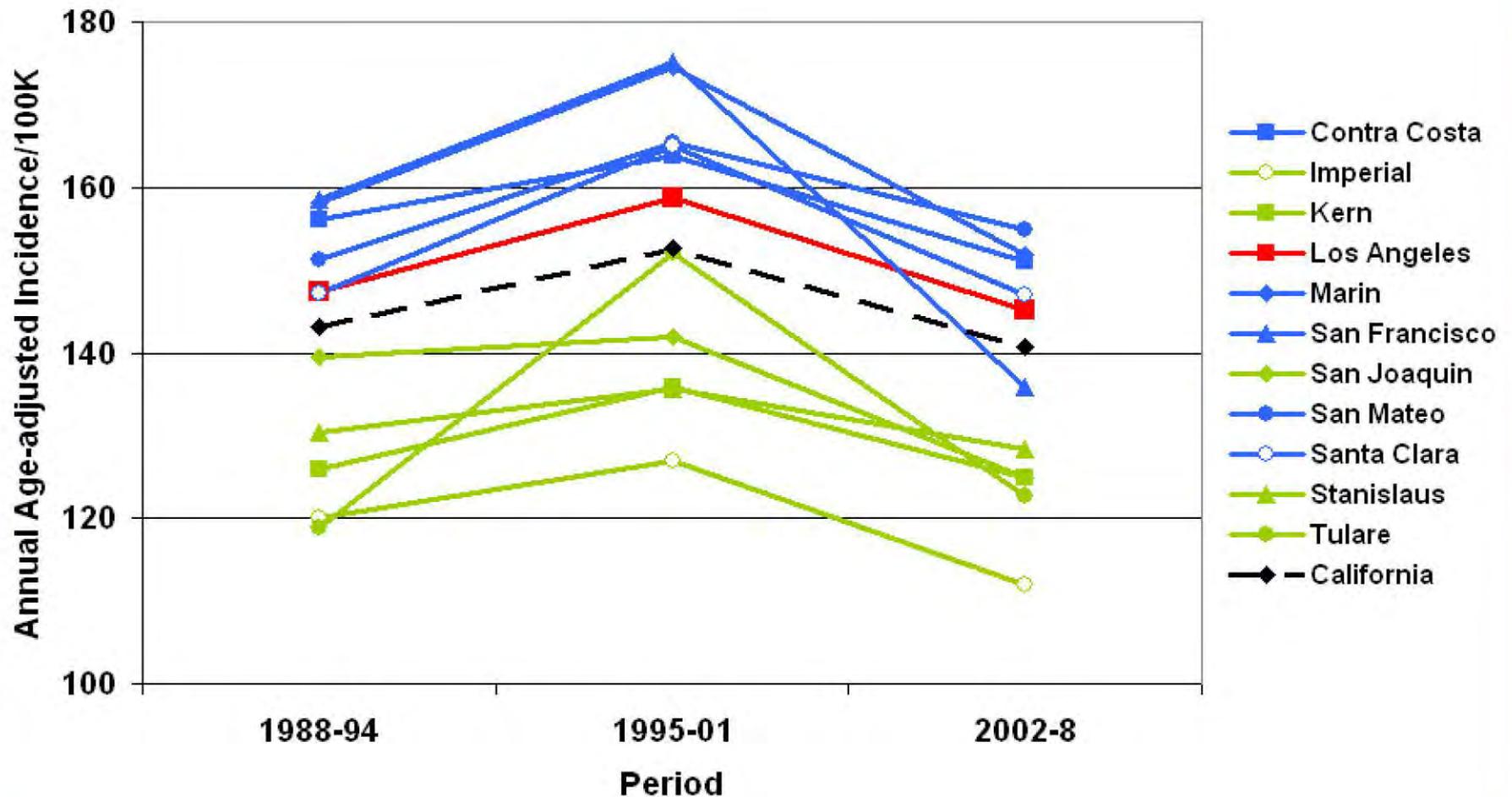
California County Median Family Income According to County Percent College Graduates



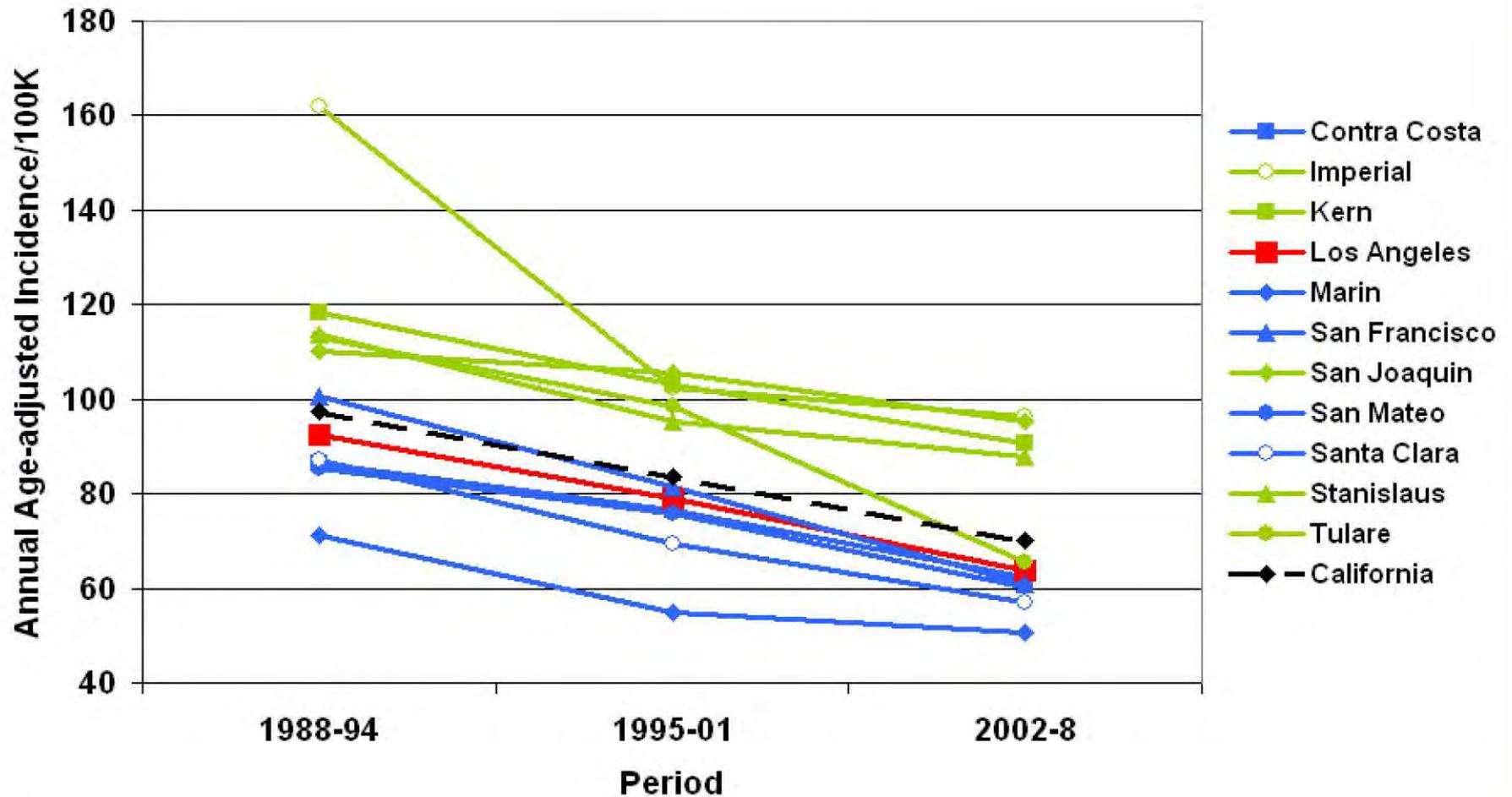
California County Median Household Income
According to Percent of College-Educated Adult Women
(Counties of more than 50K)



**Trends in Incidence of Breast Cancer among White Females
from California Counties differing in Median Income and Educational
Attainment**



Trends in Incidence of Male Lung Cancer among Whites from California Counties differing in Median Income and Educational Attainment

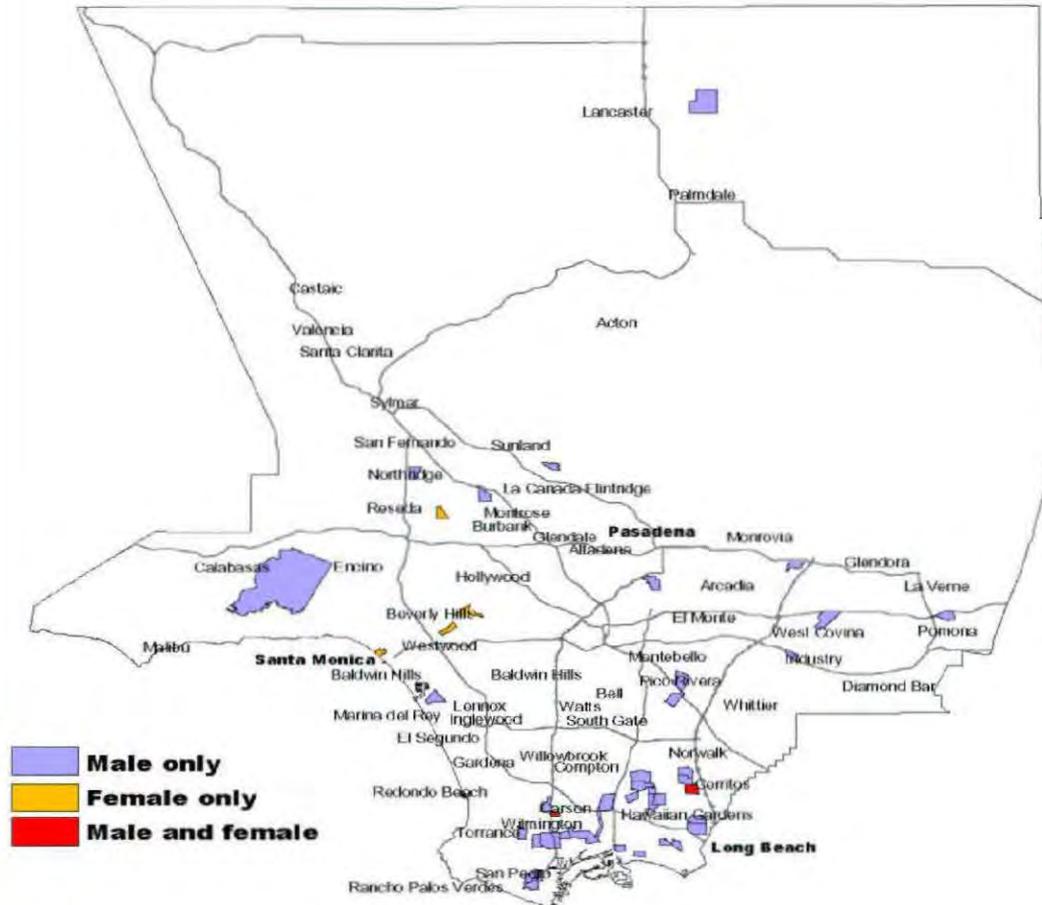


Lifestyle and Occupation

Workplace Exposures

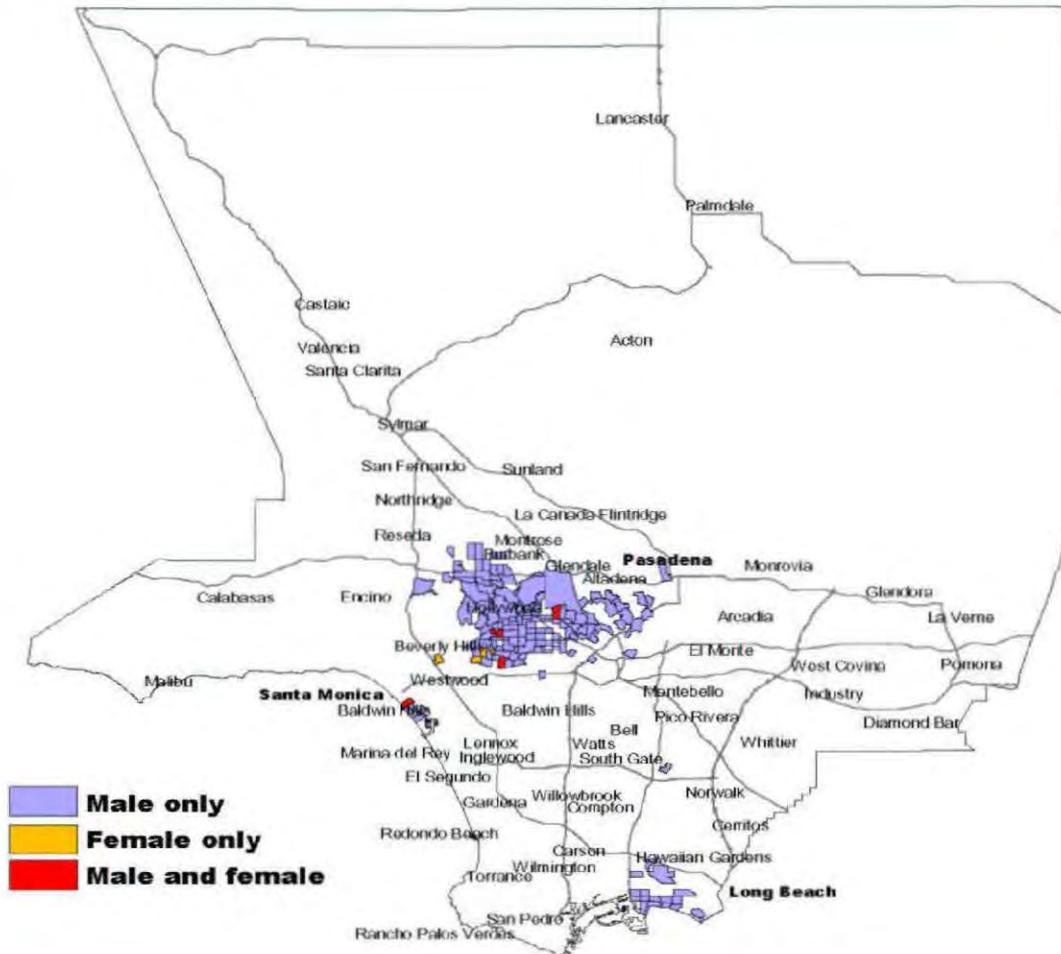
Habits and Recreational Exposures

MESOTHELIOMA



B_mesf09.shp
F_mesf09.shp
M_mesf09.shp

KAPOSI SARCOMA



- Male only**
- Female only**
- Male and female**

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M_kapf09.shp

Medical Care

Selective access to therapy ad libitum
Endometrial Cancer

Selective access to diagnostic facilities, testing
Papillary thyroid cancer, prostate cancer

Selective motivation for screening from media
Breast cancer in a celebrity

WITH CHARACTERISTIC PATTERN

- Oropharynx CA
- Sq Esophagus
- Adenoca Stomach
- Upper Colon
- Hepatoma
- Gallbladder
- Larynx
- Squamous Lung
- Small Cell Lung
- Large Cell Lung
- Adenoca Lung
- Mesothelioma
- Kaposi Sarcoma
- NS Hodgkin's Dis
- Melanoma
- Breast Cancer
- Cervix Cancer
- Endometrial CA
- Prostate CA
- Anogenital Sq CA
- Squamous Bladder
- Papill. Thyroid CA
- Large B-cell NHL
- Immature C. NHL
- Sm.B/Mixed NHL
- Mult. Myeloma

NO CHARACTERISTIC PATTERN

- Mixed Salivary
- Stomach Cardia
- Small Bowel
- Sigmoid Colon
- Rectum
- Cholangiocarcinoma
- Biliary Tract
- Pancreas
- Nose/Sinuses
- Soft Tissue Sarcoma
- Angiosarcoma
- Osteosarcoma
- Ovarian CA
- Germ Cell Carcinoma
- Acute Myelocytic Leukemia
- Bladder
- Kidney
- Wilms Tumor
- Brain
- Retinoblastoma
- Neuroblastoma
- Follicular Thyroid
- Multiple Endocrine Neoplasm
- Mixed Cell Hodgkin's Lymphoma
- Follicular Non-Hodgkin lymphoma
- T-cell Non-Hodgkin Lymphoma
- Acute Lymphoblastic Leukemia
- Chronic Lymphocytic Leukemia
- Chronic Myelocytic Leukemia
- Mixed Cell Genital Neoplasm

How do we identify causes of cancer?

- Cause:
 - Something that if eliminated, prevents cancer
- Genes ~~or~~ and Environment
- Environment or ***Environment***
 - ***Every cause that is not inherited***
- Workplace or Residence
- Factors may predict cancer but not cause it

Genetic Factors (Causal Genes)

- Play a role in all forms of cancer
- Usually create susceptibility to environment
- Usually only a small proportion from any gene
- The most important cause of a few rare cancers

Finding Causes (Environmental Carcinogens)

- Sources of Information
 - Clinical anecdotes
 - Lab *In vitro* mechanistic biology
 - Animal testing
 - Epidemiological Patterns

All tools are imperfect

- Clinical and lab observations not definitive
 - Rarely well controlled or statistically sound
 - Human repair mechanisms are unaccounted for

All tools are imperfect

- Animals are not like people
 - Don't live long enough for carcinogens to act
 - Have different anatomy and physiology
 - No clear basis for extrapolating results

All tools are imperfect

- Can't do experiments
- “Natural” epidemiologic observations are hard
 - Opportunities with enough exposure rare
 - Multiple exposures usual
 - Dosage approximate
 - Like democracy, the worst except for the others
 - Must exclude chance, bias, other explanations

Formal Criteria designating carcinogens are used to guide regulation

- THE MODEL CRITERIA:
 - International Agency for Cancer Research
 - Definite, Probable, Possible, Unclassifiable
- EPA, FDA, NTP
- CANADA, OTHER COUNTRIES, STATES
- CALIFORNIA EPA: PROPOSITION 65

Our knowledge is incomplete

- Every kind of cancer has unique causes
- A few exposures cause multiple kinds
 - Smoking
 - Ionizing radiation
 - Chemotherapeutic chemicals
- Every case has multiple causes
- Our ignorance varies by type
- An unexplained excess may give a lead

DEFINITE ENVIRONMENTAL CARCINOGENS

>20 INDUSTRIAL CHEMICALS; >15 PROCESSES

>15 INORGANIC PRODUCTS, >15 METALS/ MINERALS

>30 PHARMACOLOGIC PRODUCTS

10 FOOD/DRINKS/HABITS

10 INFECTIOUS AGENTS

5 FORMS OF RADIATION

3 INSECTICIDES/HERBICIDES

Carcinogenic exposures in the workplace

Heavy doses

- Airborne arsenic, asbestos, hexavalent chromium
- Airborne asbestos
- Other heavy metal dusts: e.g. nickel
- Products of combustion: soot, diesel exhaust
- Industrial dioxins, PCB's PBB's, vinyl chloride
- Toxic gas and mists: strong acids, mustard gas
- Refinery products like benzene and benzidene
- Solvents: carbon tetrachloride, TCE,
- Agricultural Pesticides: arsenic, chlordane, dieldrin

CHRONIC LIFESTYLE CARCINOGENS

- TOBACCO FOR SMOKING OR CHEWING
- ALCOHOL
- SOLAR RADIATION
- DRUGS AND HORMONES
- DIETARY PREFERENCES (WELL-DONE MEAT)
- OBESITY/SEDENTARY LIFESTYLE
- PHYSIOLOGIC OR THERAPEUTIC HORMONES

LIFESTYLE CARCINOGENS

- CONTACT WITH INFECTIOUS AGENTS
 - HIV
 - Papilloma virus,
 - Hepatitis B,
 - Helicobacter pylori
 - Parasitic flukes

What Carcinogens are in the Residential Environment?

- Cumulative Airborne Carcinogens?
- Cumulative Waterborne Carcinogens?
- Acute Airborne Carcinogens?
- Airborne carcinogenic viruses?

CUMULATIVE ENVIRONMENTAL CARCINOGENS

- AIRBORNE POLYCYCLIC HYDROCARBONS
 - FROM LOCAL SOURCES OF COMBUSTION
 - DIESEL EXHAUST FROM TRUCKS, SHIPS, ETC
 - AIRBORNE SOLID PARTICLES
- AIRBORNE ASBESTOS
- WATERBORNE ARSENIC

Arsenic

- Many industrial and agricultural uses
- When ingested, skin, bladder, GI cancers
- When inhaled, lung cancer
- No history of residential cases from inhalation
- High water levels in some US areas
 - No evidence of increased cancer rates

**AIRBORNE (PERSON TO PERSON)
INFECTIOUS AGENTS?**

RARE UNKNOWN LEUKEMIA VIRUS?

AIRBORNE CHEMICAL CARCINOGENS FROM INDUSTRY COMMONLY PRESENT IN RESIDENTIAL AIR

- Hexavalent Chromium
- Methylene Chloride
- Benzene
- Trichloroethylene
- Carbon Tetrachloride
- Vinyl Chloride
- Dioxins
- PCB'S, PBB'S

Airborne Carcinogenic chemicals

- Chemical carcinogens are everywhere
- Doses are very small
- Powerful methods now detect very low doses
- Emissions are widely dispersed
- Carcinogens are heavily diluted
- Residential exposures are miniscule

Solvents and Pesticides

- Mechanistic evidence suggests cancer risk
- Cancers caused in animals by very high dose
 - Sites do not correspond to human cancers
- Best evidence from those heavily exposed
 - Dry cleaner workers exposed to TCE, carbon tetrachloride
 - Pesticide sprayers exposed to pesticides/herbicides
 - Arsenic, chlordane/heptachlor, dieldrin, methyl bromide
 - Neither commonly exposed to only one chemical
- **NO EVIDENCE TO DATE OF RESIDENTIAL RISK**

PROBLEM OF DOSE

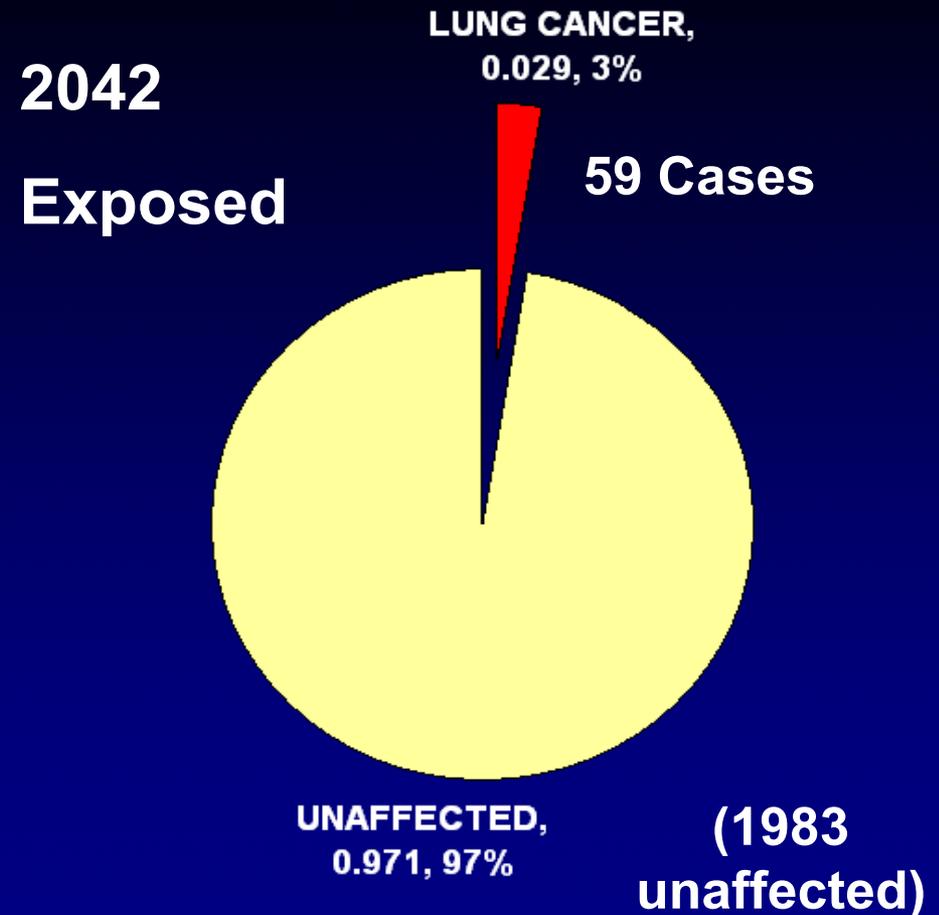
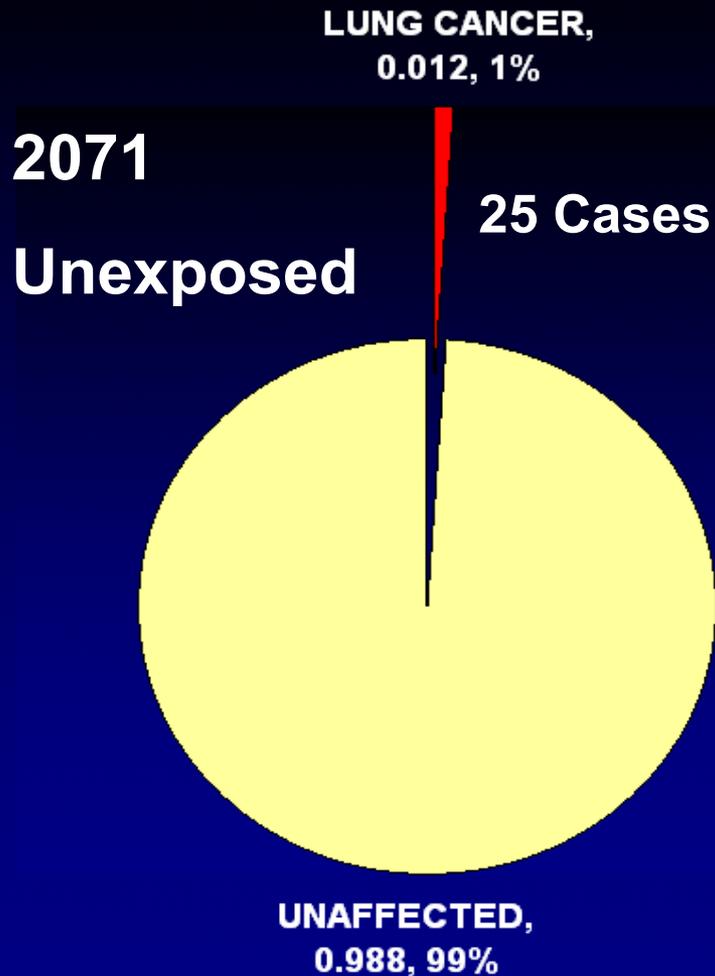
- Causation usually established in workplaces
- Doses there higher than residential doses
- Federal/State regulation is now fairly effective
- Technology picks up minute doses

Hexavalent Chromium

- Causes lung cancer
- Single most potent emission in California
- No demonstrated residential cases

Effect of Industrial exposure to hexavalent chromium:

Mean level 790 micrograms/cubic meter of air



Projected effect of Strongest Community Exposure to Hexavalent Chromium

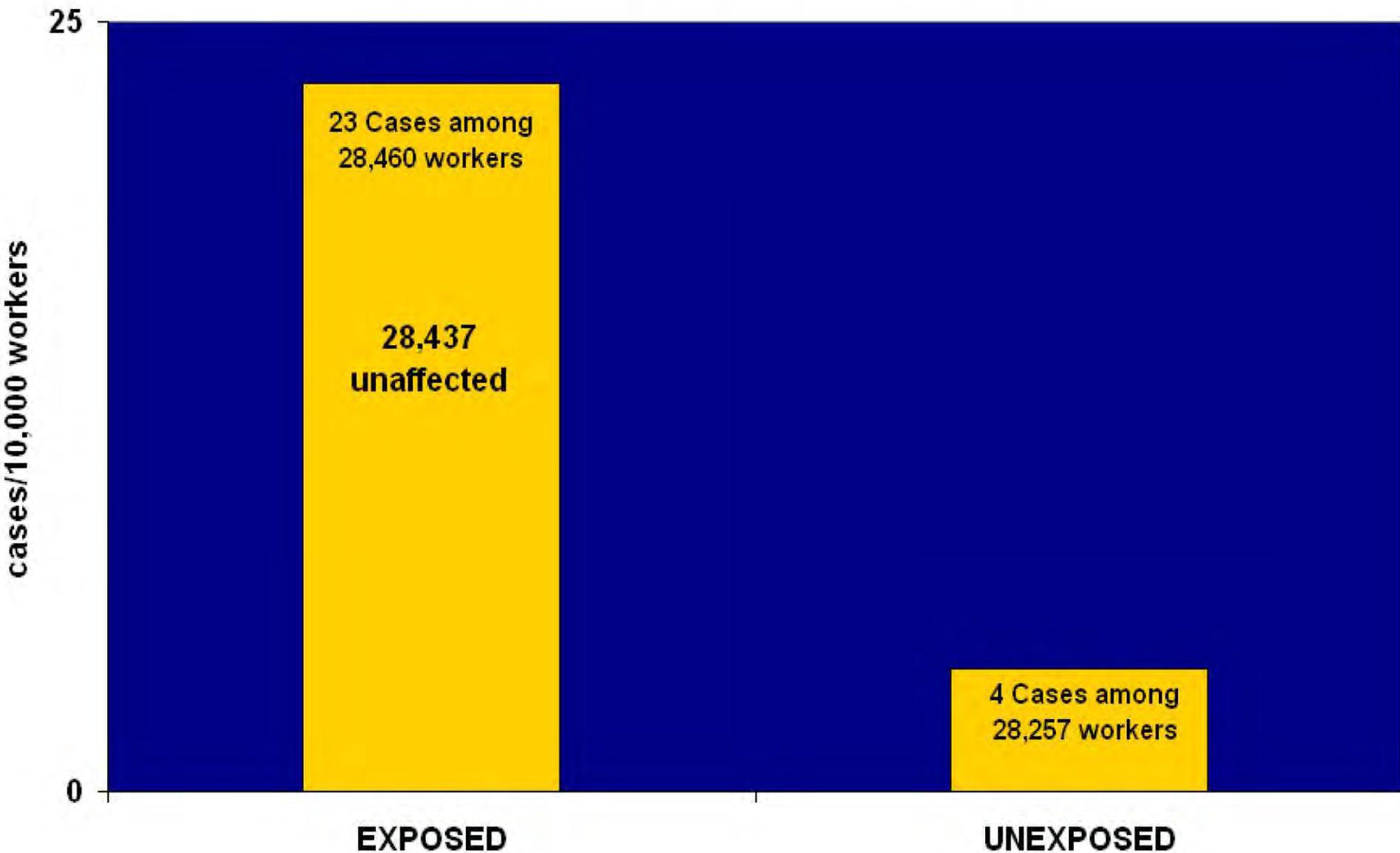
| | Micrograms chromium ⁶ /m ³ | Lung cancers /100,000 |
|-----------|--|-----------------------|
| Workplace | 790 | 1700 |
| Community | 0.04 | 0.09 |

Thus exposure at the point of the strongest known emission of carcinogen in California, about one extra case per million would appear (i.e. in the average census tract, one case every 200 years)

Benzene

- Causes Acute Myelocytic Leukemia
- Component of gasoline
- Storage under gas stations
- Old refinery “tank farms” under housing
- Yet
 - No consistent excess among service station workers
 - No consistent excess among refinery workers

**Effect of industrial exposure to benzene:
Mean level 275 mg/cubic meter of air**



Projected effect of Community Exposure to Benzene

| | Milligrams benzene/m ³ | New leukemias /100,000 |
|-----------|-----------------------------------|------------------------|
| Workplace | 275 | 67 |
| Community | 0.2 | 0.04 |

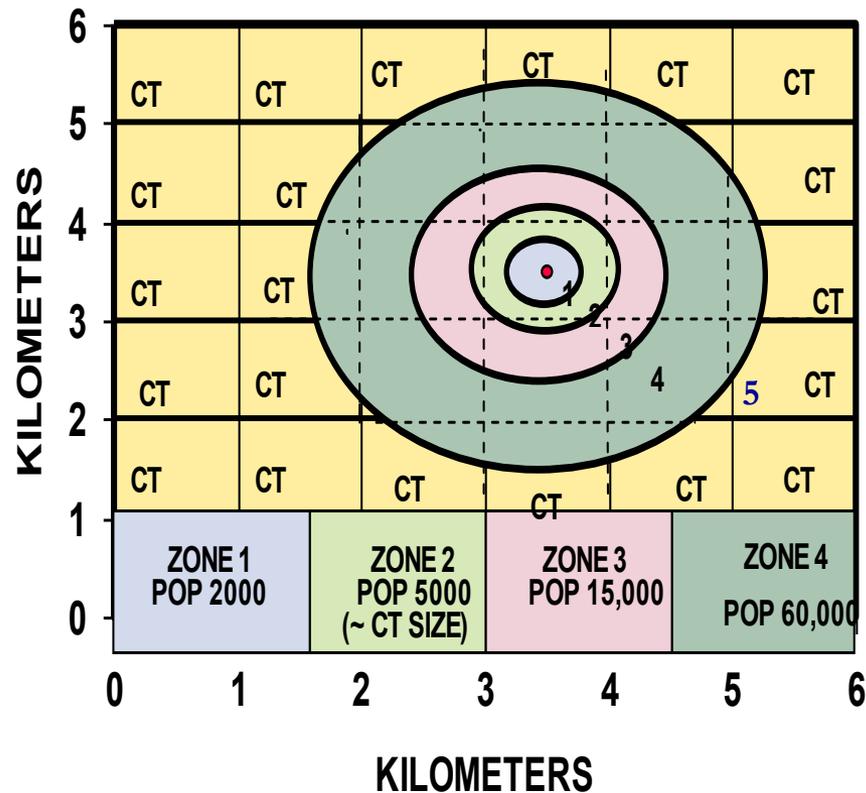
Thus exposure to the highest level found in Southern California in 1963 (before current regulations) would produce about one extra case of leukemia per 2.5 million (i.e. in the average census tract, one case every 500 years)

MORE PROBLEMS WITH DOSE

- Dose-response effects are presumed linear
- Chemicals rapidly disseminate into space
- Dilution is proportional to the square or cube of distance from the emission point
- ANY SUCH CARCINOGEN COULD CAUSE CANCER, BUT NONE WOULD PRODUCE A NOTICABLE EXCESS OVER BACKGROUND

Dispersion of carcinogen emissions

Point of carcinogen emission •



Impact of point source emission of a carcinogen known to double risk

| | Population | Distance | Attributable Risk | # Cases |
|------------------|----------------|---------------|---------------------|-------------|
| At Source | 50 | 0.1 km | 100/100,000 | 0.05 |
| Zone 1 | 2000 | 0.3 km | 11/100,000 | 0.22 |
| Zone 2 | 5000 | 0.5 km | 4/100,000 | 0.20 |
| Zone 3 | 15,000 | 1.0 km | 1/100,000 | 0.15 |
| Zone 4 | 60,000 | 2.0 km | 0.25/100,000 | 0.15 |
| Zone 5 | 120,000 | 3.0 km | 0.10/100,000 | 0.12 |

Thus, no more than a single additional case would be expected

Other Special Concerns

- Electromagnetic Radiation

- Mobile phones

- High tension wires

- Electric blankets

- Microwave radiation

- No certain causation

WHAT ENVIRONMENTAL CLUSTERS HAVE OCCURRED?

- No clear residential or local excess has ever been attributed to industrial emission of one of the volatile chemicals
- An occasional case could in theory have been caused, but no excess has ever been identified

However, there have been Environmental Clusters

- At least two in the US
- Several in the rest of the world
- Many false alarms
- At least one recent concern

True cluster: Fallon, NV 2000-2001

Acute Lymphoblastic Leukemia

Expected number of cases: 0.3

Observed number of cases: 16

Probably due to a virus introduction

True Cluster: Libby, MT

- Vermiculite Mining scattered asbestos-containing tailings all over town
- Cases of mesothelioma occurring in local persons

True clusters: Italy, Greece, New Caledonia

- Asbestos-containing whitewash used to whiten residential buildings
- Excess cases of mesothelioma occurred

True cluster: Cappadocia, Turkey

- Local stone used to build houses for people and shelter for sheep
- Mesothelioma occurred in both residents and their sheep

True clusters: Taiwan, Chile, Bangladesh, Argentina

- Geologic source of ground water containing high levels of arsenic
- High rate of bladder cancer in consumers

True cluster: Seveso Italy

- Massive industrial spill of dioxins
- Unexpectedly high number of sarcomas

True cluster: Areas of Ukraine and Belarus

- Chernobyl nuclear accident
 - Release of radioactive particles
- Thyroid cancer in downwind areas
 - Especially in children

Untrue "clusters"

Love Canal NY, Woburn MA* and
Hinkley CA*

- (Subjects of "A Civil Action" and "Erin Brockovich")
- Despite clear evidence of chemical toxins, no increase in cancer frequency has been documented

Possible LA cluster:

- Excess of squamous Cancers near the port and 710 freeway

WHAT ARE THE PROBLEMS IN ASSESSING CLUSTERS?

- Demography, not Geography
 - Age, sex, race, ethnicity, lifestyle
 - Income/education, occupation, medical care
- Errors in diagnosis or attribution
- Errors in census estimates
- CHANCE

Non-environmental “clusters”: Overcounting

- Mixture of different cancers
 - 33% of women, 40% of men over life
- Inclusion of non-cancer conditions
 - Common conditions easily found
- Cancers diagnosed before residence
 - Could not be caused locally
- Cancers occurring after moving out
 - Prevents comparison with registry

Non-environmental “clusters”: Overdiagnosing

- Changes in Diagnostic technology
 - New, more sensitive test
 - New convenient or cheaper equipment
 - Change in public motivation

Non-environmental “clusters”

- Errors in the Census Denominator
 - Rapid post-census growth
 - Temporary residency for medical care

Non-environmental clusters: chance

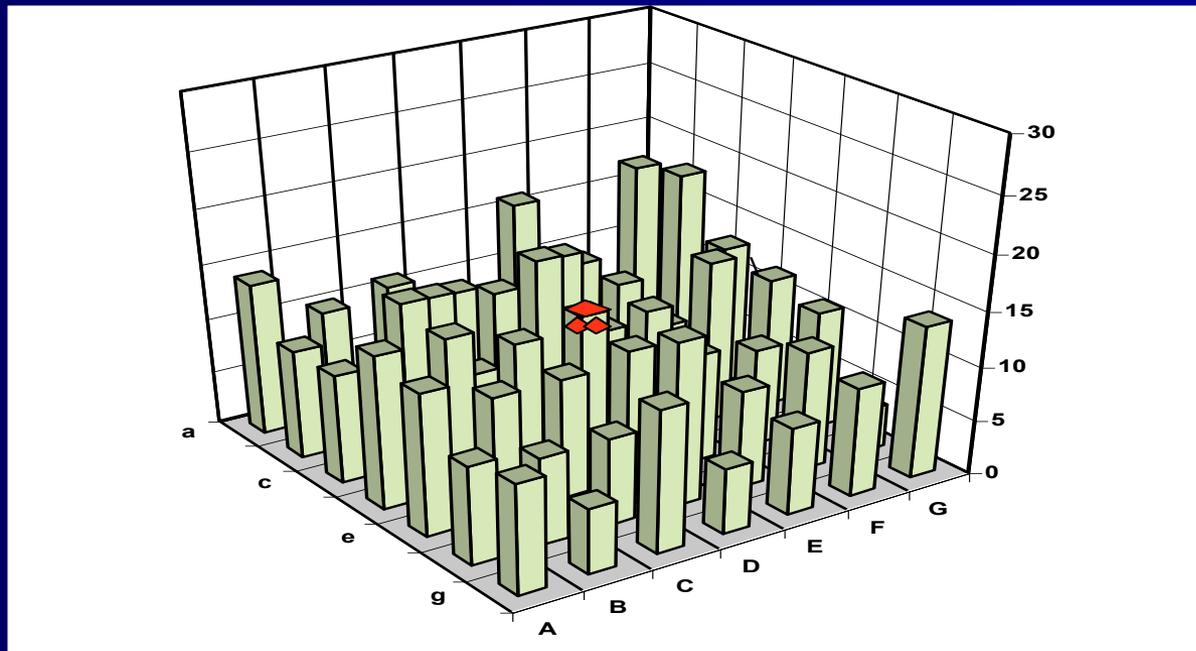


Chance has several effects



- Variation in population size at a given time
- Variation in baseline occurrence by chance
- Variable small number of added cases
- Large number of “clusters” from chance

Relatively small number of cases from emissions



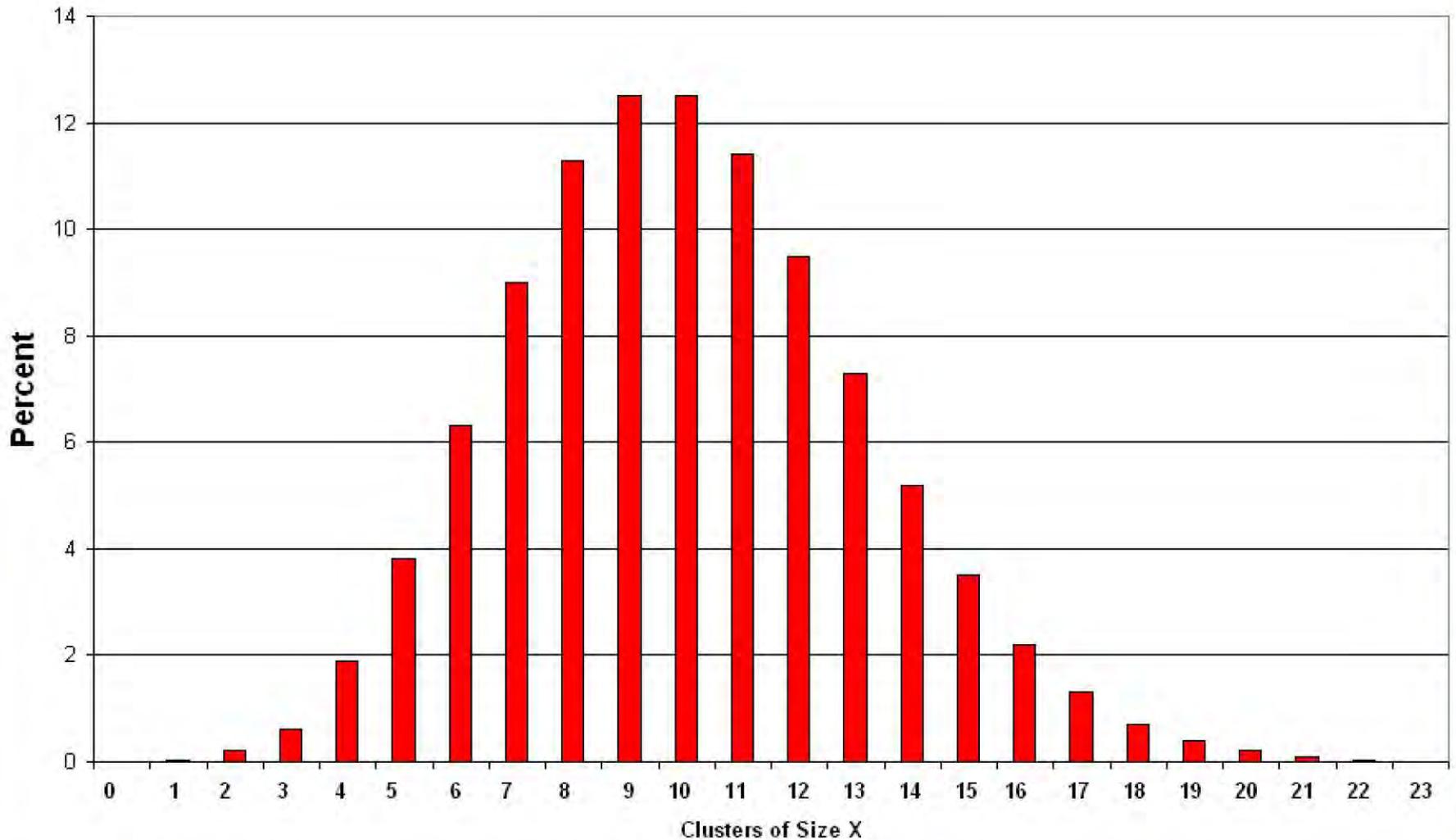
The number expected rarely appears

- A toss of two dice, on average, should give a 7
 - Happens only one in 6 tries; otherwise by chance half will be higher, half lower
 - Thus when x cases are expected, very often more occur by chance

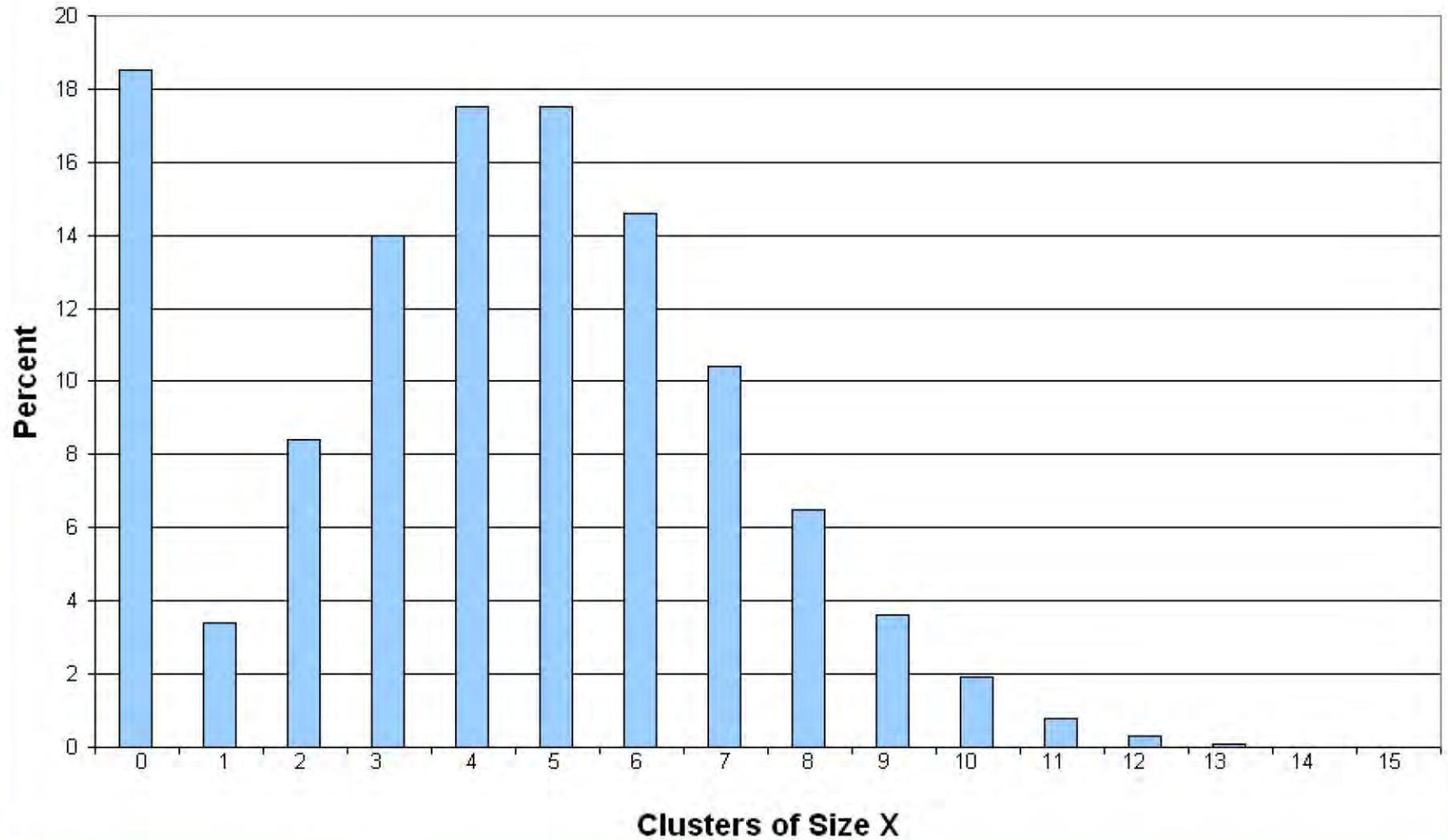
The number expected rarely appears

- Especially if the expected number is small
 - A specific card from a deck should appear twice out of 100 separate draws
 - If 100 separate sets of 100 draws are repeated, the card will appear twice in only 59%.
 - In 9% the card will not be drawn at all, and in 32% it will appear 3 or more times.

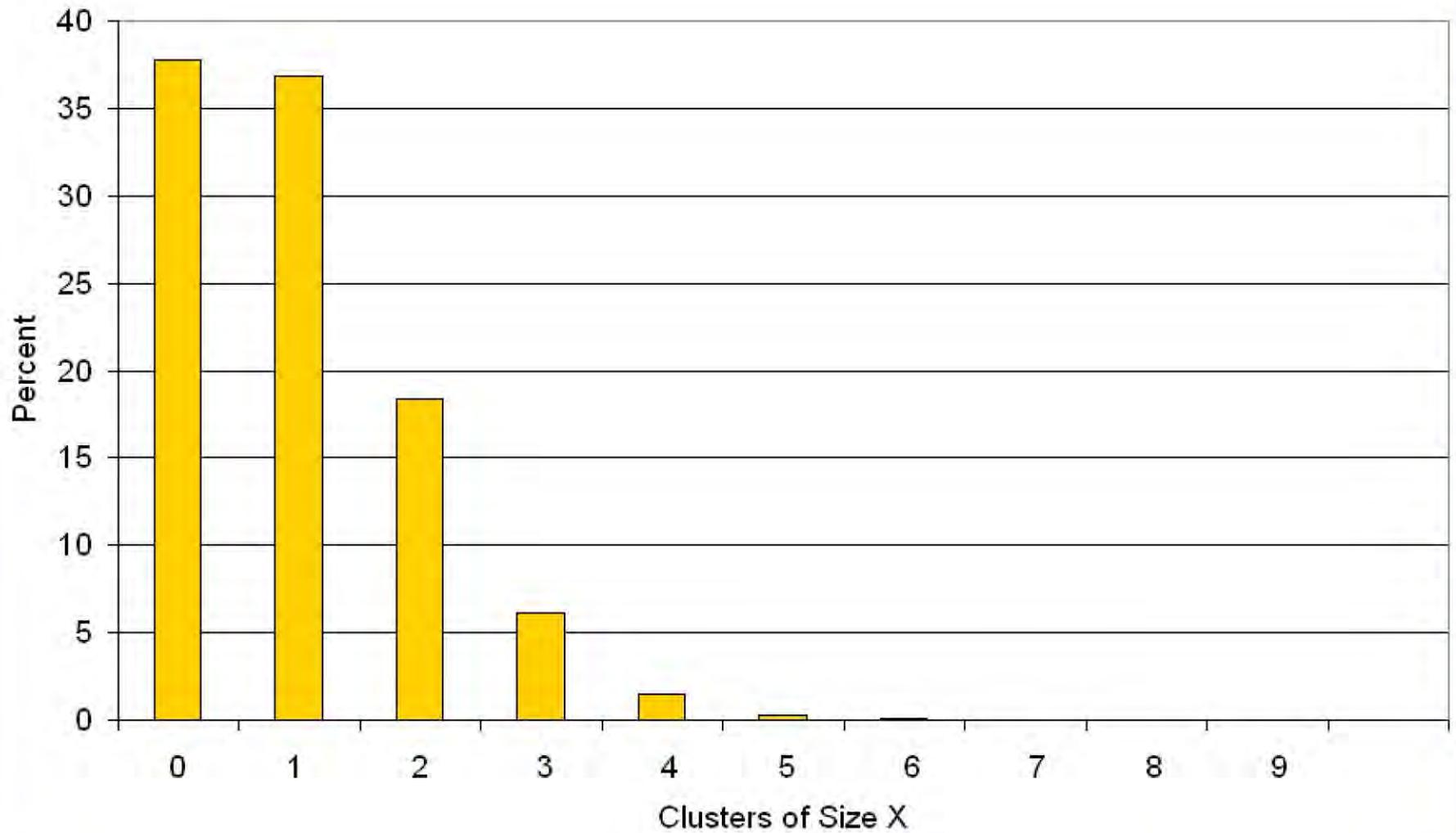
Poisson Distribution of Clusters if Expected Size is TEN



Poisson Distribution of Clusters if Expected Size is FIVE



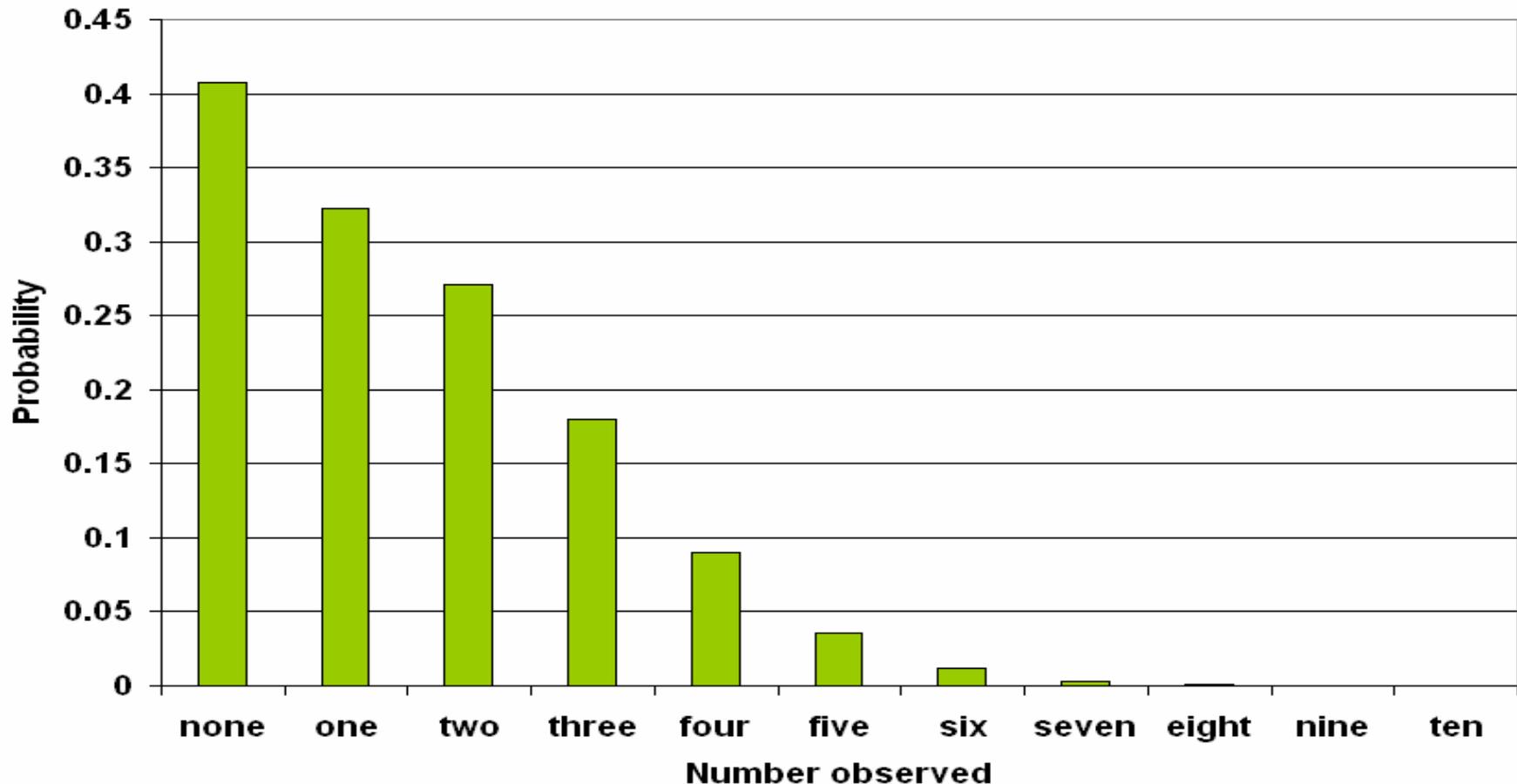
Poisson Distribution of Clusters if Expected Size is ONE



Distribution of 5-case clusters

Poisson distribution

Probability distribution of cases by number if 2 were expected



Multiple comparisons

- The more independent comparisons, the more likely a positive finding by chance alone.
- Special problem: when many alternative hypotheses are obvious
 - Nutrients
 - Occupations
 - Neighborhoods

The number of comparisons matters

- **When something happens 1% of the time by chance**
 - **If there are 100 neighborhoods, one is usual**
 - **If there are 1000 neighborhoods, there should be 10**
 - **If there are 5000 neighborhoods, there should be 50**
 - **There are a lot more than 5000 neighborhoods**
 - **But, If it happens in your neighborhood, never chance**



Table 3 Look up tables for when there are 100 populations of the size as the one perceived to be at risk
 Grey/bolded cells are those calling for possible cluster investigation

N.B. If, for example, 350 such populations are thought to exist, multiply Table one by 3.5 and bold those cells showing over 2 "clusters" by chance

| μ | x=1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | |
|-------|------|---|------|------|------|------|------|------|------|------|------|------|------|------|-----|-----|
| 1 | 63.2 | 26.4 | 8.0 | 1.9 | 0.4 | 0.1 | 0.0 | | | | | | | | | |
| 2 | | 59.3 | 32.2 | 14.2 | 5.2 | 1.6 | 0.4 | 0.1 | 0.0 | 0.0 | | | | | | |
| 3 | | | 58.4 | 36.0 | 19.2 | 9.1 | 3.4 | 1.2 | 0.4 | 0.1 | 0.0 | 0.0 | | | | |
| 4 | | | | 56.6 | 37.1 | 21.5 | 11.1 | 5.1 | 2.1 | 0.8 | 0.3 | 0.1 | 0.0 | 0.0 | | |
| 5 | | 100 x p^{x+x} | | | 55.8 | 38.3 | 23.7 | 13.3 | 6.8 | 3.2 | 1.3 | 0.5 | 0.2 | 0.1 | 0.0 | |
| 6 | | | | | | 55.4 | 39.3 | 25.5 | 15.2 | 8.3 | 4.2 | 1.9 | 0.8 | 0.3 | 0.1 | |
| 7 | | | | | | | 54.9 | 40.0 | 27.0 | 16.9 | 9.8 | 5.3 | 2.7 | 1.3 | 0.6 | |
| 8 | | | | | | | | 54.8 | 40.8 | 28.4 | 18.5 | 11.3 | 6.5 | 3.5 | 1.8 | |
| 9 | | Given expected (μ), number of "clusters" size x by chance | | | | | | | | 54.3 | 41.1 | 29.2 | 19.5 | 12.2 | 7.2 | 4.0 |
| 10 | | | | | | | | | | 45.3 | 32.8 | 21.4 | 21.0 | 13.7 | 8.5 | |

Is a cluster real or by chance?

A judgment call

| If this many cases are expected, | At least 5% of tracts will have as many as: | At least 1% of tracts will have as many as: | Given 5,000 tracts at risk, concern gets serious at: |
|----------------------------------|---|---|--|
| 0.5 cases | 2 cases | 3 cases | 6 cases |
| 1 case | 3 cases | 4 cases | 7 cases |
| 2 cases | 5 cases | 6 cases | 9 cases |
| 5 cases | 9 cases | 11 cases | 15 cases |
| 10 cases | 16 cases | 18 cases | 23 cases |

WHAT SPECIFICS RELATE TO THIS LOCAL CONCERN?

West Hills

Cancer Incidence in Males West Hills, 1996-2008

Males

| CT 113231 | Obs | Exp | O/E | p |
|------------|-----|-----|------|--------|
| Colorectal | 9 | 8 | 1.13 | 0.7 |
| Lung | 11 | 9 | 1.22 | 0.43 |
| Prostate | 33 | 26 | 1.27 | 0.12 |
| Bladder | 12 | 5 | 2.4 | < 0.01 |
| AML | 0 | 1 | | |
| All Sites | 75 | 77 | 0.97 | 0.89 |

Cancer Incidence in Males West Hills, 1996-2008

Males

| CT 134401 | Obs | Exp | O/E | p |
|------------|-----|-----|------|------|
| Colorectal | 8 | 18 | 0.44 | 0.03 |
| Lung | 16 | 20 | 0.8 | 0.46 |
| Prostate | 46 | 47 | 1.02 | 0.91 |
| Bladder | 19 | 11 | 1.72 | 0.01 |
| AML | 1 | 1 | 1 | 0.91 |
| All Sites | 163 | 175 | 0.93 | 0.39 |

Cancer Incidence in Males West Hills, 1996-2008

Males

| CT 134421 | Obs | Exp | O/E | p |
|------------|-----|-----|------|------|
| Colorectal | 15 | 15 | 1 | 0.94 |
| Lung | 12 | 17 | 0.71 | 0.23 |
| Prostate | 41 | 42 | 0.98 | 0.96 |
| Bladder | 4 | 10 | 0.4 | 0.09 |
| AML | 1 | 1 | 1 | 0.75 |
| All Sites | 134 | 148 | 0.91 | 0.26 |

Cancer Incidence in Males West Hills, 1996-2008

Males

| CT 134422 | Obs | Exp | O/E | p |
|------------|-----|-----|------|------|
| Colorectal | 23 | 15 | 1.53 | 0.02 |
| Lung | 11 | 17 | 0.65 | 0.18 |
| Prostate | 48 | 39 | 1.23 | 0.14 |
| Bladder | 9 | 10 | 0.9 | 0.92 |
| AML | 0 | 1 | | |
| All Sites | 146 | 142 | 1.03 | 0.73 |

Cancer Incidence in Males West Hills, 1996-2008

Males

| CT 135203 | Obs | Exp | O/E | p |
|------------|-----|-----|------|------|
| Colorectal | 28 | 25 | 1.12 | 0.47 |
| Lung | 28 | 29 | 0.97 | 0.98 |
| Prostate | 68 | 67 | 1.02 | 0.87 |
| Bladder | 22 | 16 | 1.38 | 0.13 |
| AML | 2 | 2 | 1 | 0.68 |
| All Sites | 257 | 228 | 1.12 | 0.05 |

Cancer Incidence in Males West Hills, 1996-2008

Males

| West Hills | Obs | Exp | O/E | p |
|------------|-----|-----|------|------|
| Colorectal | 83 | 81 | 1.03 | 0.75 |
| Lung | 78 | 92 | 0.85 | 0.16 |
| Prostate | 228 | 217 | 1.05 | 0.42 |
| Bladder | 66 | 53 | 1.24 | 0.06 |
| AML | 4 | 6 | 0.67 | 0.49 |
| All Sites | 751 | 782 | 0.95 | 0.27 |

Cancer Incidence in Females West Hills, 1996-2008

| Females | | | | | |
|------------|-----|-----|------|--------|--|
| CT 113231 | Obs | Exp | O/E | p | |
| Colorectal | 3 | 7 | 0.43 | 0.18 | |
| Lung | 10 | 8 | 1.25 | 0.39 | |
| Breast | 42 | 27 | 1.56 | < 0.01 | |
| Bladder | 0 | 1 | | | |
| AML | 0 | 0 | | | |
| All Sites | 81 | 75 | 1.08 | 0.42 | |

Cancer Incidence in Females West Hills, 1996-2008

Females

| CT 134401 | Obs | Exp | O/E | p |
|------------|-----|-----|------|--------|
| Colorectal | 23 | 13 | 1.77 | < 0.01 |
| Lung | 11 | 14 | 0.79 | 0.45 |
| Breast | 76 | 60 | 1.27 | 0.04 |
| Bladder | 2 | 3 | 0.67 | 0.95 |
| AML | 0 | 1 | | |
| All Sites | 182 | 155 | 1.17 | 0.03 |

Cancer Incidence in Females West Hills, 1996-2008

Females

| CT 134421 | Obs | Exp | O/E | p |
|------------|-----|-----|------|------|
| Colorectal | 14 | 11 | 1.27 | 0.3 |
| Lung | 11 | 13 | 0.84 | 0.61 |
| Breast | 56 | 49 | 1.14 | 0.27 |
| Bladder | 2 | 2 | 1 | 0.9 |
| AML | 0 | 1 | | |
| All Sites | 148 | 128 | 1.16 | 0.08 |

Cancer Incidence in Females West Hills, 1996-2008

| Females | | | | | |
|------------|-----|-----|------|------|--|
| CT 134422 | Obs | Exp | O/E | p | |
| Colorectal | 14 | 12 | 1.17 | 0.54 | |
| Lung | 11 | 15 | 0.73 | 0.42 | |
| Breast | 52 | 49 | 1.06 | 0.63 | |
| Bladder | 3 | 3 | 1 | 0.58 | |
| AML | 0 | 1 | | | |
| All Sites | 141 | 134 | 1.05 | 0.53 | |

Cancer Incidence in Females West Hills, 1996-2008

| Females | | | | | |
|------------|-----|-----|------|------|--|
| CT 135203 | Obs | Exp | O/E | p | |
| Colorectal | 18 | 20 | 0.8 | 0.46 | |
| Lung | 29 | 24 | 1.21 | 0.3 | |
| Breast | 98 | 85 | 1.14 | 0.17 | |
| Bladder | 2 | 4 | 0.5 | 0.41 | |
| AML | 1 | 1 | 1 | 0.79 | |
| All Sites | 233 | 240 | 0.97 | 0.66 | |

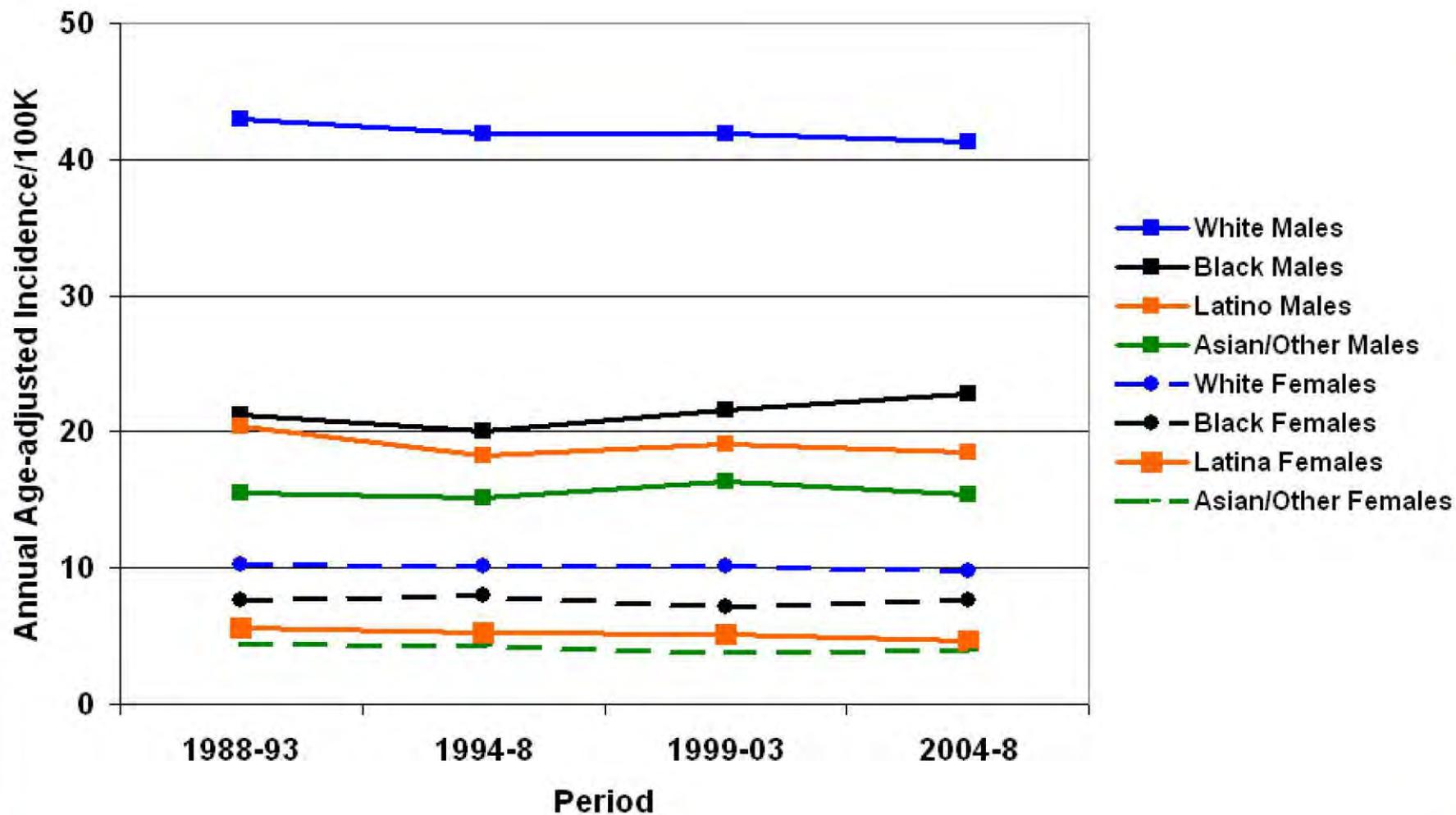
Cancer Incidence in Females West Hills, 1996-2008

| Females | | | | | |
|------------|-----|-----|------|--------|--|
| West Hills | Obs | Exp | O/E | p | |
| Colorectal | 70 | 63 | 1.11 | 0.34 | |
| Lung | 72 | 75 | 0.96 | 0.8 | |
| Breast | 324 | 271 | 1.2 | < 0.01 | |
| Bladder | 9 | 13 | 0.69 | 0.31 | |
| AML | 1 | 4 | 0.25 | 0.22 | |
| All Sites | 809 | 720 | 1.12 | < 0.01 | |

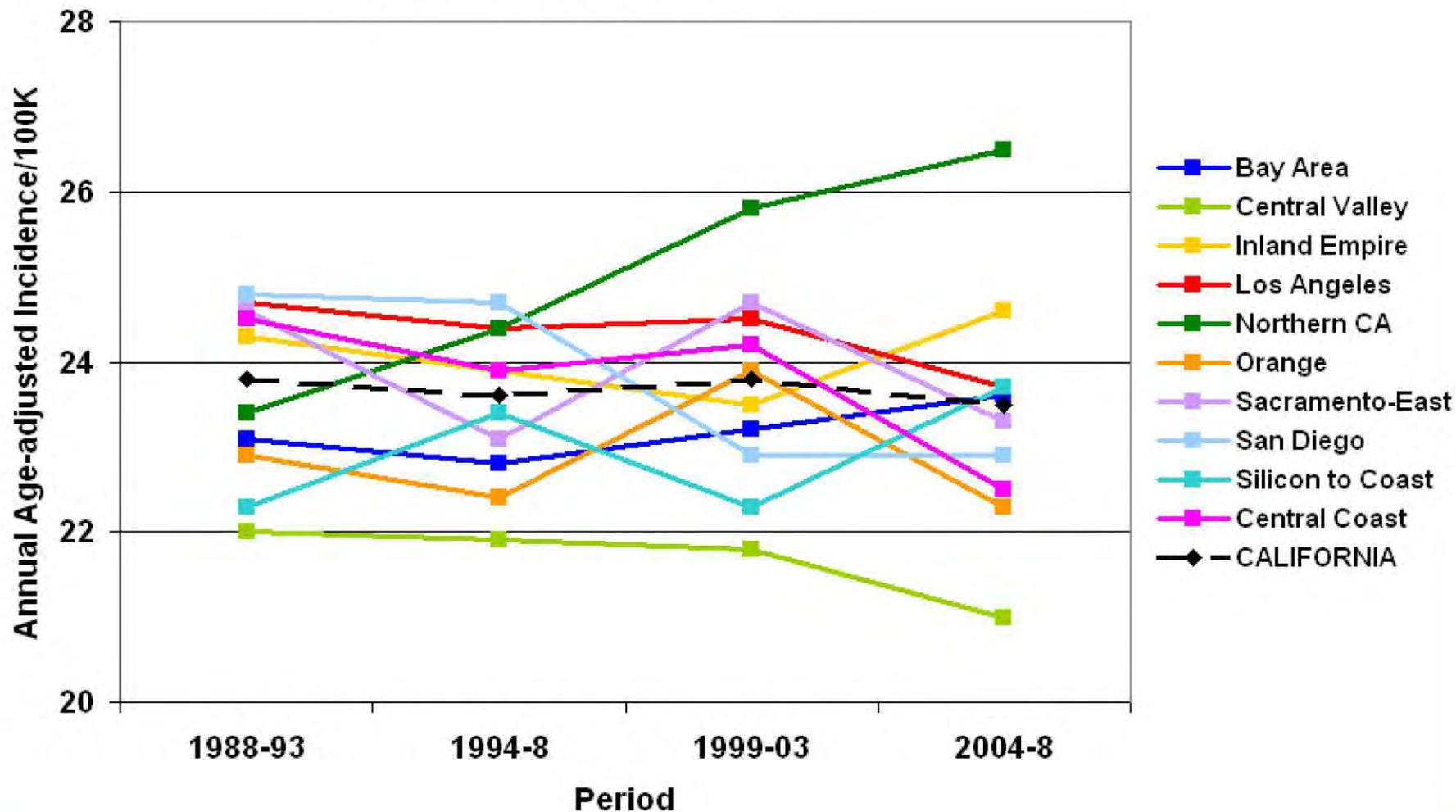
Summary

The most extreme finding is the apparent increase in bladder cancer risk in the most northerly, and to a lesser extent in the next most northerly, tract in West Hills. The former increase would probably be as great by chance in 8 or 9 tracts in Los Angeles County

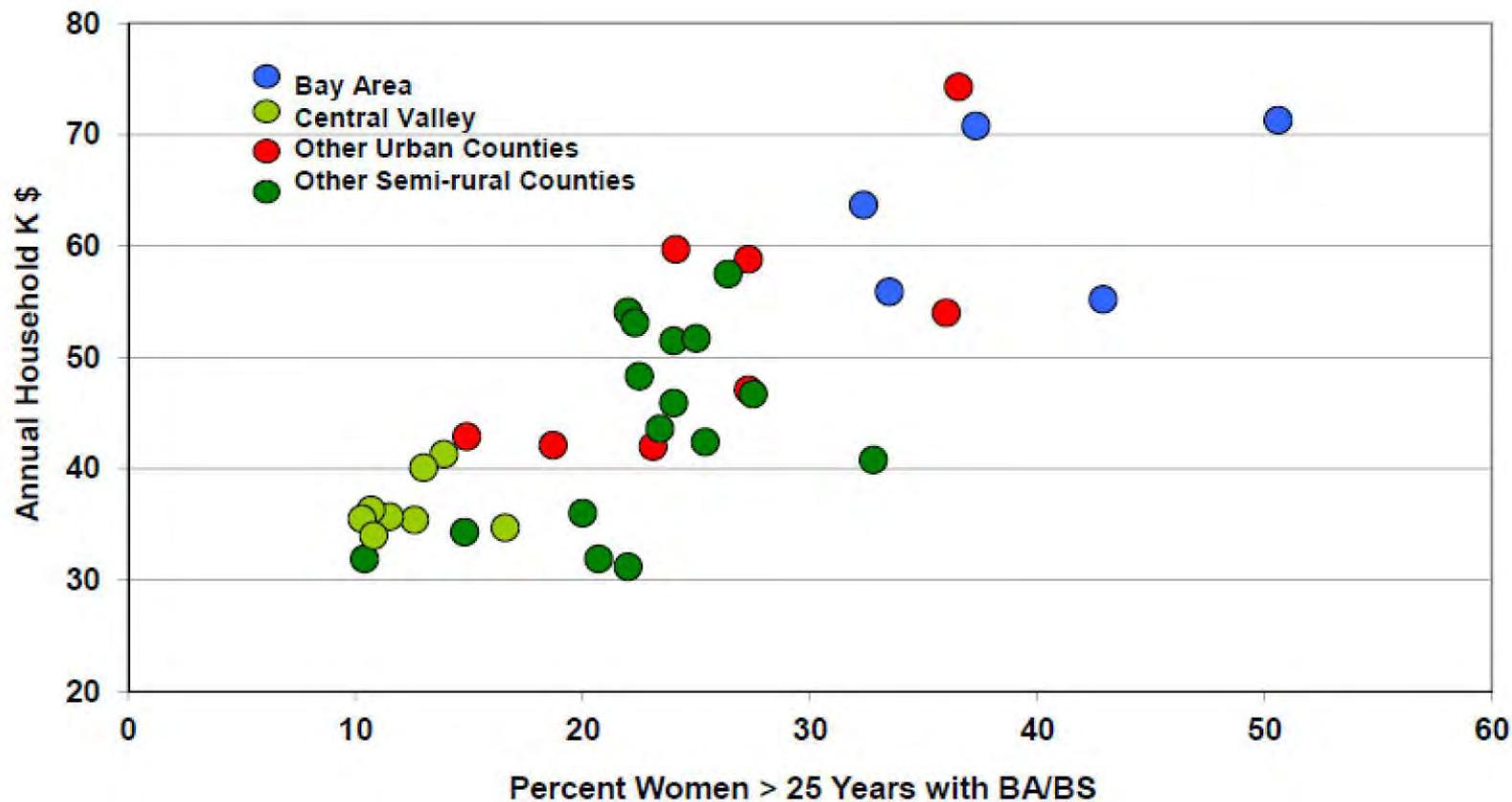
Trends in Incidence of Bladder Cancer by Gender and Race/Ethnicity in California



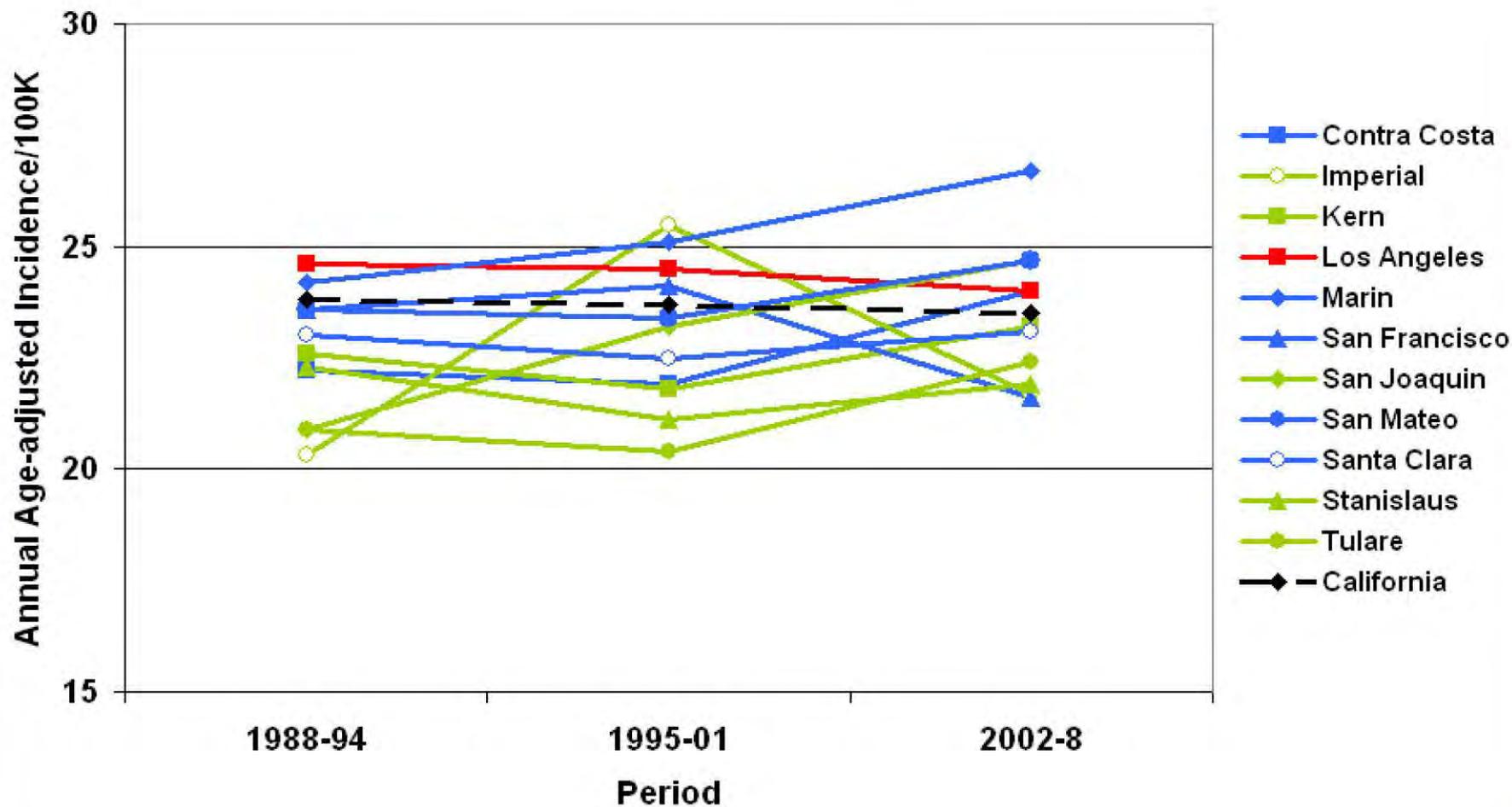
Trends in Incidence of Bladder Cancer among Whites by Region in California



California County Median Household Income
According to Percent of College-Educated Adult Women
(Counties of more than 50K)

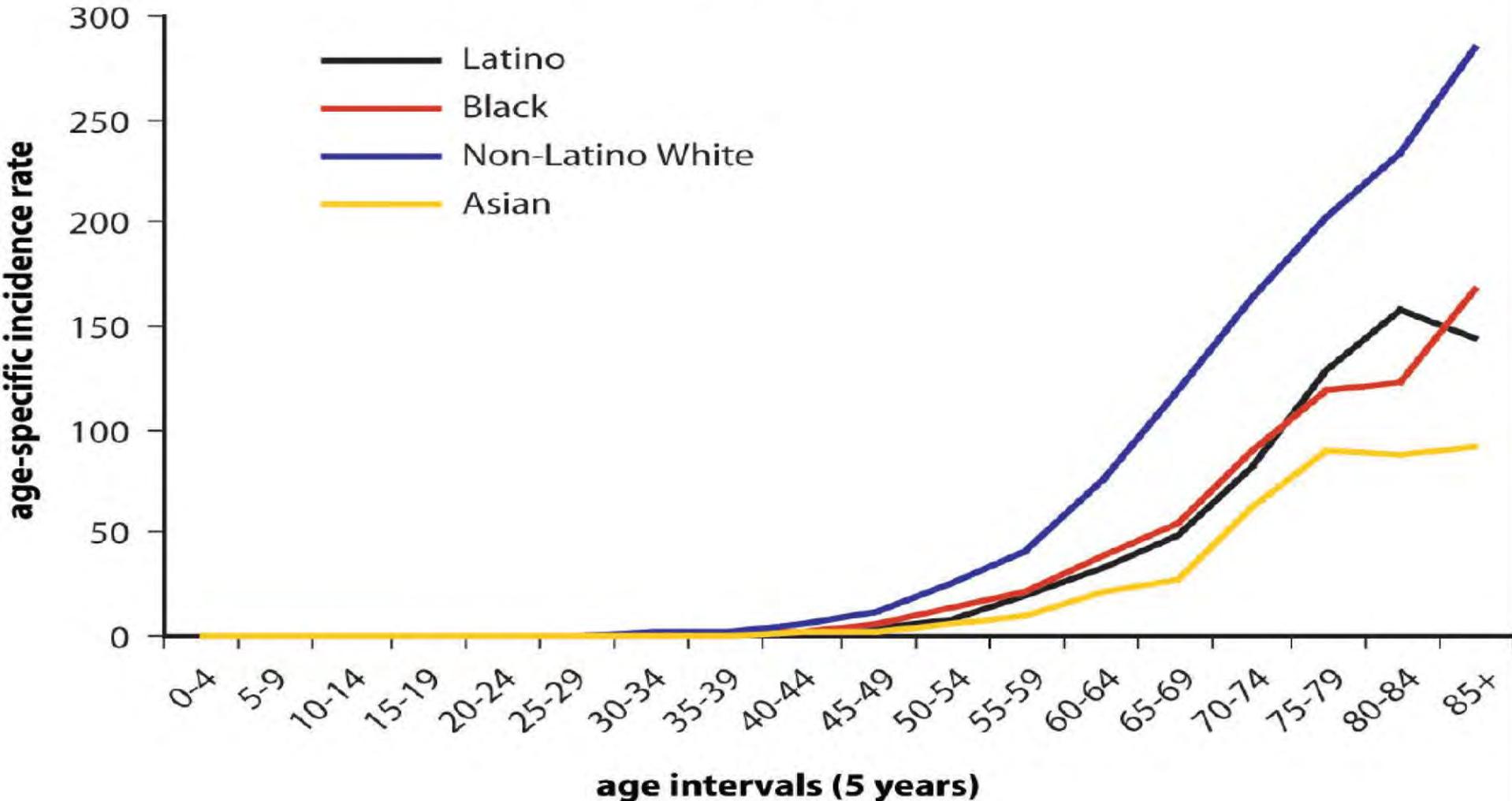


Trends in Incidence of Bladder Cancer among Whites from California Counties differing in Median Income and Educational Attainment



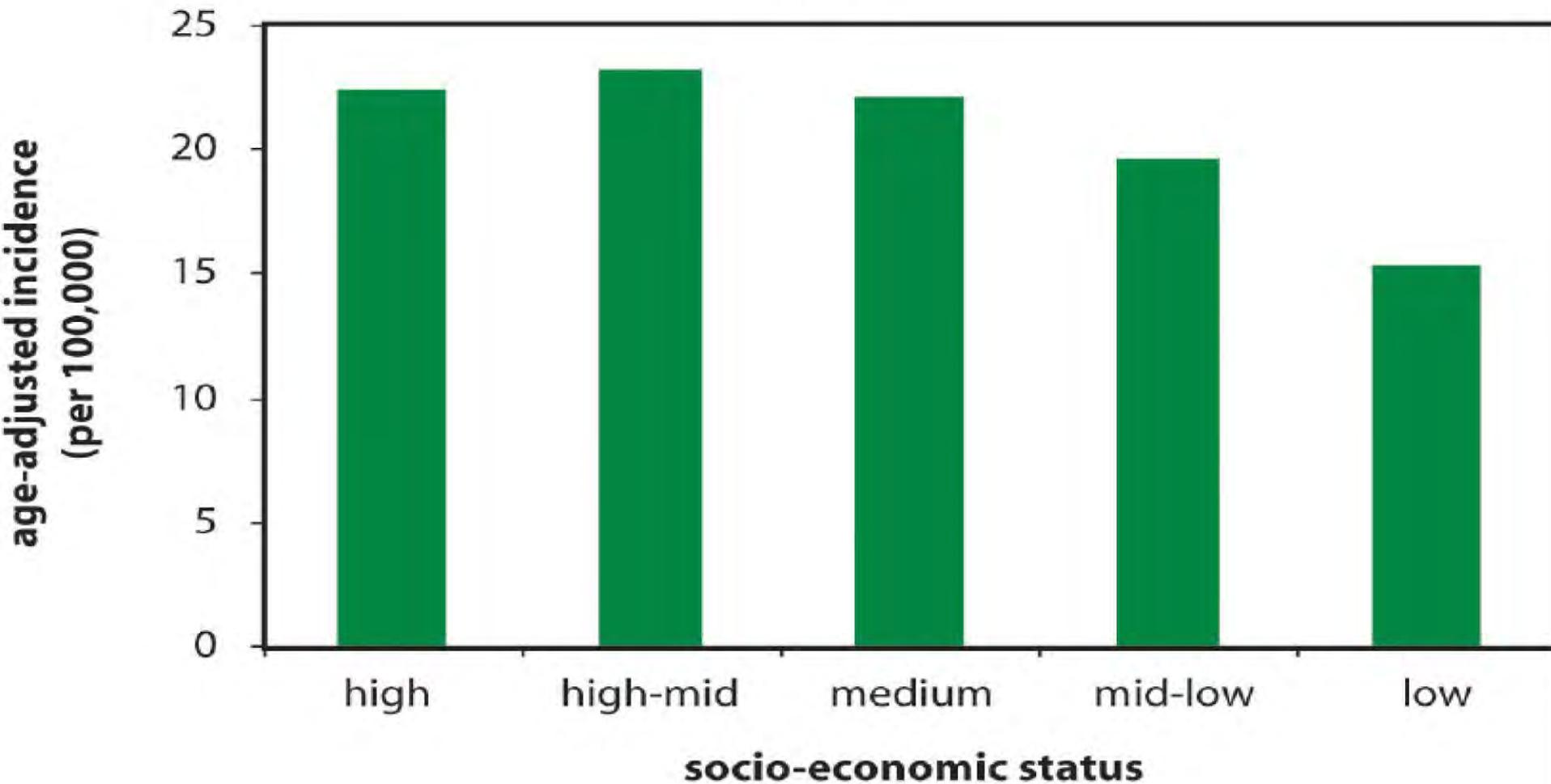
Bladder Carcinoma

**Age-specific incidence by race/ethnicity
(males)**



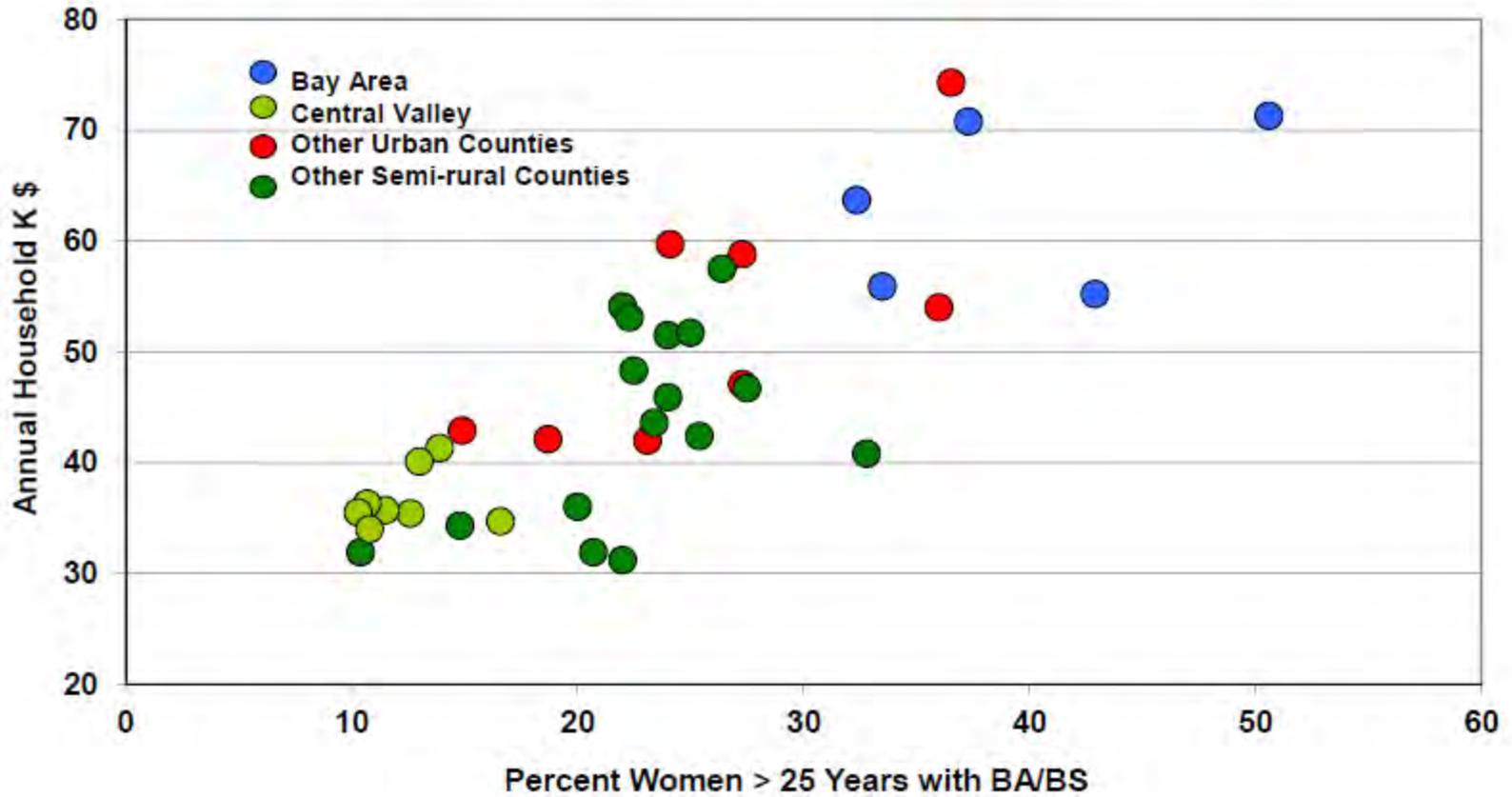
Bladder Carcinoma

Age-adjusted incidence by socio-economic status (males)



West Hills Tracts

California County Median Household Income
According to Percent of College-Educated Adult Women
(Counties of more than 50K)



Interpretation

No increase was noted among female residents of the West Hills tracts, and bladder cancer generally occurs more frequently among smokers, among upper middle class men, and among those employed in certain occupations. The observed increase is therefore not surprising.

Cancer Occurrence in Offsite Neighborhoods Near the Santa Susana Field Laboratory

Thomas Mack, M.D., M.P.H.
Keck School of Medicine
University of Southern California

Reasons for Concern

- Intensive testing of rocket fuels
- Usage of solvents, chemicals, metals, radionuclides
- Presumed carcinogen contamination
- Lymphomas and lung cancers among workers

- History of accidents, spills and releases
- Possible dispersion offsite by air and water

- Safety conditions relaxed, inadequate monitoring
- History of secrecy and non-responsiveness

Reasons for Scientific skepticism

- Lack of any clear risk found by previous searches

Previous searches were Inconclusive

| Study | Periods | Locations | Cancers | Conclusions |
|----------------|-------------------------------|--|---------------------|---|
| Perkins-Wright | 1978-82 1983-87 | 5 LA Tracts | 11 Sites | Single Tract Bladder 1.5 83-7 Overall: Inconclusive |
| Coye-Goldman | 1973-82 1983-88 1988-89 | Aggregated Tracts by County | 14 Sites aggregated | Bladder 1.3 83-88 LA tracts Lung 1.1 88-89 VEN Tracts Suspect Confounding |
| Nasseri | 1988-95 | Aggregated VEN Co Tracts | 12 Sites aggregated | No positive findings |
| Morgenstern | 1988-95 1996-02 | Aggregated LA, VEN Blocks in 3 belts by Distance | 9 Sites aggregated | Lung 1.1 Middle Belt 88-95 Melanoma 1.2 Middle Belt 96-02 Thyroid ? Proximity effect Aerodigestive? Proximity effect |

Problems with Previous searches

| Study | Problems |
|----------------|--|
| Perkins-Wright | Multiple comparisons without adjustment Weak associations Bias: response to cluster report Confounded by Race and Social Class |
| Coye-Goldman | Multiple comparisons without adjustment Weak associations Aggregation obfuscates location Confounded by Social Class |
| Nasseri | Multiple comparisons without adjustment Aggregation obfuscates location Low statistical power Confounded by Social Class |
| Morgenstern | Multiple comparisons without adjustment Weak associations Aggregation obfuscates location; Distance is not dose Confounding by Social Class |

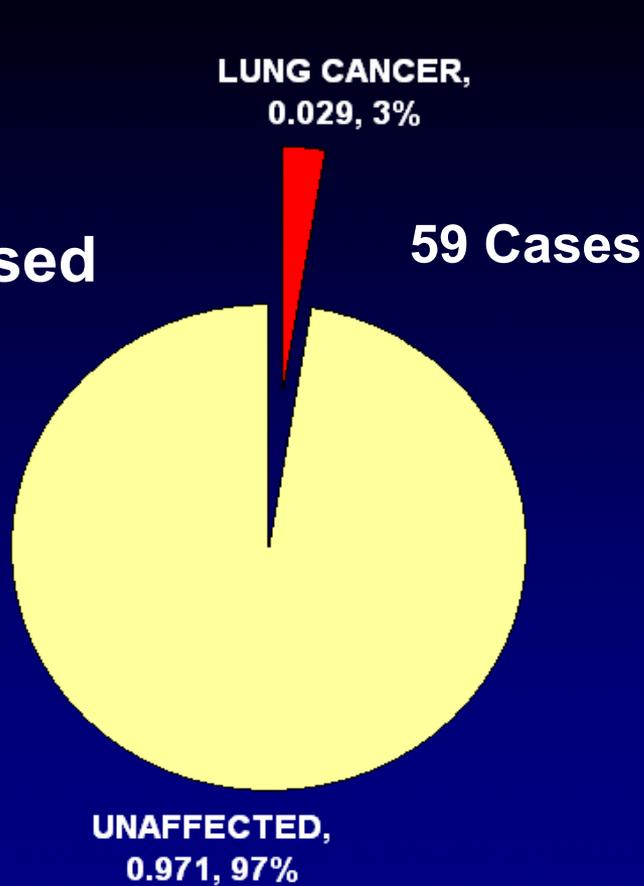
Reasons for Scientific skepticism

- Ambiguous and controversial exposure estimates
- The presence of a carcinogen, especially when technology permits detection of very low levels, does not necessarily constitute a major hazard
- High dose levels are needed to produce a measurable cancer excess

Effect of Industrial exposure to hexavalent chromium: Mean level 790 micrograms/cubic meter of air

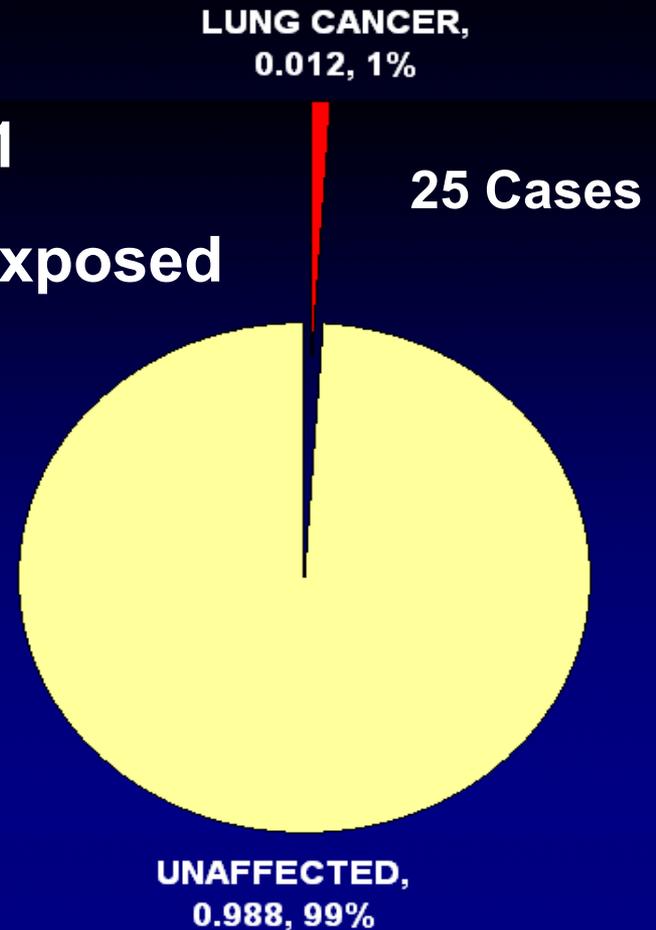
2042

Exposed

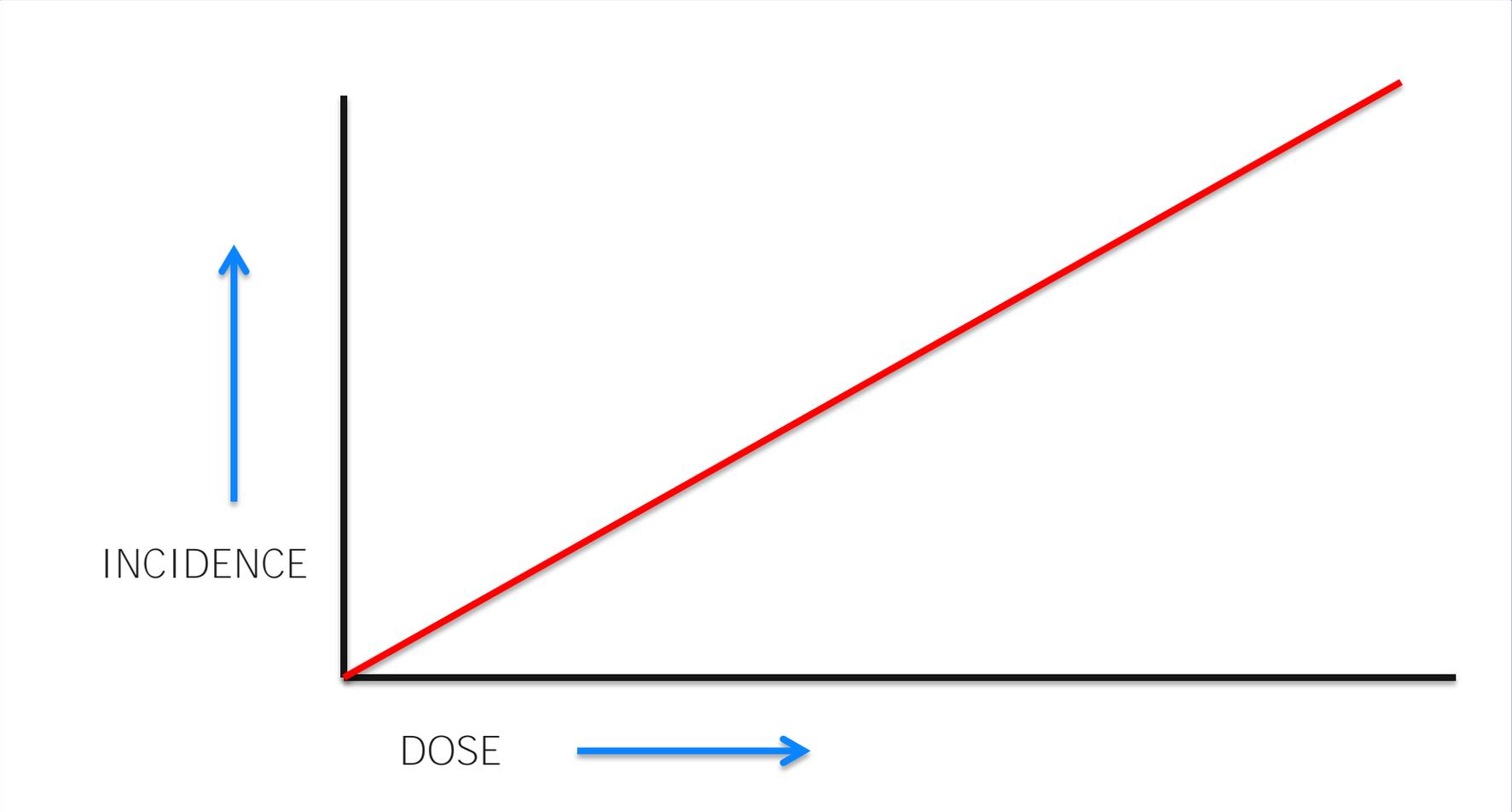


2071

Unexposed



Carcinogenesis increases linearly with dose



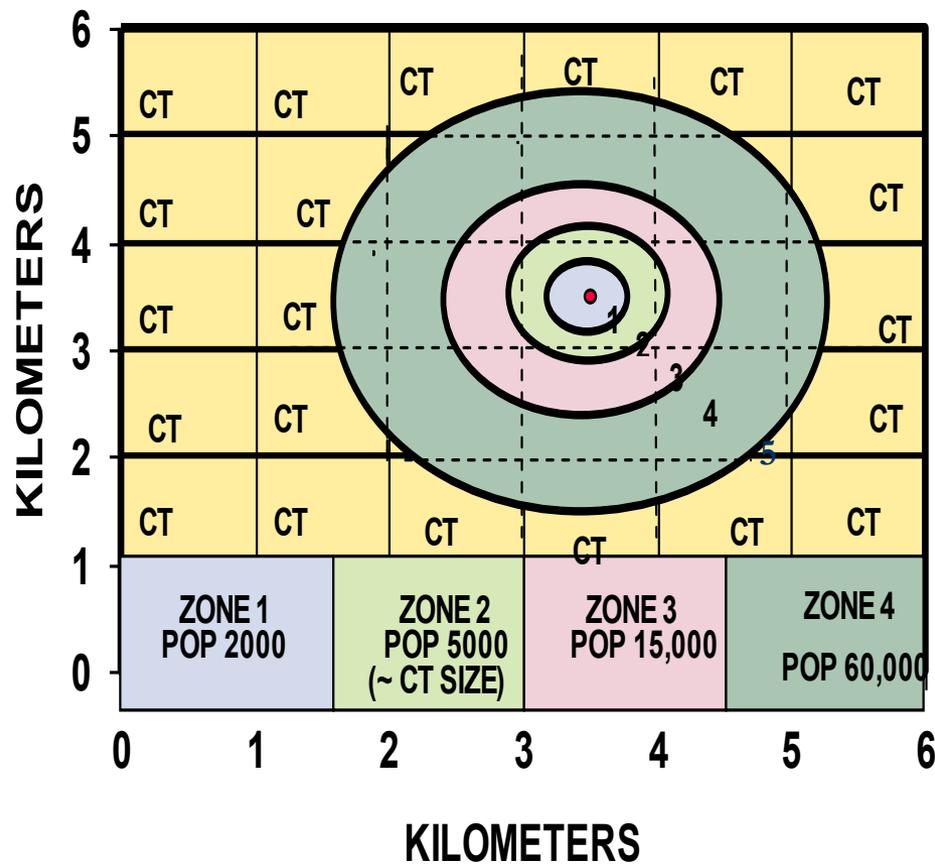
Projected effect of Strongest Community Exposure to Hexavalent Chromium

| | Micrograms chromium ⁶ /m ³ | Lung cancers /100,000 |
|-----------|--|-----------------------|
| Workplace | 790 | 1700 |
| Community | 0.04 | 0.09 |

Thus exposure at the point of the highest known emission of carcinogen in California, about one extra case per million would appear (i.e. in the average census tract, **one extra case every 200 years**)

Dispersion of carcinogen emissions

Point of carcinogen emission •



Emission dose level to individuals is variable

- Chemicals rapidly disperse into air/water
- As the distance from the site increases:
 - More people are exposed
 - Exposure dose is lower
 - Dispersion results in dilution: dose is inversely proportional to distance

Impact of point emission if dose is thought to double the risk

| | Population | Distance | Attributable Risk | # Cases |
|------------------|----------------|---------------|---------------------|-------------|
| At Source | 50 | 0.1 km | 100/100,000 | 0.05 |
| Zone 1 | 2000 | 0.3 km | 11/100,000 | 0.22 |
| Zone 2 | 5000 | 0.5 km | 4/100,000 | 0.20 |
| Zone 3 | 15,000 | 1.0 km | 1/100,000 | 0.15 |
| Zone 4 | 60,000 | 2.0 km | 0.25/100,000 | 0.15 |
| Zone 5 | 120,000 | 3.0 km | 0.10/100,000 | 0.12 |

No more than a single additional case would be expected

Reasons for Scientific skepticism

- Absence of historical precedents

Precedents: Environmental cancer clusters do occur (other than occupational risks)

Fallon, NV: 2000-2001, 16 ALL cases occurred, 0.3 expected
Host to thousands of diverse visitors

Libby, MT: Multiple cases of mesothelioma in a small town
Tailings of asbestos-containing vermiculite

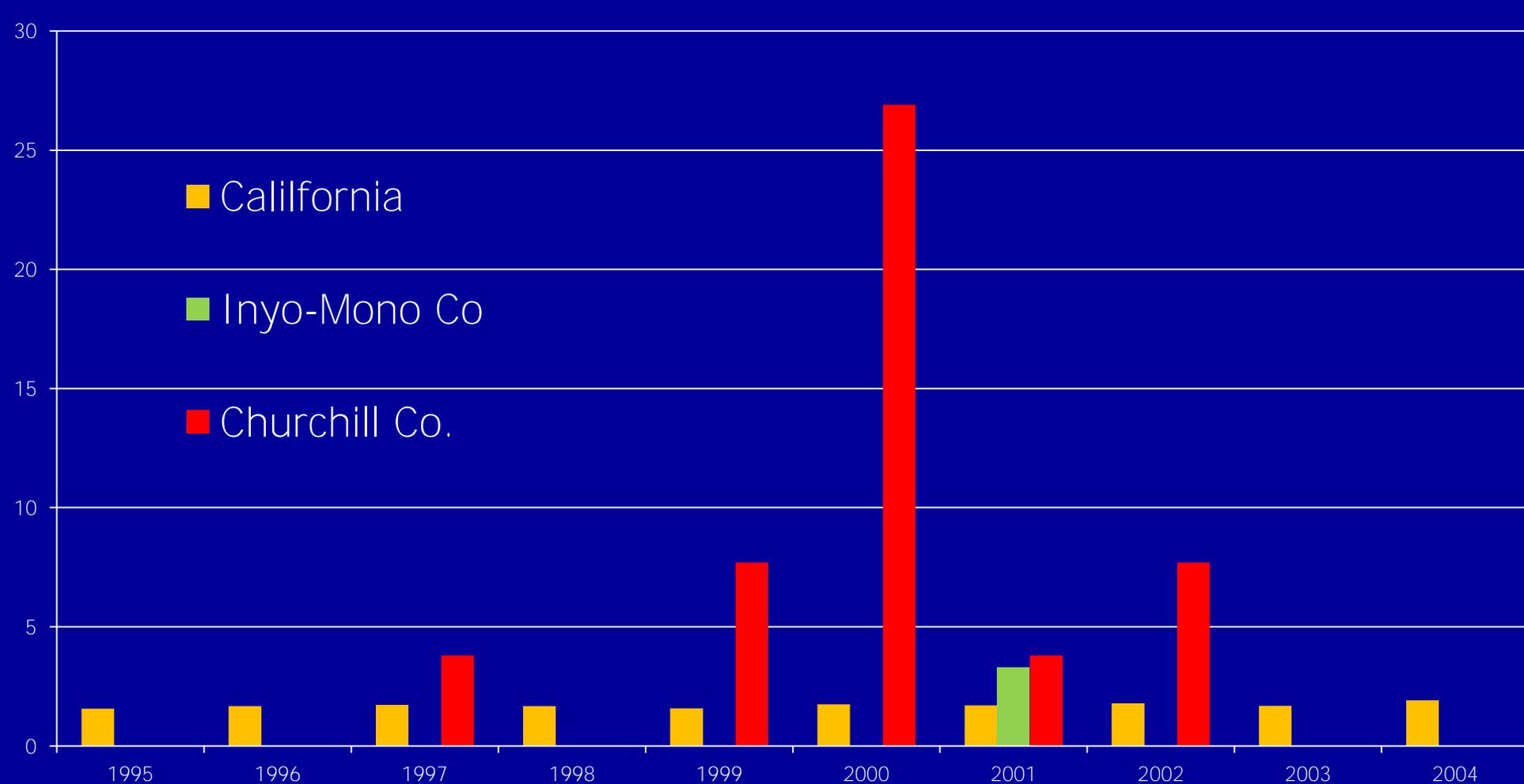
Cappadocia, Turkey: Cluster of cases of mesothelioma

Greece, Italy, New Caledonia: Clusters of mesothelioma
From building materials or whitewash with asbestos

Ukraine/Belorus: Localized thyroid cancer in young persons
From nuclear fallout

Taiwan, Chile, Argentina, Bangladesh: Localized bladder cancer
Groundwater contaminated with natural arsenic deposits

Churchill County (Fallon) ALL Cluster Rate compared to California Rates



If dose is usually weak, why are “clusters” found?

Two different circumstances

Strong direct exposure, highly targeted at close quarters

Household asbestos, person to person virus

Sufficient dose by *short-term but intense* exposure

Sufficient dose to ***single families or compounds***

Strong indirect or distant exposure, disseminated by air/water/soil

Chernobyl, waterborne arsenic, asbestos tailings

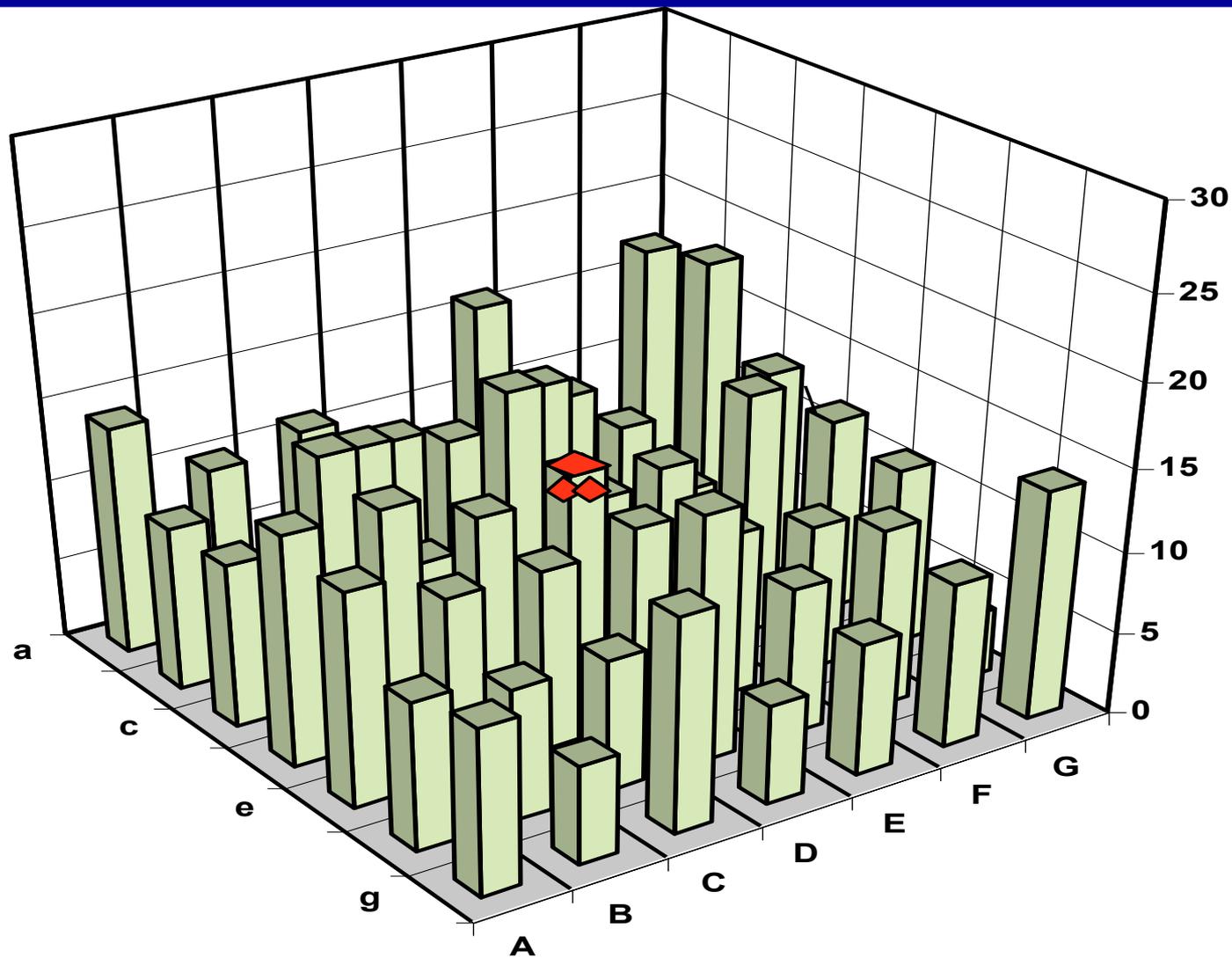
Sufficient dose by ***continuous cumulative*** exposure over the long-term

Sufficient dose disseminated to ***multiple adjacent localities***

Weak exposure

Rare cancers undetectable, common ones lost within random variation

dom (Poisson) distribution of Lung Carcinoma
ring in 49 Localities of 5000 Persons each over
added ones (and vary in number by chance)
- Unexpected cases?



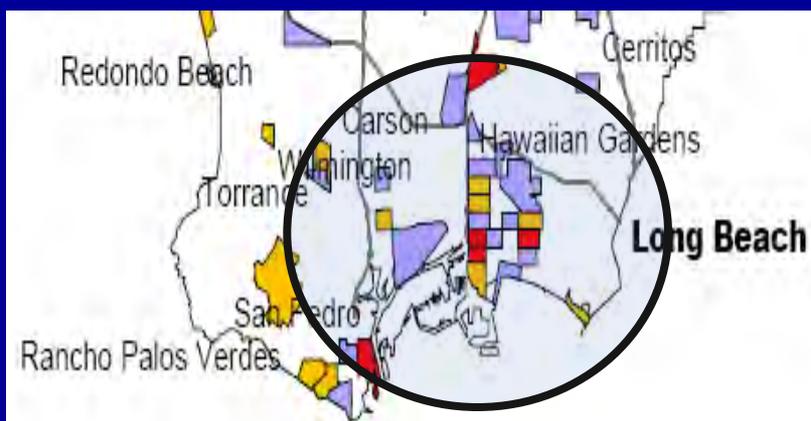
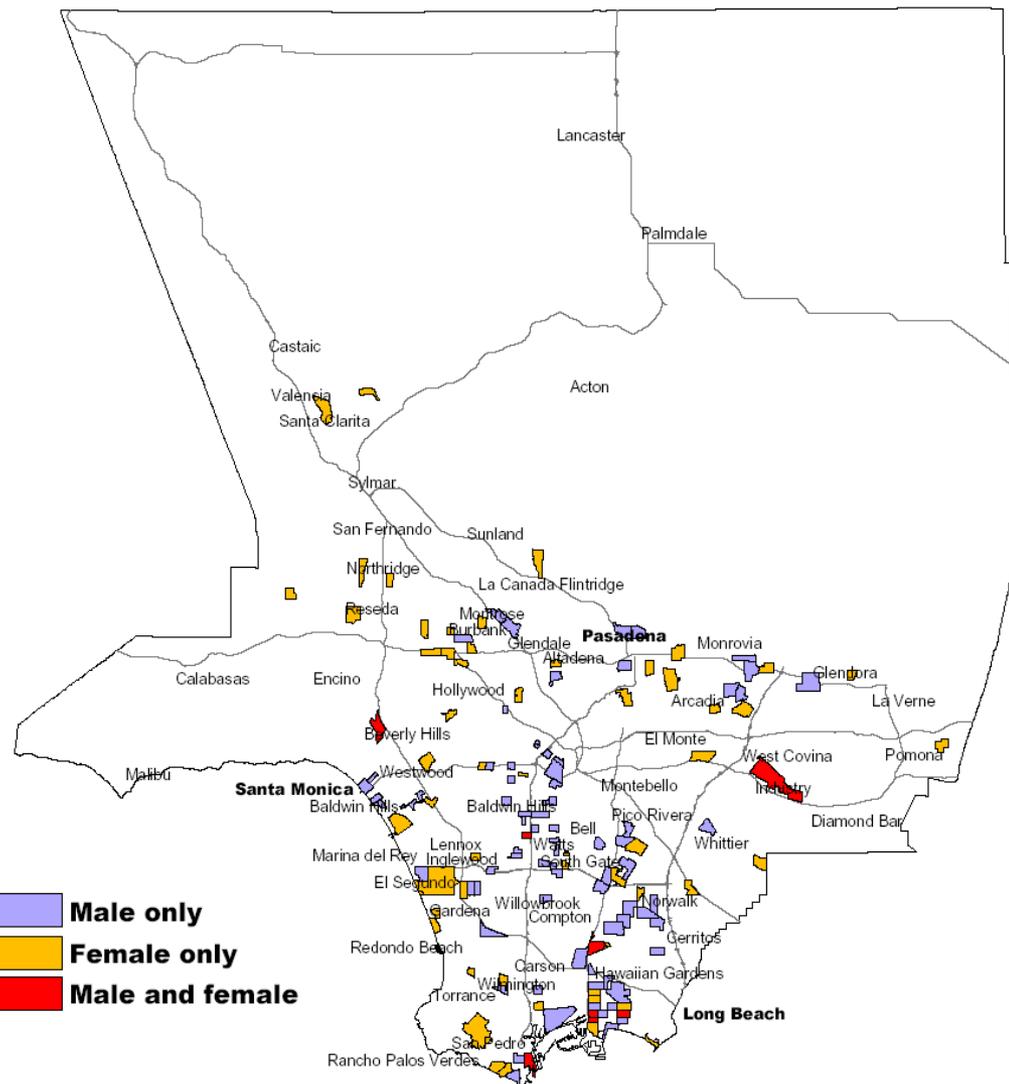
The Challenge

- Some offside residents may have been exposed to carcinogens at **some** dose
- They may well have **some** added cancer risk.
- The challenge is to see if a **measurable and unambiguous** increase in risk has been produced.
- Must examine **individual** neoplasms and **individual** tracts

To demonstrate an unambiguous association:

- Increase must be at least 50%, a relative risk of 1.5 (there are too many alternative explanations for a weaker link)
- Chance must be excluded
- Adjacent tracts (localities) offsite should have high exposure in common
- Here is a local example

Carcinoma of the Oropharynx



Steps in Linking Environmental Carcinogenicity to a Particular Locality

1. Assess the likelihood that any association between cancer incidence and a residential locality could be explained *by chance*
2. Ensure that any such association cannot be explained by *a bias*
3. Ensure that any such association cannot be explained by the *characteristics of local residents?*.

1. Assessing chance

- The conventional method is to identify by computation any excess difference which is statistically significant at the level of 95% confidence
- Method is based on the appropriate distribution of random possible results—chance can never be ruled out, just quantified at an arbitrary level.
- We perform this exercise to screen tract/cancers

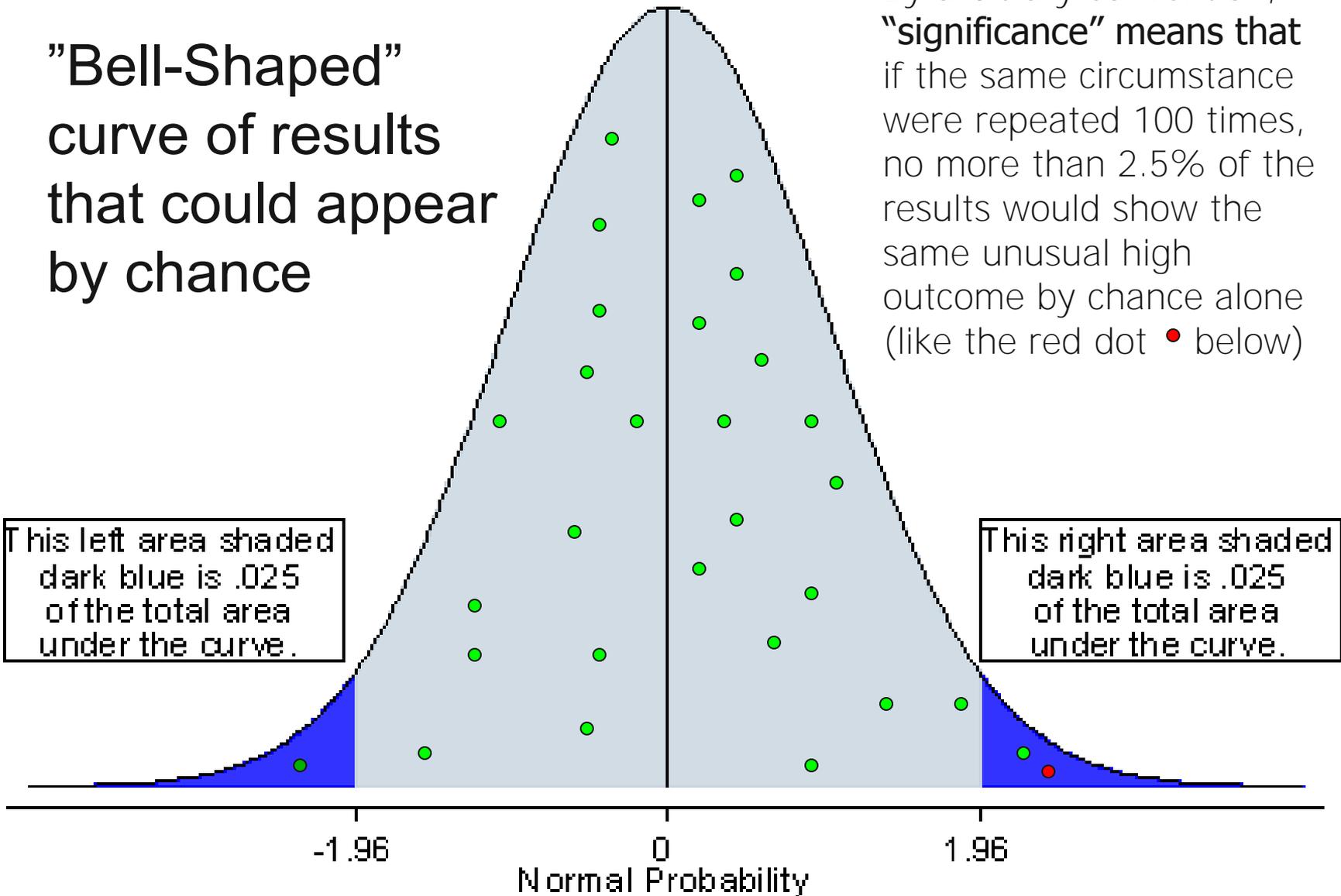
"Bell-Shaped"
curve of results
that could appear
by chance

Expected Value ↓

By arbitrary convention,
"significance" means that
if the same circumstance
were repeated 100 times,
no more than 2.5% of the
results would show the
same unusual high
outcome by chance alone
(like the red dot • below)

This left area shaded
dark blue is .025
of the total area
under the curve.

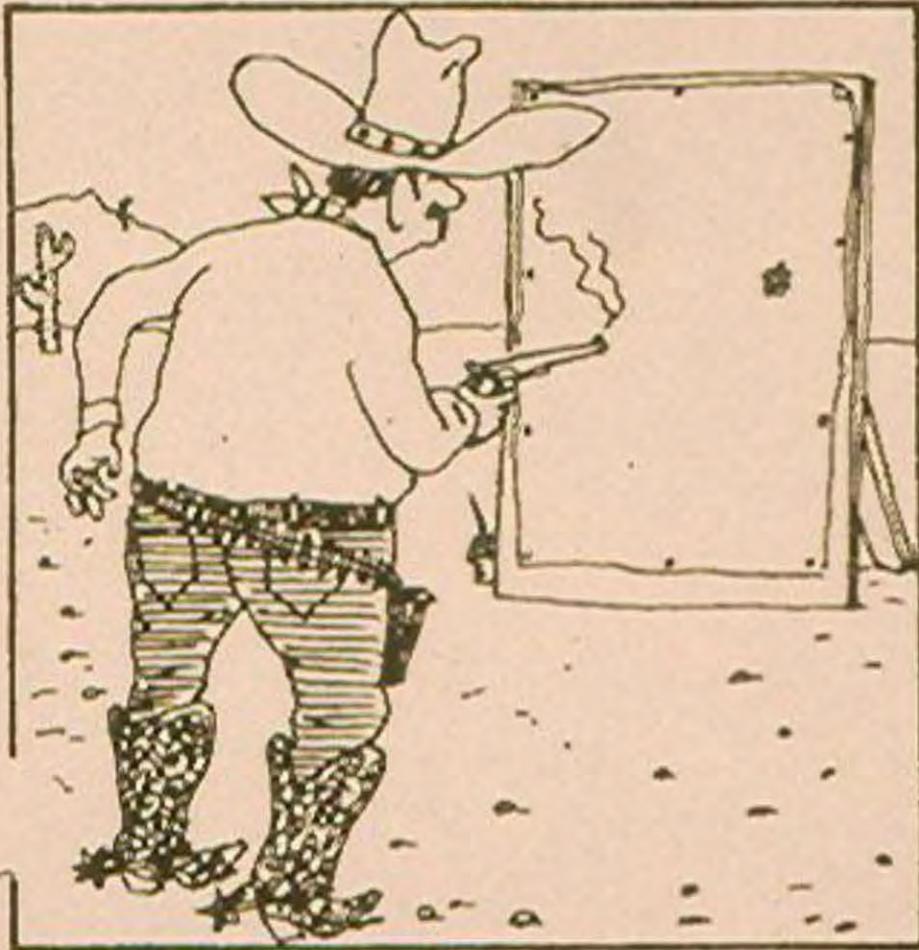
This right area shaded
dark blue is .025
of the total area
under the curve.



2. Bias comes in several forms

- Registry errors: unlikely, because ascertainment is very complete and in effect done blindly to place, age, race, etc.
- Census errors: underestimation of the number of persons, especially high risk persons, makes the excess look too large. This is a common problem in rapidly changing neighborhoods
- Texas sharpshooting: If investigation is initiated by a reported “cluster”, we already know the rate is not going to be low, and the statistical test is meaningless

“TEXAS SHARPSHOOTING”



**AIM, SHOOT, AND ONLY THEN--
DRAW THE TARGET**

Multiple Comparisons

- .
- The more cancers, periods, and tracts tried, the more likely are extreme findings
- Solution: instead of relying upon “significance” for each tract/cancer, we screen all tract-cancer combinations by significance, then calculate how often each extreme result could occur by chance among all CA tracts
- The following Poisson table gives this percentage for selected observed numbers given the number expected.

Percent of searches expected to find N or more cases observed according to the mean expected

| Mean expected | 1 Obs | 2 Obs | 3 Obs | 4 Obs | 5 Obs | 6 Obs | 7 Obs | 8 Obs | 9 Obs | 10 Obs | 11 Obs | 12 Obs |
|---------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|
| 1 | 63.2% | 26.4% | 8.0% | 1.9% | 0.4% | 0.1% | 0.01% | | | | | |
| 2 | | 59.3% | 32.2% | 14.2% | 5.2% | 1.6% | 0.4% | 0.1% | 0.02% | 0.01% | | |
| 3 | | | 58.4% | 36.0% | 19.2% | 9.1% | 3.4% | 1.2% | 0.4% | 0.1% | 0.03% | |
| 4 | | | | 56.7% | 37.1% | 21.5% | 11.1% | 5.1% | 2.1% | 0.8% | 0.3% | 0.1% |
| 5 | | | | | 55.8% | 38.3% | 23.7% | 13.3% | 6.8% | 3.2% | 1.3% | 0.5% |
| 6 | | | | | | 55.4% | 39.3% | 25.5% | 15.2% | 8.3% | 4.2% | 1.9% |
| 7 | | | | | | | 54.9% | 40.0% | 27.0% | 16.9% | 9.8% | 5.3% |
| 8 | | | | | | | | 54.8% | 40.8% | 28.4% | 18.4% | 11.3% |
| 9 | | | | | | | | | 54.3% | 41.1% | 29.2% | 19.5% |
| 10 | | | | | | | | | | 45.3% | 32.8% | 21.4% |

For example:

- When 2 cases are expected and 6 are observed, 1.6% of localities of that size would find as many or more than 6 by chance.
- That means in 160 California localities

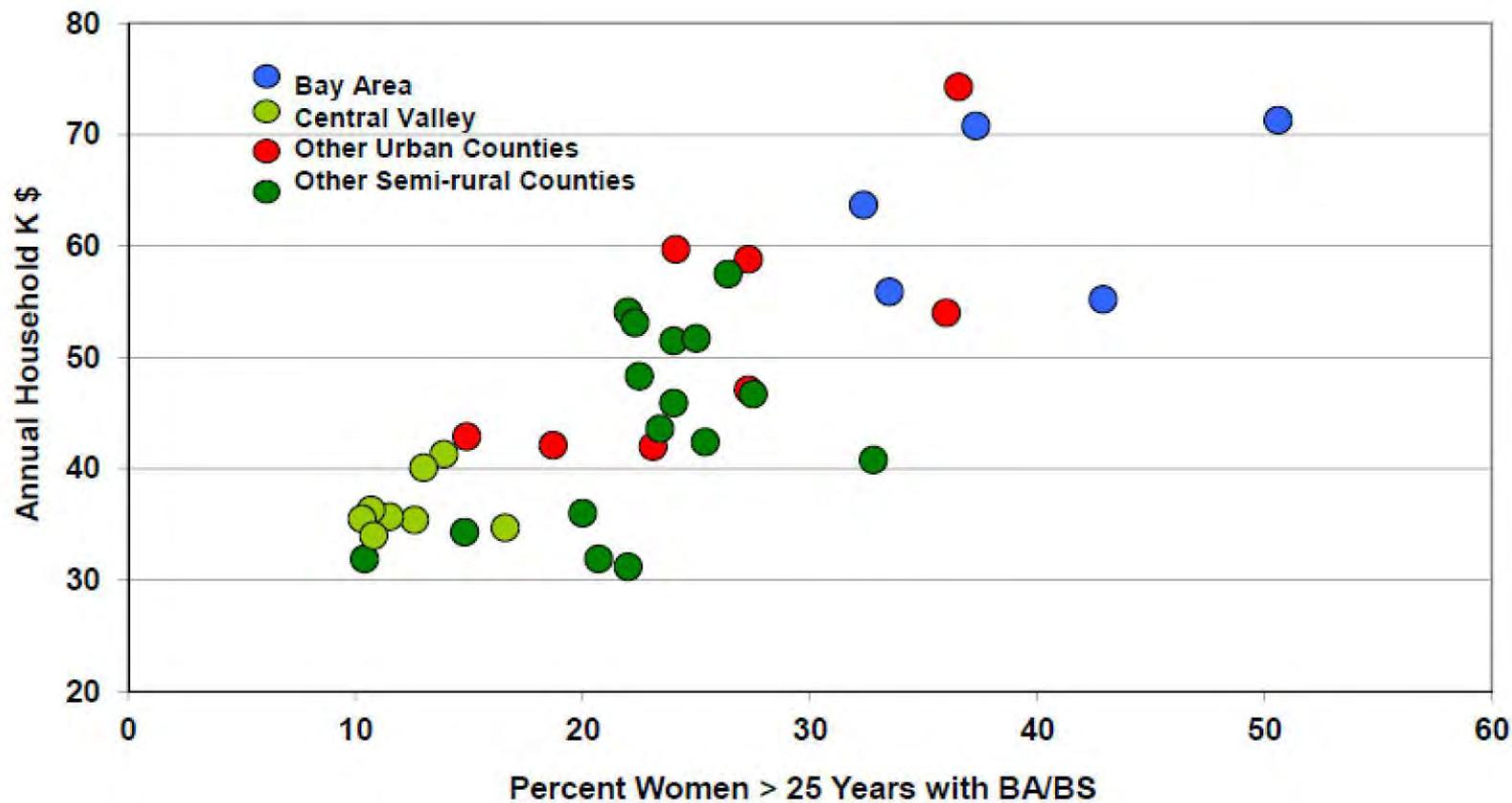
3. Explore alternative explanations for any cluster: *They are important considerations*

- Other known causes of that particular cancer
 - Rarely measureable by locality: example--smoking
- Race/Ethnicity, (approximate by tract)
 - Measureable surrogate causes like—skin color
- Education and Income (approximate by tract)
 - Measureable surrogate for causes like—sexual and reproductive history

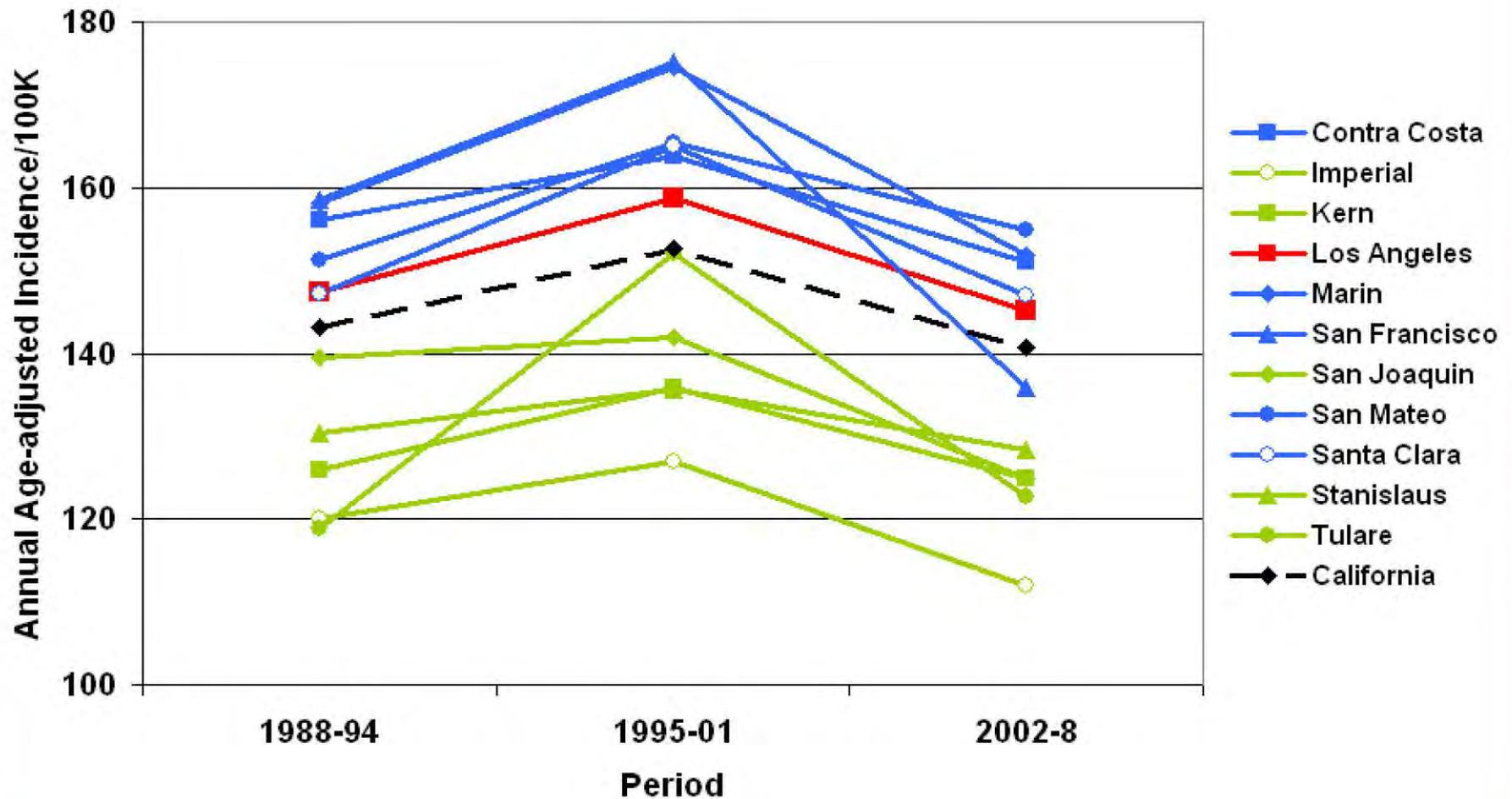
A rough commonality of lifestyle characterizes the residents of any neighborhood

- Neighborhood choice is personal and particular
 - Preferred location, location, location
- Thus birds of a feather tend to flock together
- Obvious on both County and Census tract levels
 - Ethnicity, education, friends, habits, occupation
- Shows up in cancer patterns

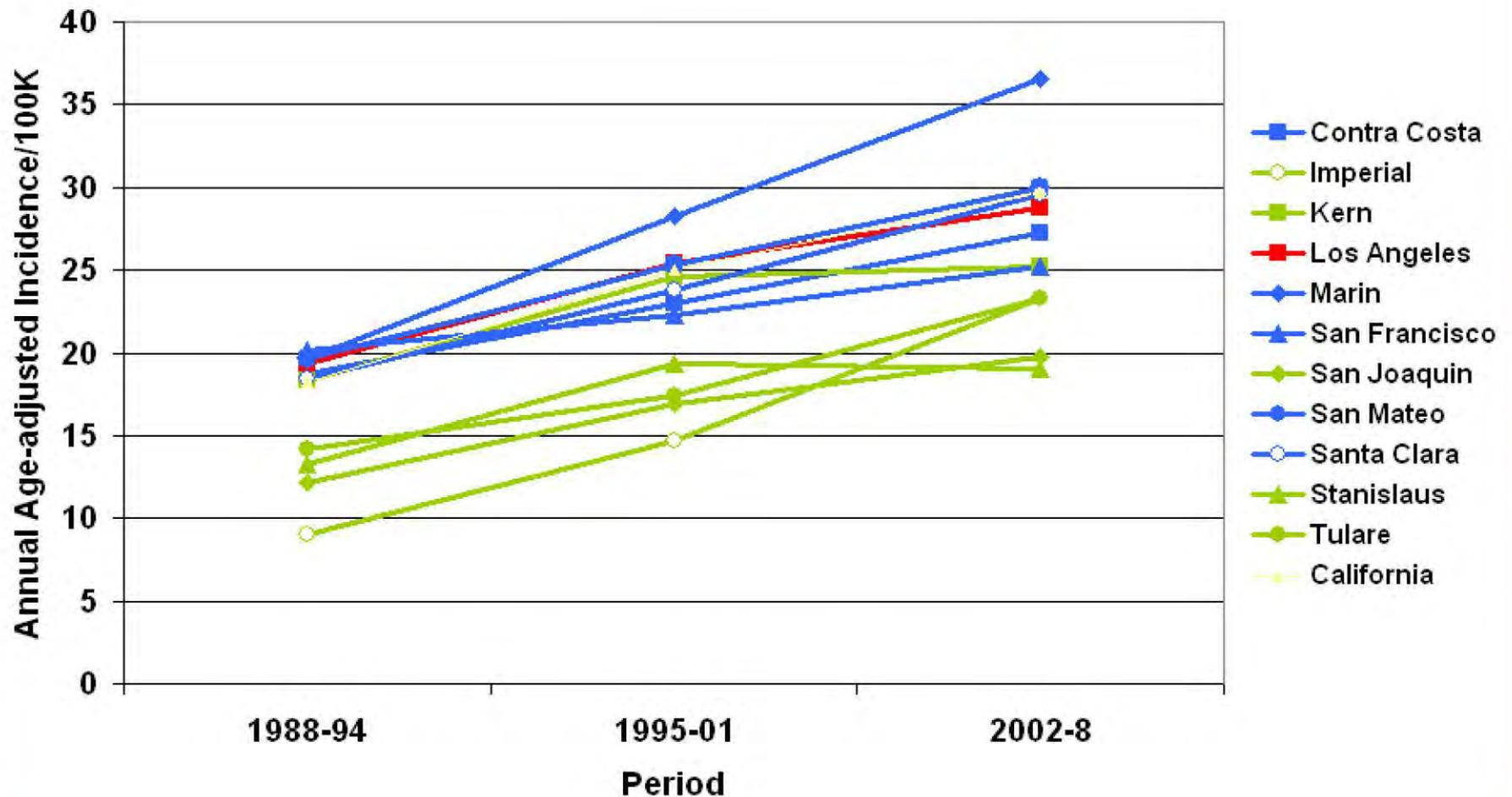
California County Median Household Income
According to Percent of College-Educated Adult Women
(Counties of more than 50K)



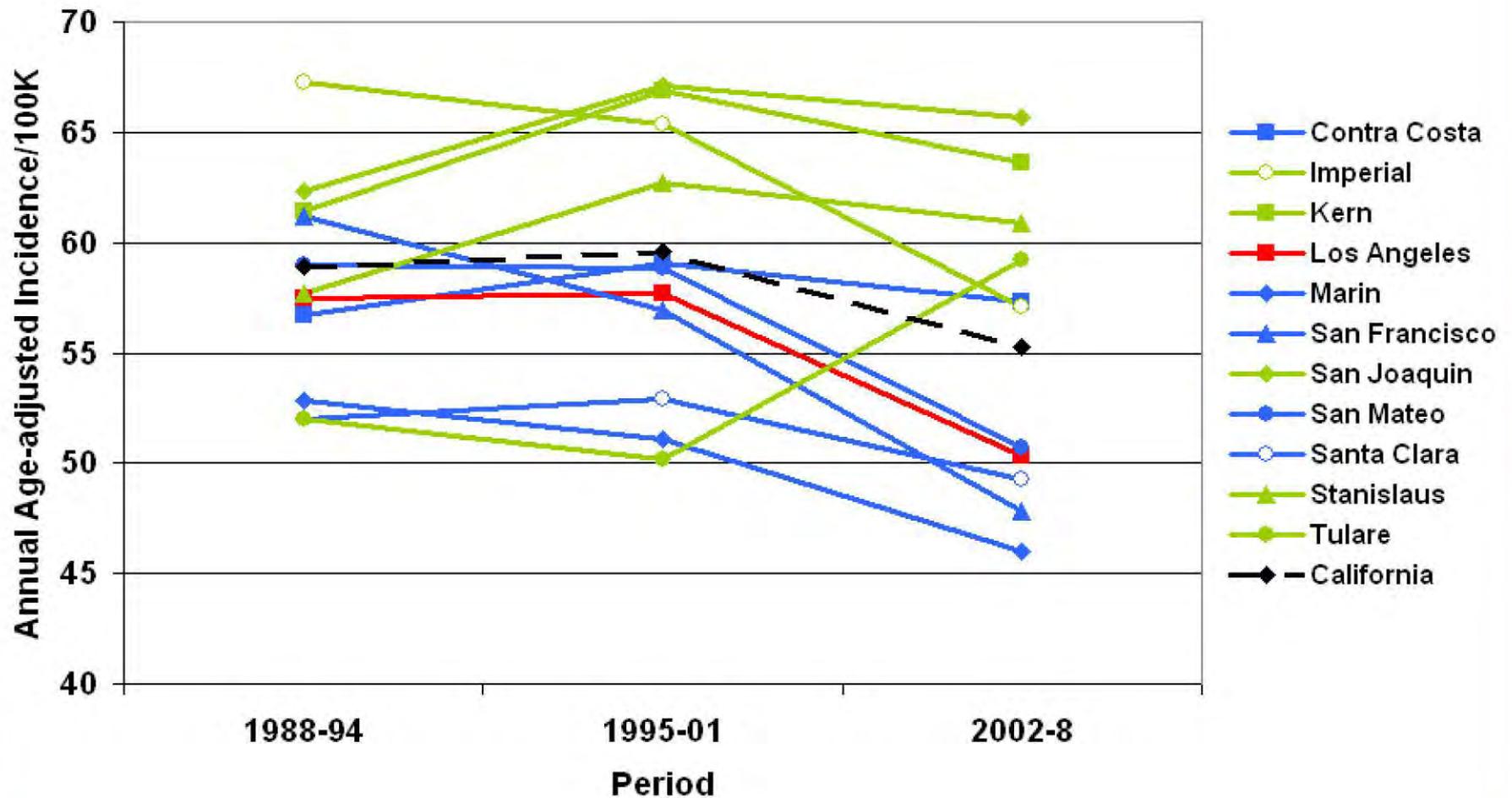
**Trends in Incidence of Breast Cancer among White Females
from California Counties differing in Median Income and Educational
Attainment**



Trends in Incidence of Malignant Melanoma among Whites from California Counties differing in Median Income and Educational Attainment



Trends in Incidence of Female Lung Cancer among Whites from California Counties differing in Median Income and Educational Attainment

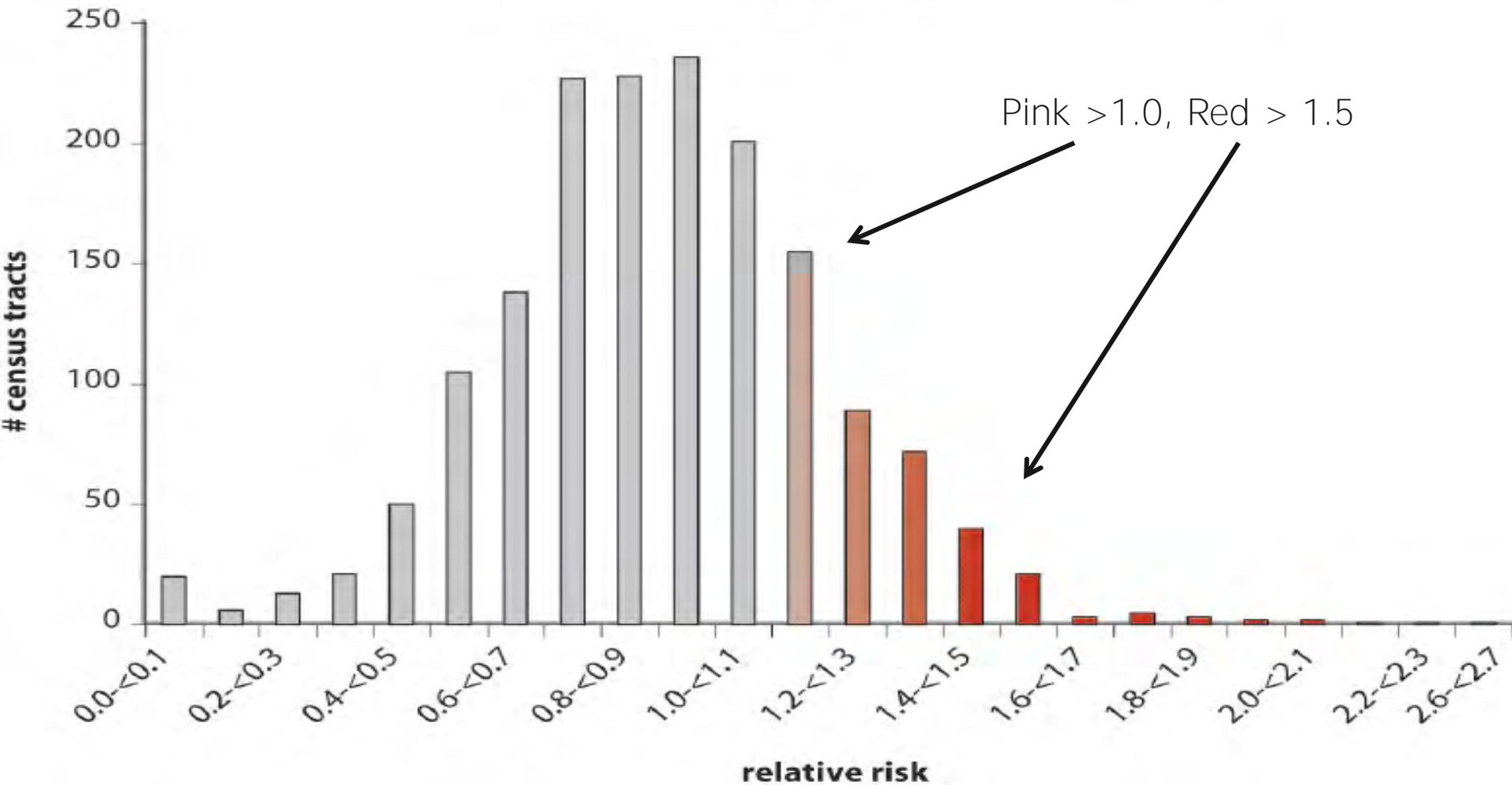


From Counties to Census tracts

- We define localities as census tracts because the census gives us accurate populations by age and sex
- Census tracts are smaller than counties, averaging about 5000 persons but varying in size from hundreds to tens of thousands
- Thus variation in cancer occurrence comes from three factors, usually in this order:
 - Size of the tract population
 - Chance
 - Prevalence of causal factors

Colon Carcinoma in LA

Distribution of census tracts by relative risk (males)

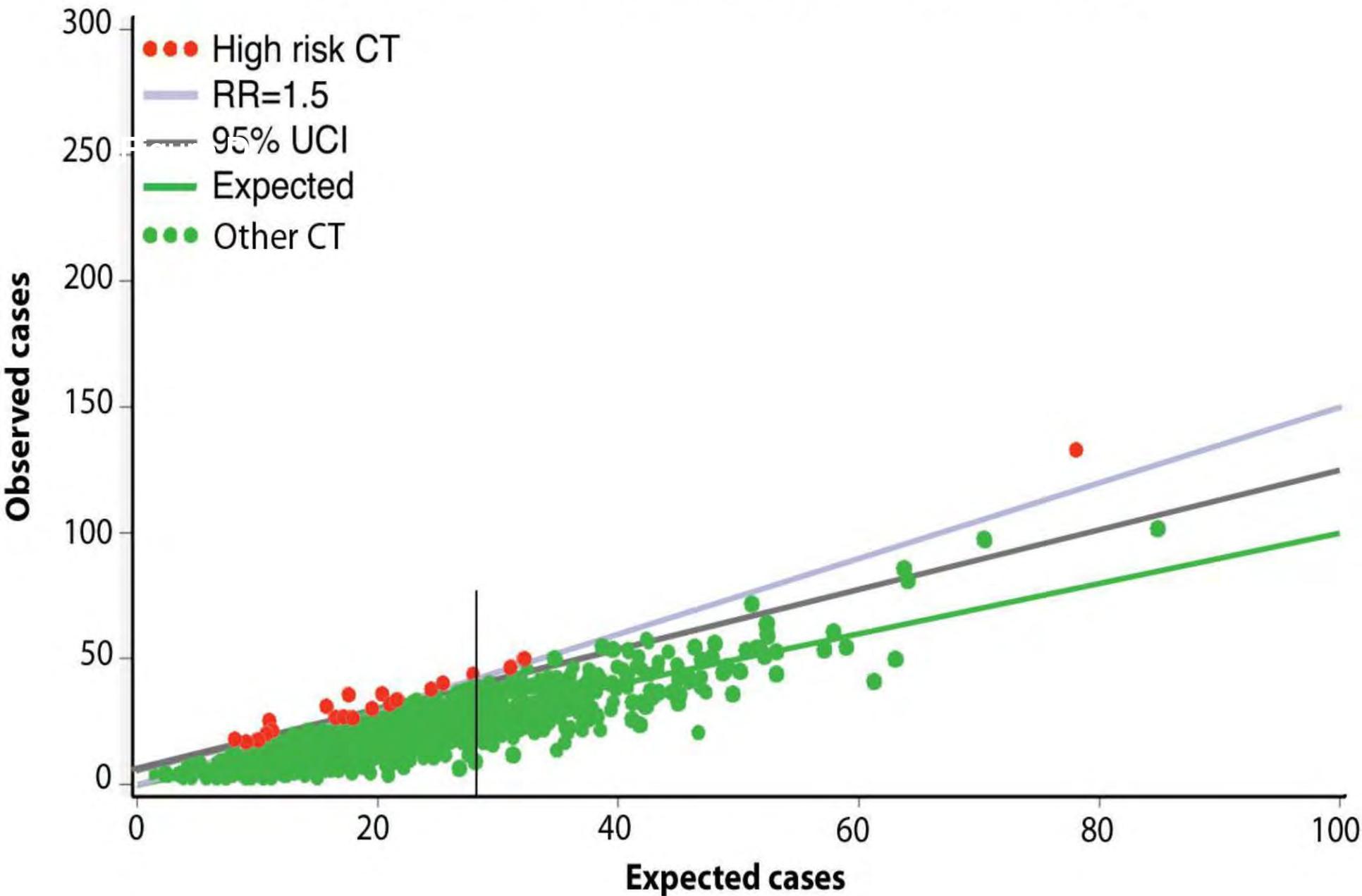


Because the tract size varies, we can describe the tracts by the number of cases expected and observed rather than by rate

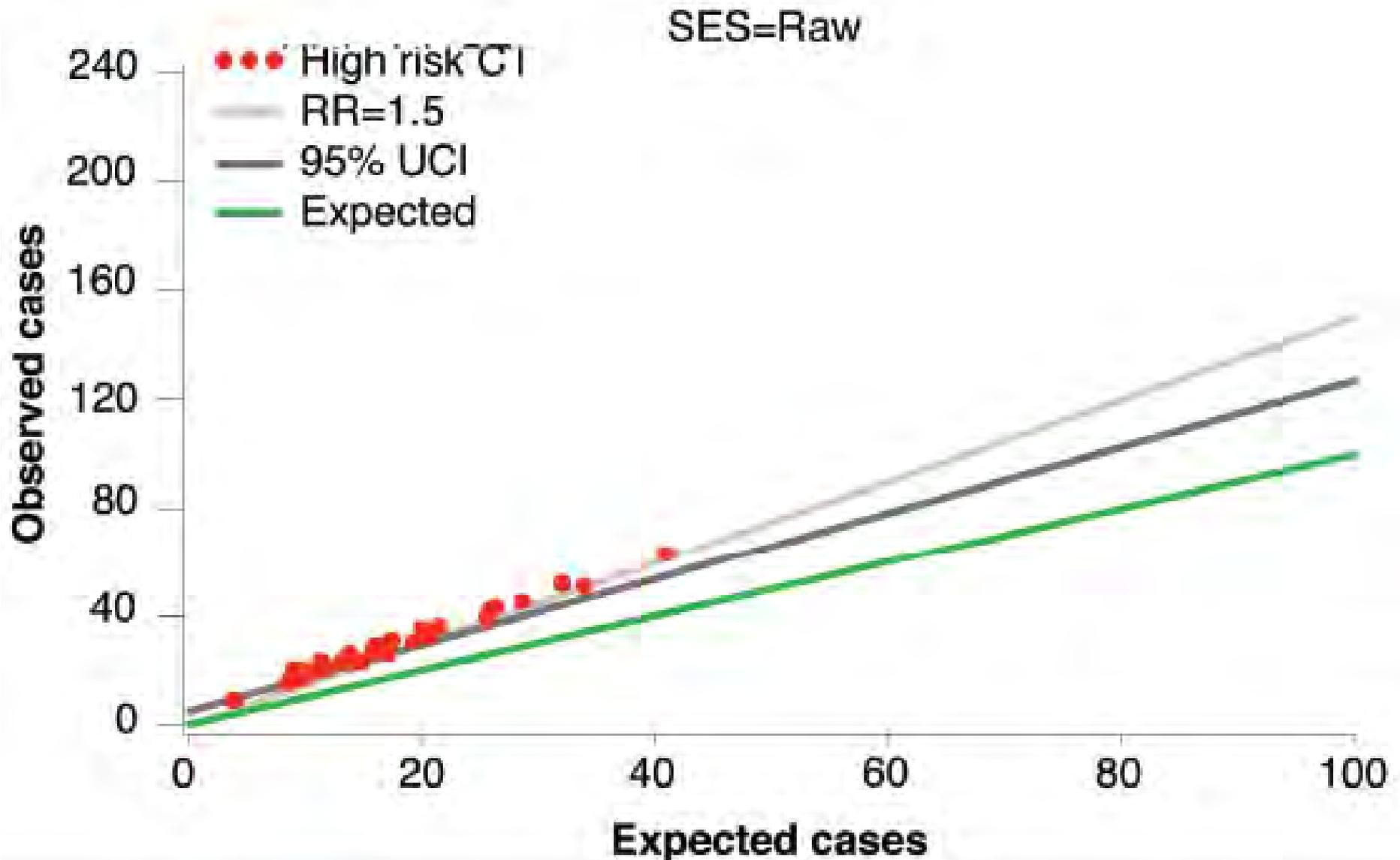
- For a given expected case number horizontally, we represent each tract vertically by a dot for the observed case number
- Lines showing both a standard risk (50% increase) and a measure of “significance” are shown.
- A dot above the lines in red represents a “significant” increase.
- Those occurring by chance will usually touch a line. The higher the red dot, the higher the incidence.
- Different cancers show different patterns depending on how localized high risk is found

Census Tracts at high risk of COL

according to the number of observed and expected cases

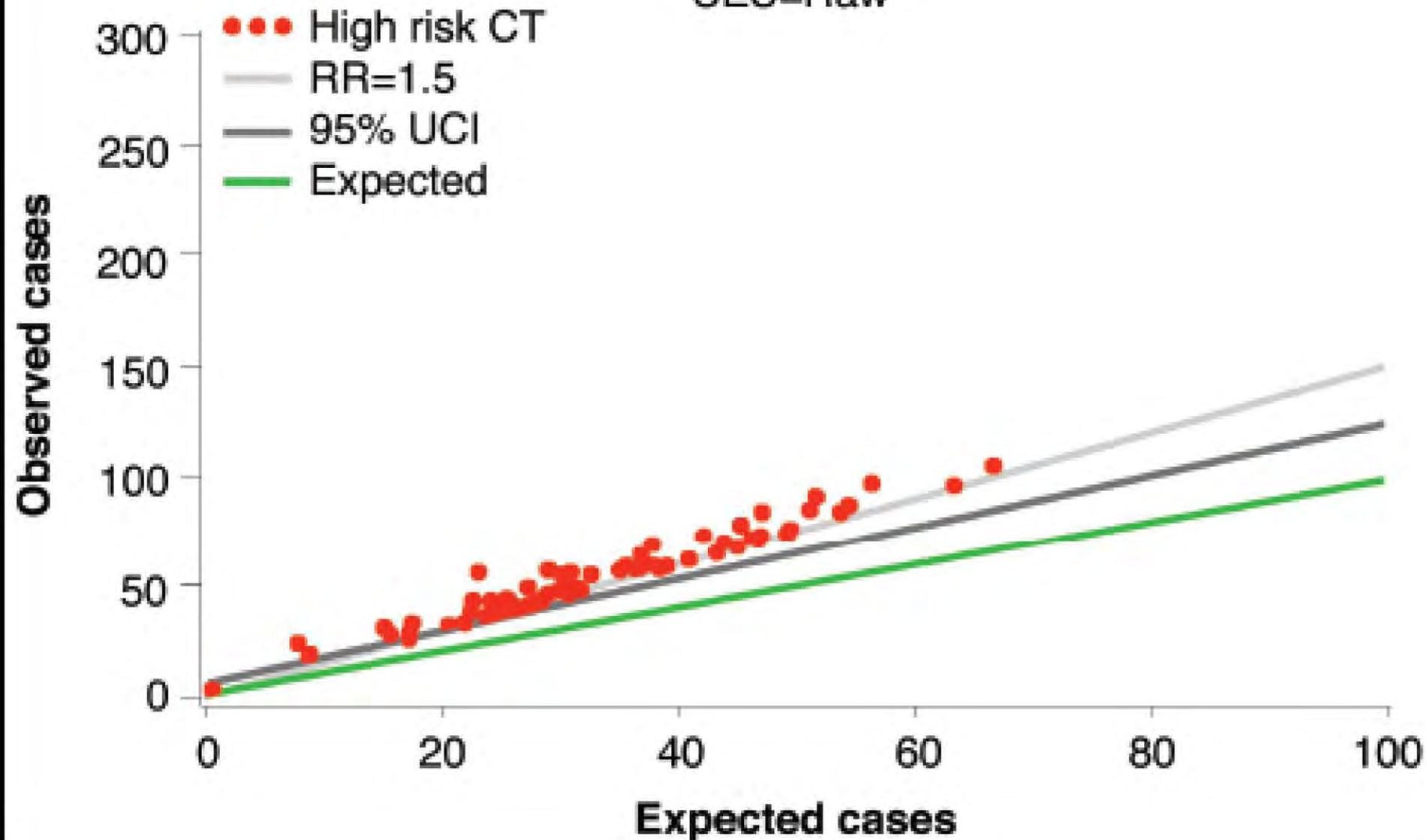


Female Colon Cancer



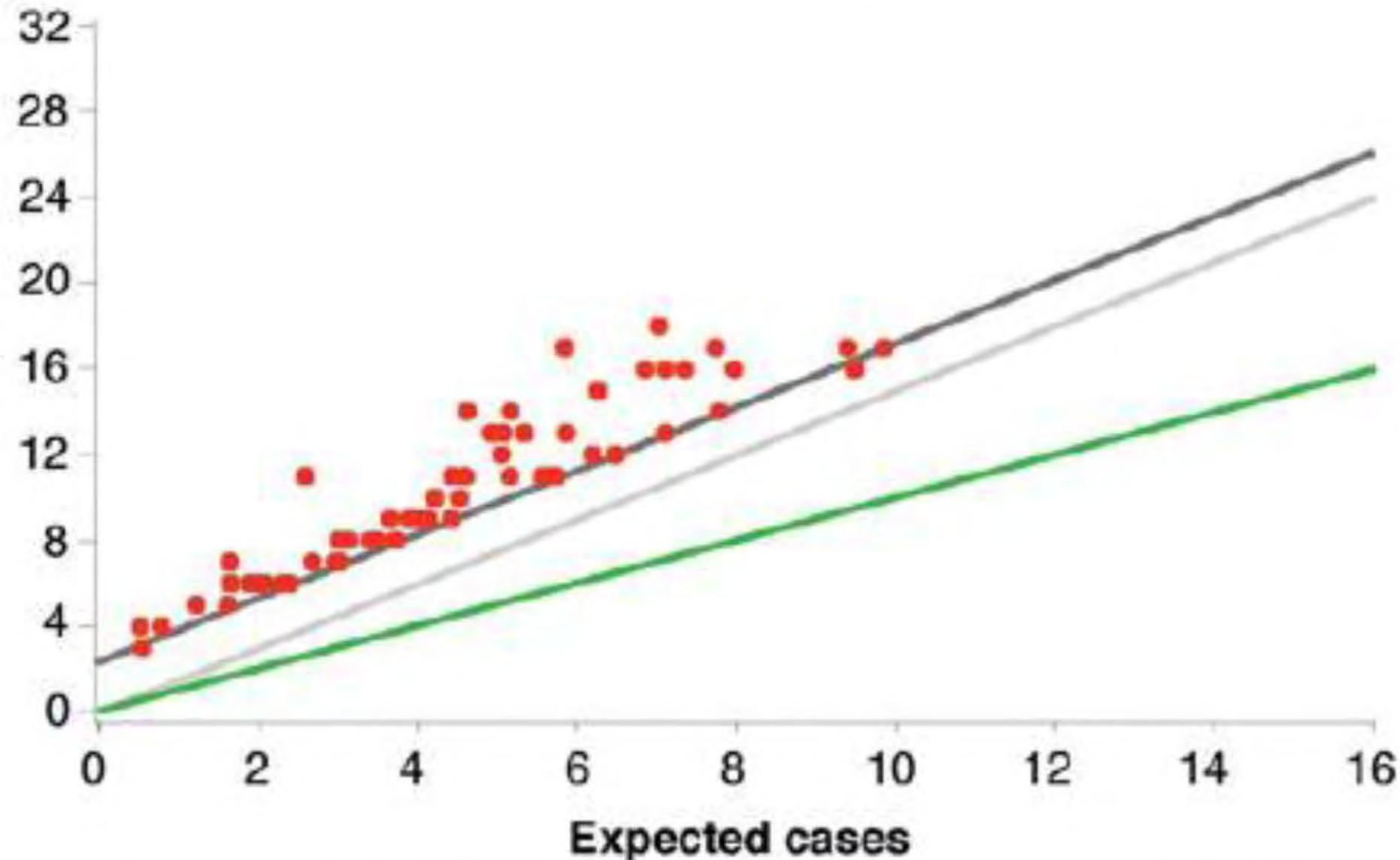
Male Lung Cancer

SES=Raw

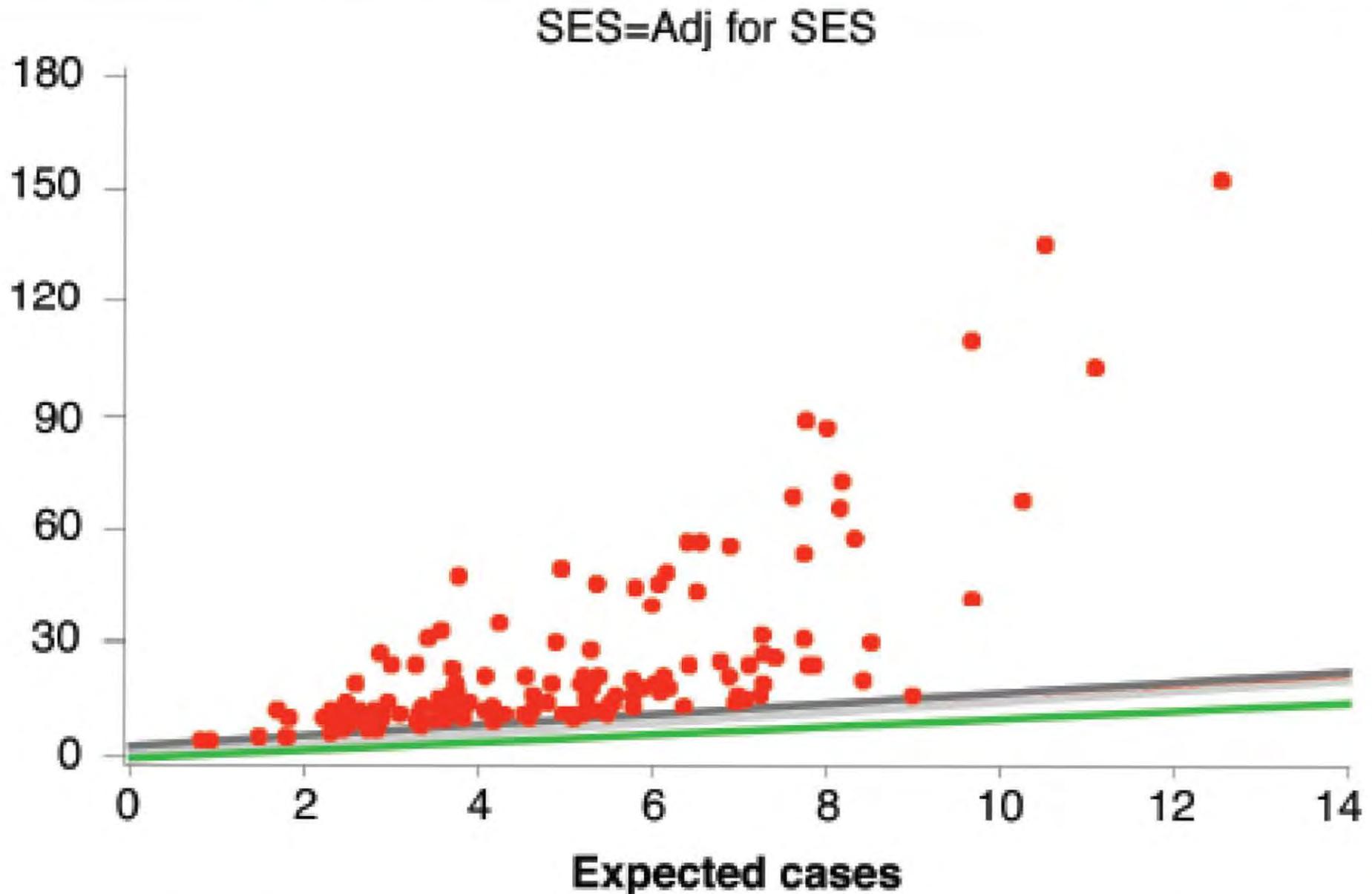


Female Oropharyngeal Cancer

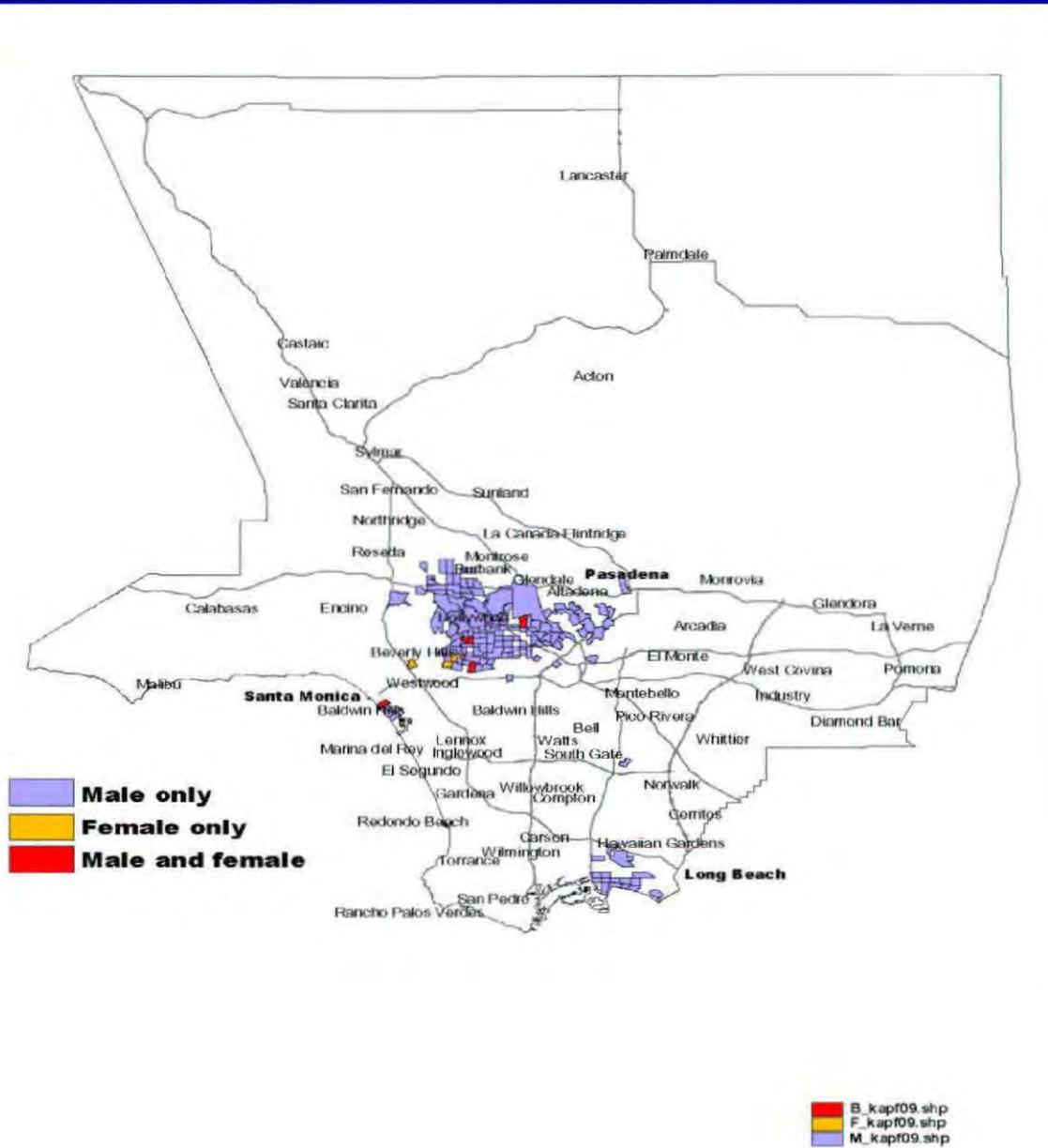
SES=Adj for SES



Male Kaposi Sarcoma

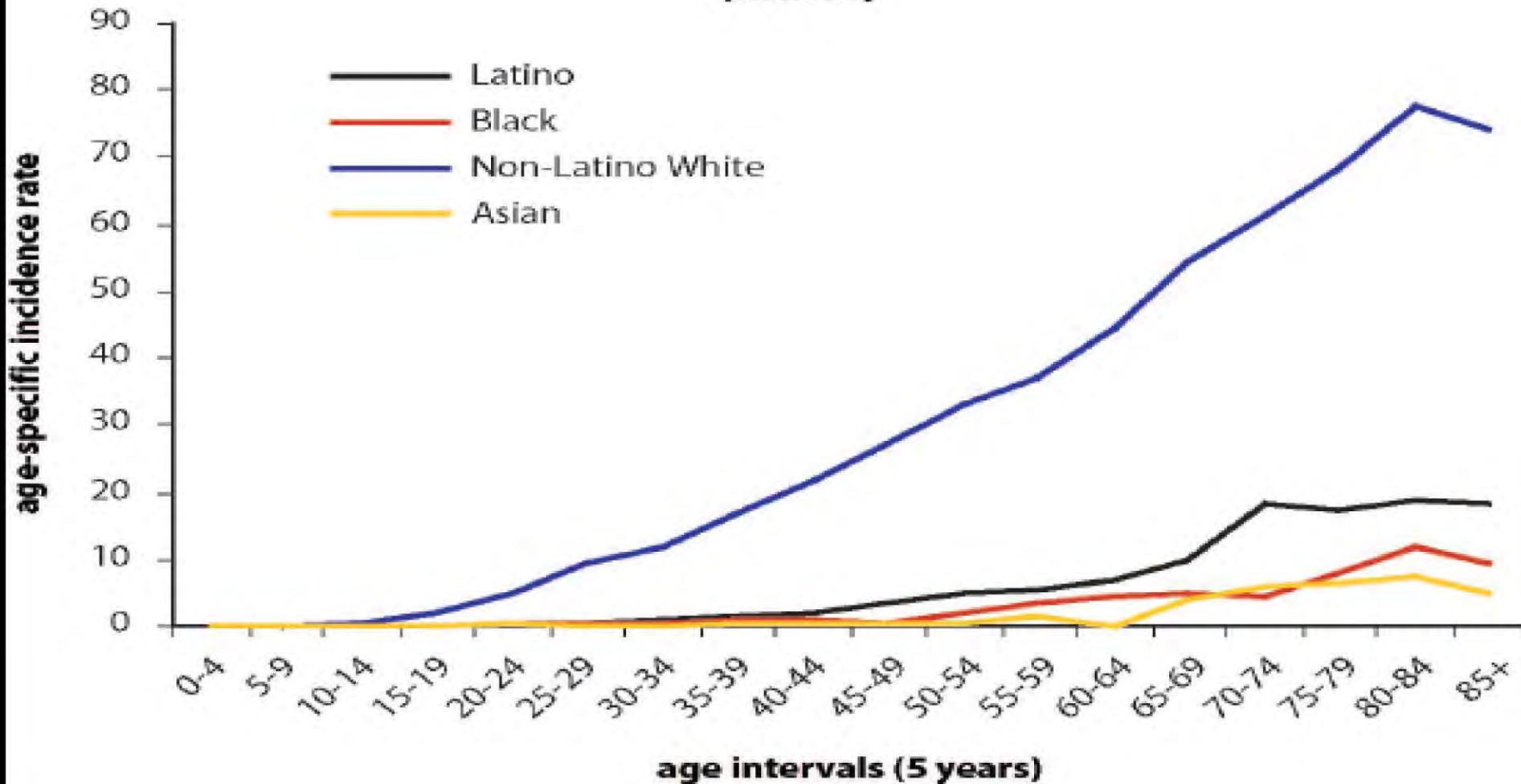


KAPOSI SARCOMA



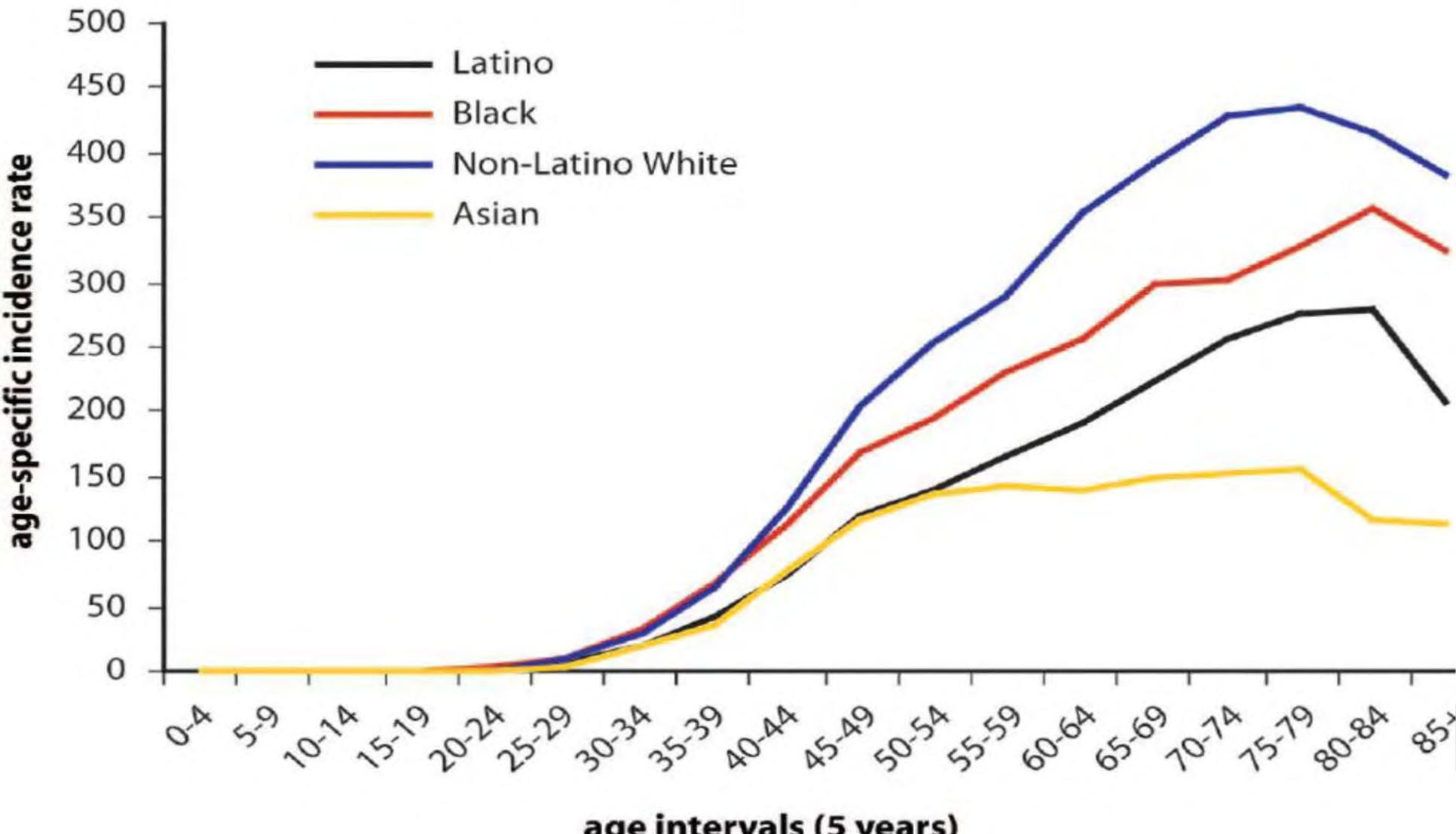
Malignant Melanoma

Age-specific incidence by race/ethnicity (males)



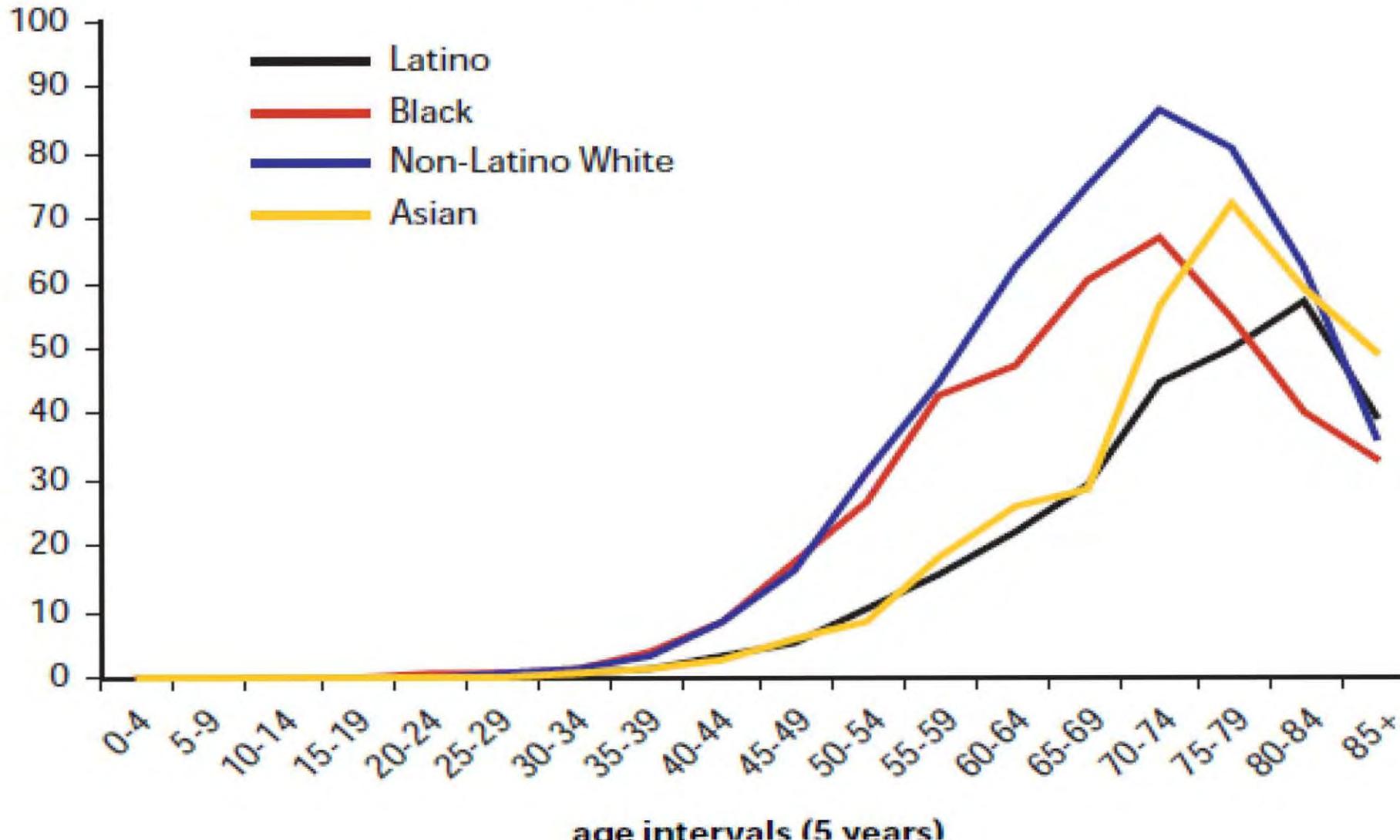
Female Breast Cancer

Age-specific incidence by race/ethnicity (females)



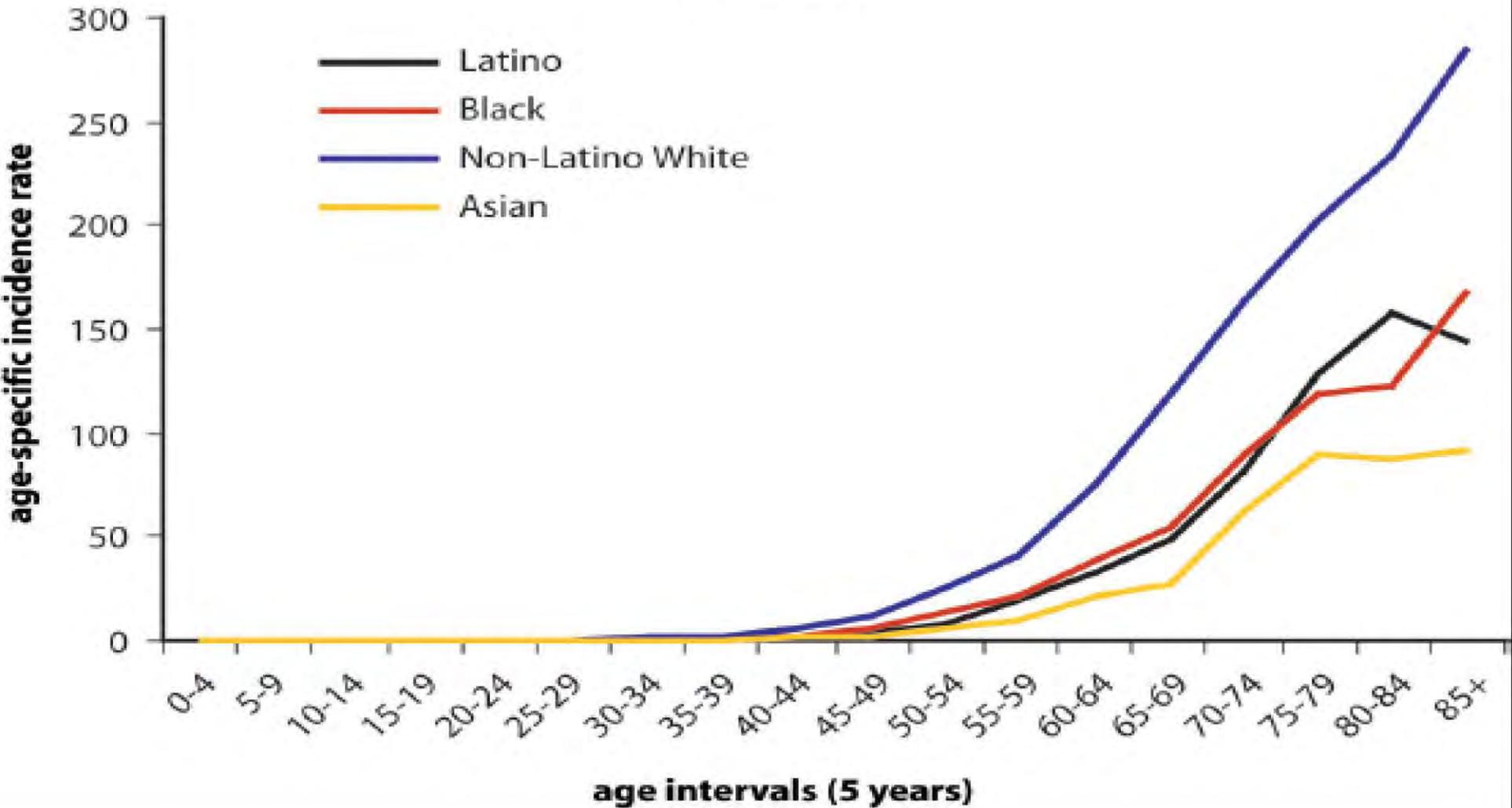
Female Lung Adenocarcinoma

Age-specific incidence by race/ethnicity
(females)



Bladder Cancer

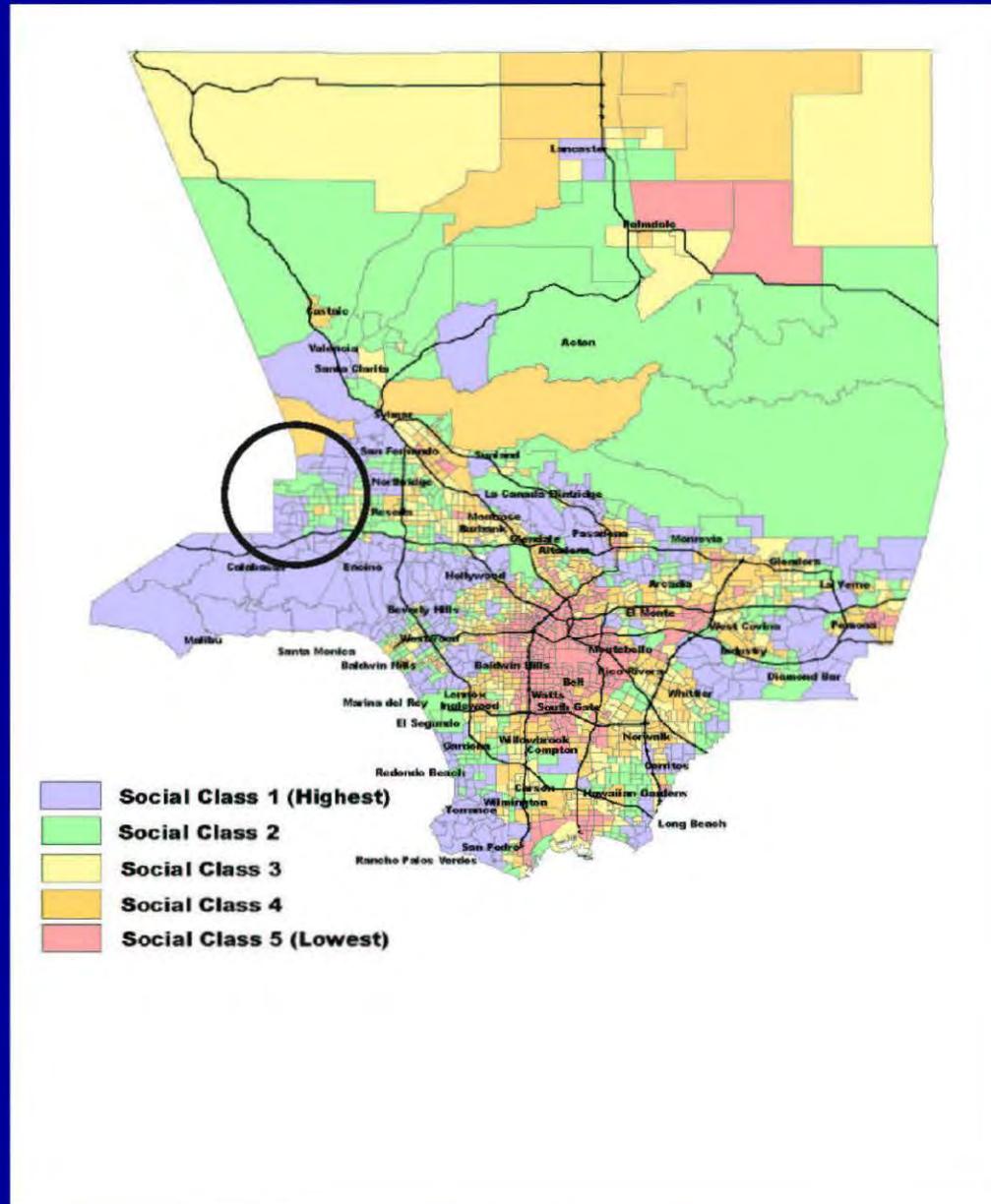
**Age-specific incidence by race/ethnicity
(males)**



Other cancers higher in other Race/Ethnicity groups

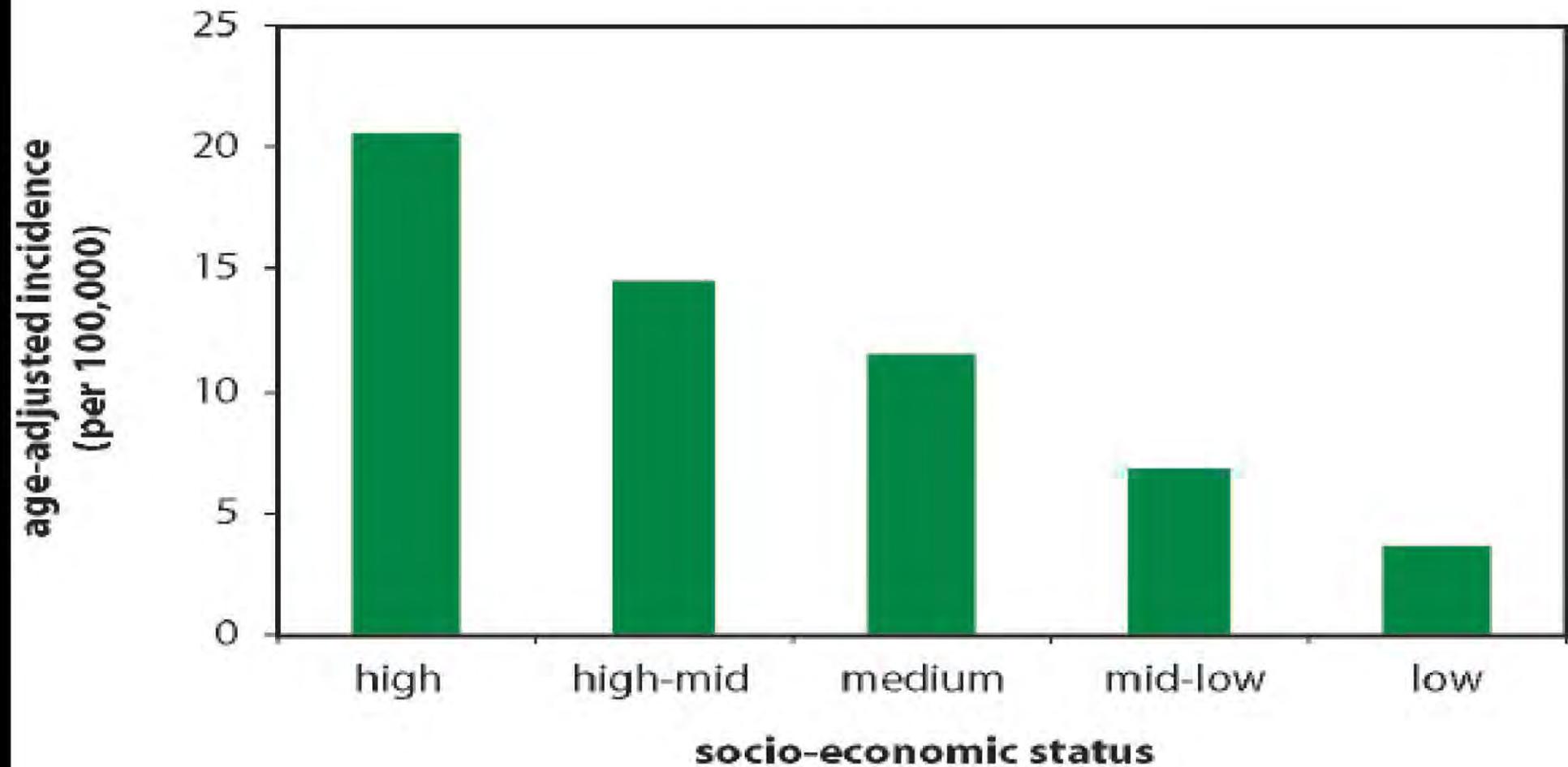
- Prostate cancer higher in African-Americans
- Liver cancer higher in East Asian-Americans
- Gall Bladder and stomach cancer higher in Latino-Americans

CENSUS TRACTS BY SOCIAL CLASS



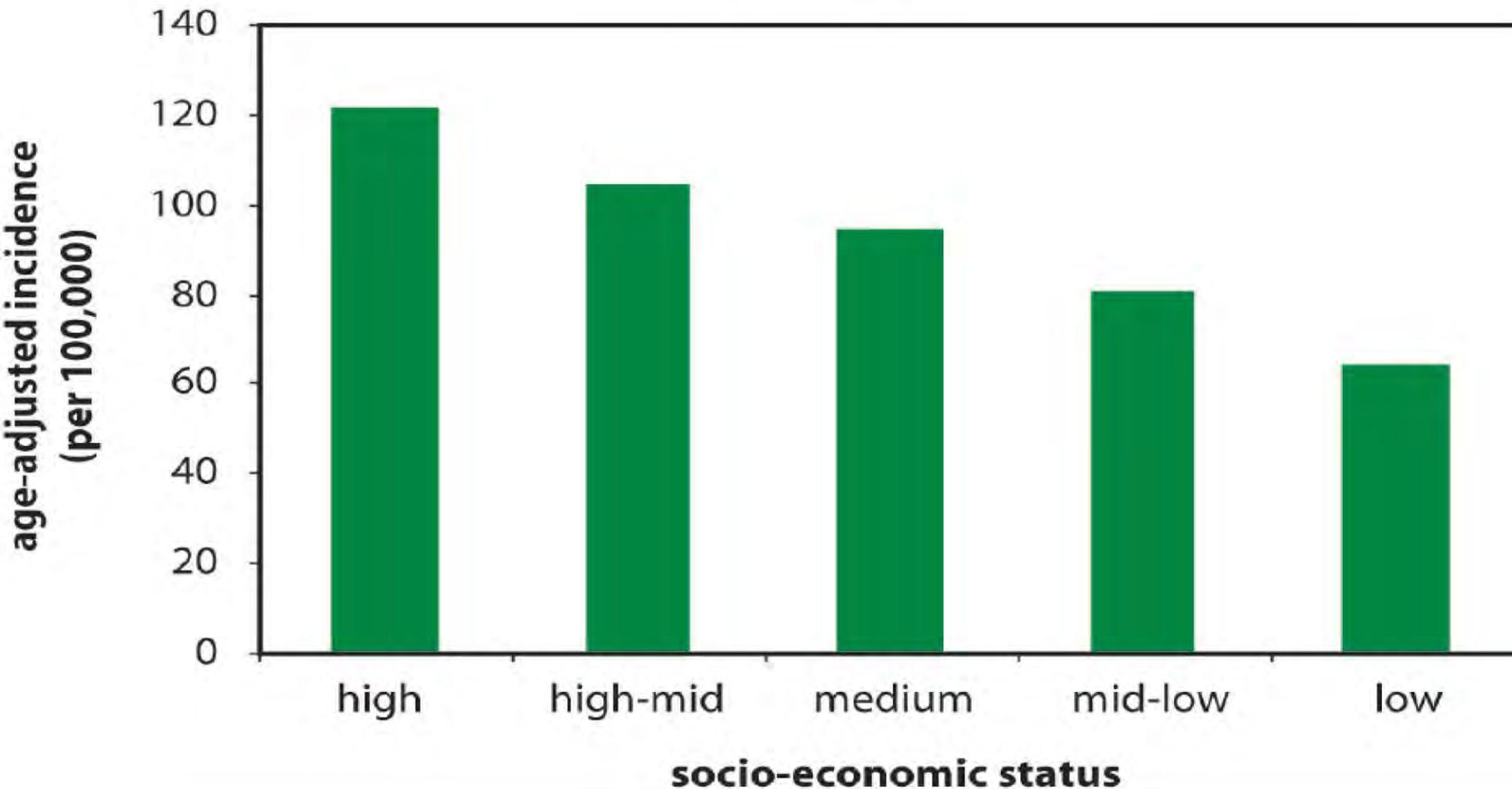
Malignant Melanoma

Age-adjusted incidence by socio-economic status (males)



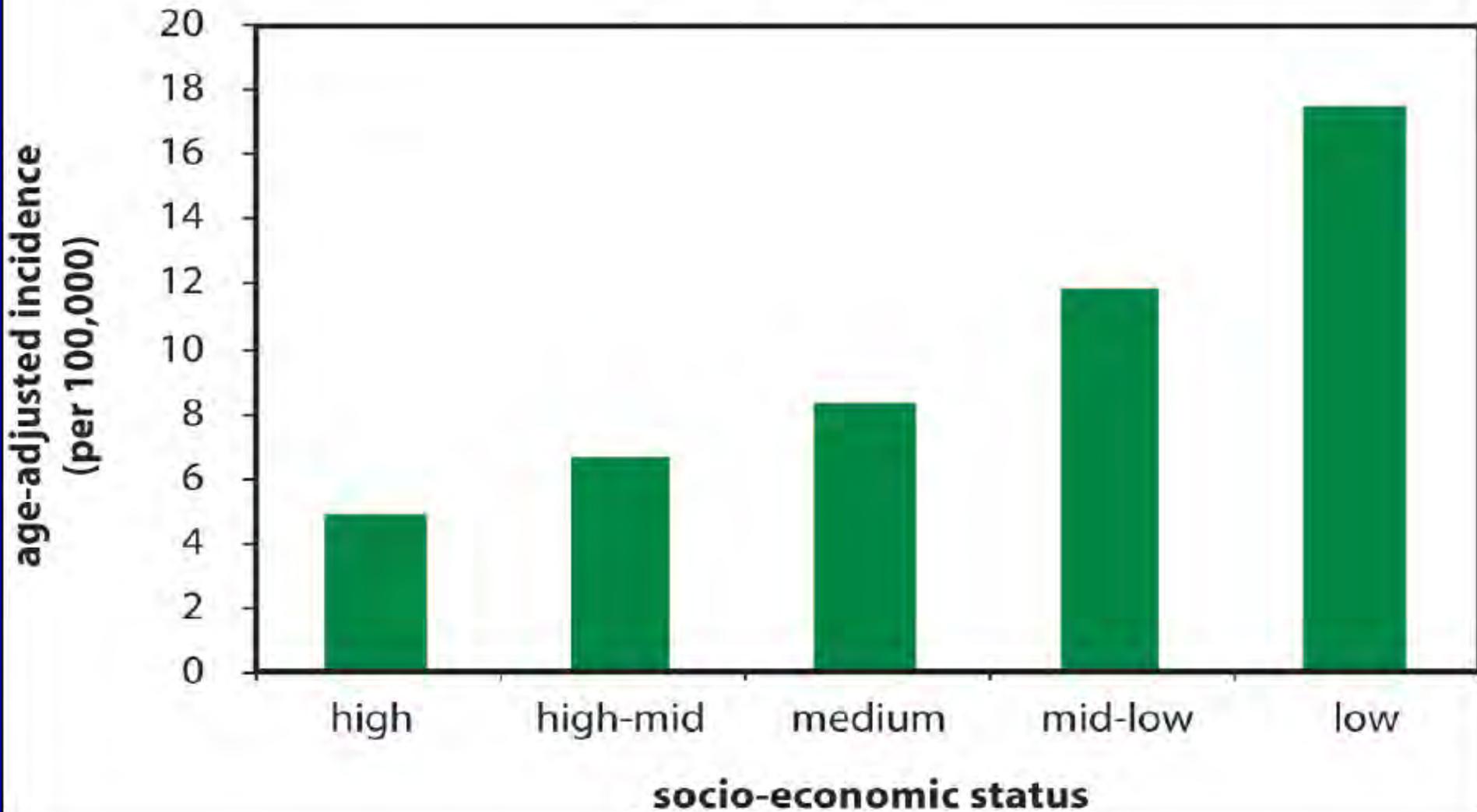
Female Breast Cancer

Age-adjusted incidence by socio-economic status (females)

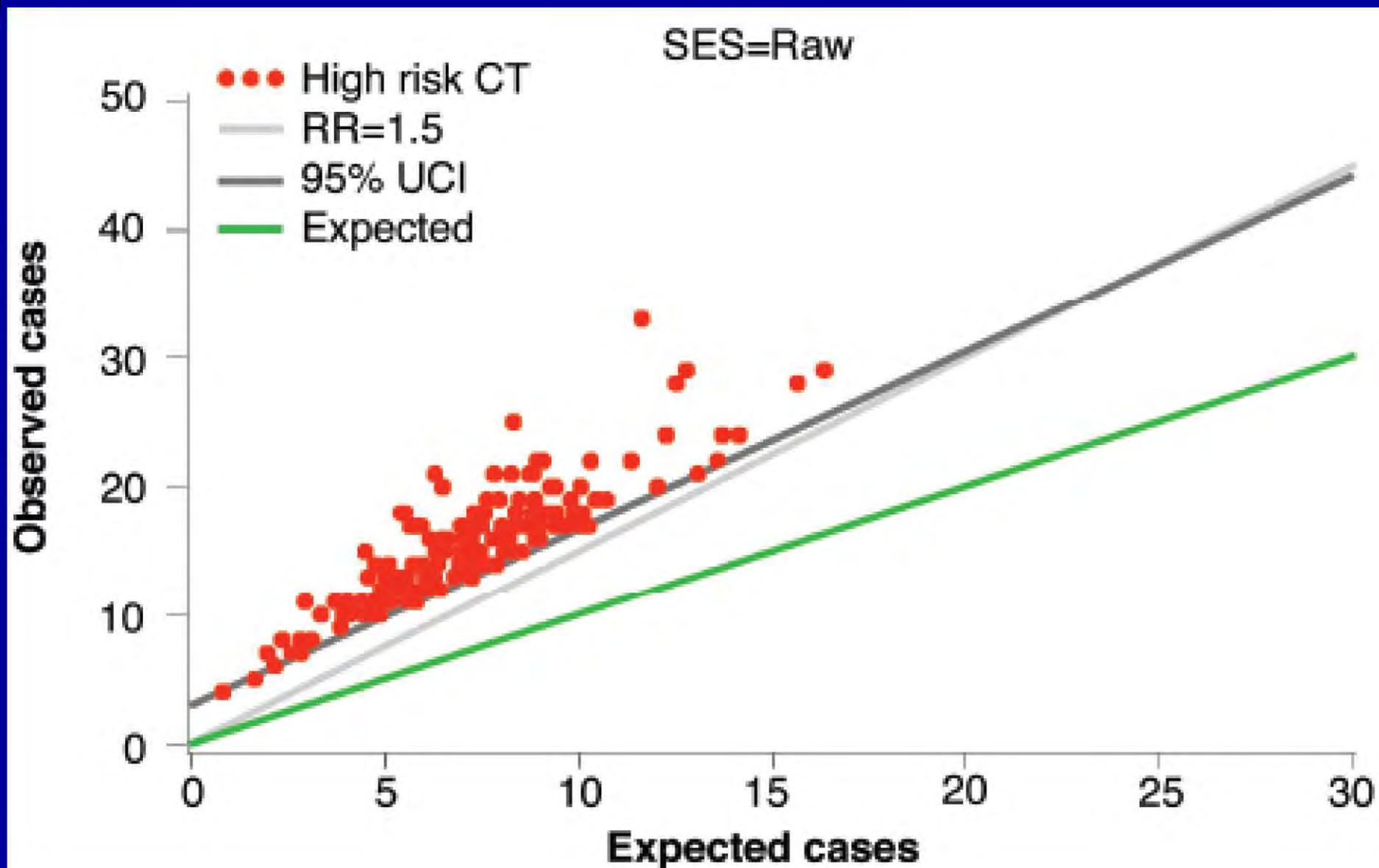


Cancer of the Cervix

Age-adjusted incidence by socio-economic status (females)

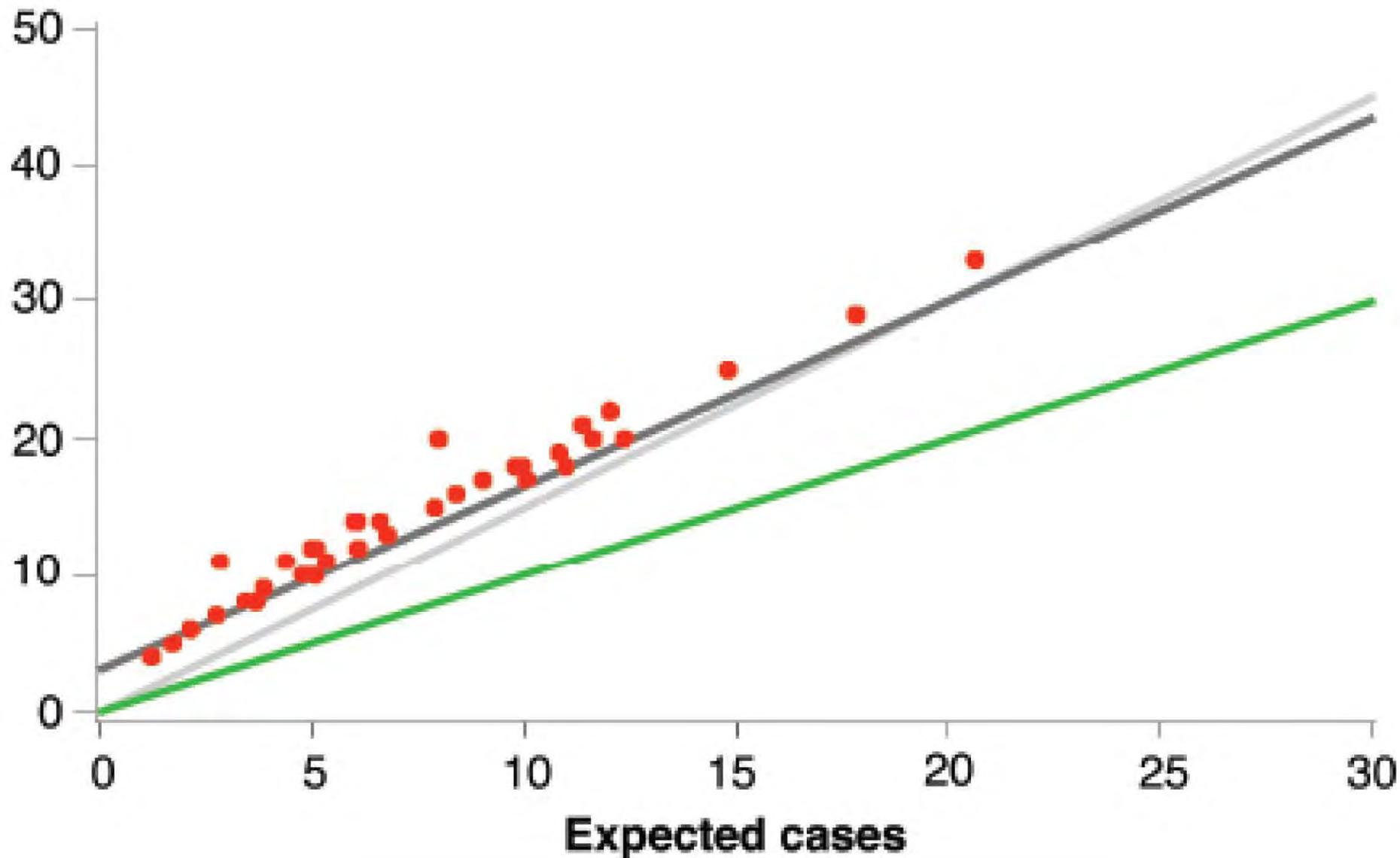


Female Cancer of the Cervix



Female Cancer of the Cervix

SES=Adj for SES



Cancers “cluster” for different reasons

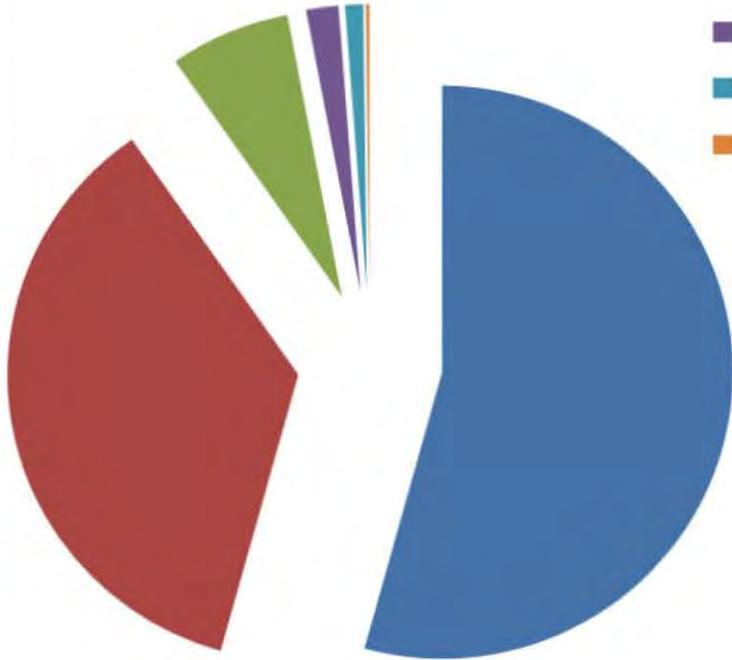
- Lung cancer clusters by smoking, race, education
- Oropharynx cancer by smoking/drinking
- Cervical cancer by self/partner’s sexual activity
- Kaposi sarcoma clustered by sexual preference
- Prostate cancer clusters by race, access to care
- Stomach cancer clusters by history of poverty
- Liver cancer clusters by parental ethnicity
- Thyroid cancer clusters by access to screening
- Mesothelioma clusters by occupation
- Melanoma clusters by race and education
- Breast cancer clusters by education/occupation

Characteristics of SSRL Offsite Tracts

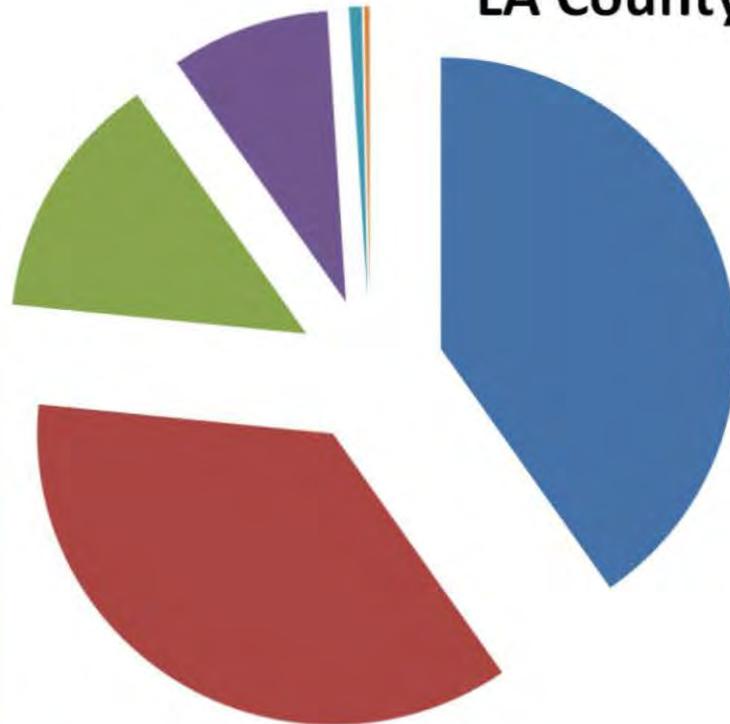
- They are not characteristic of their respective Counties in terms of:
 - Income and, doubtless, education
 - Race/ethnicity

Ventura County 2010

- European-American
- Latino-American
- Asian American
- African-American
- Native American
- Pacific Islander



LA County 2010

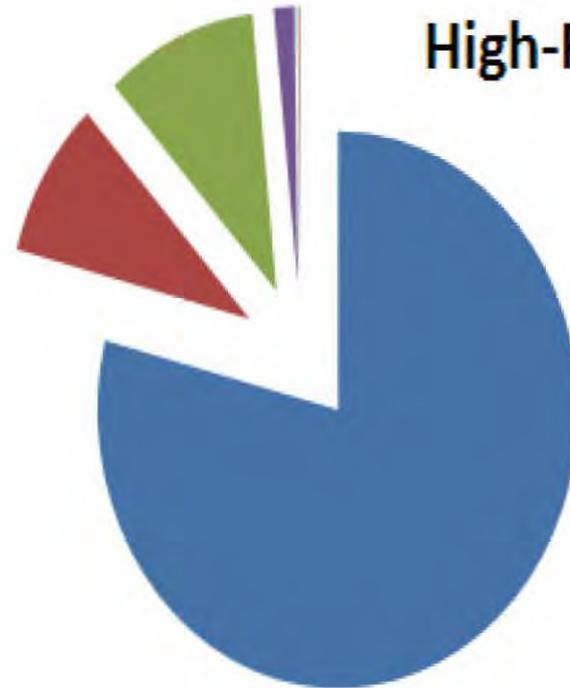


LA County High-Risk Tracts

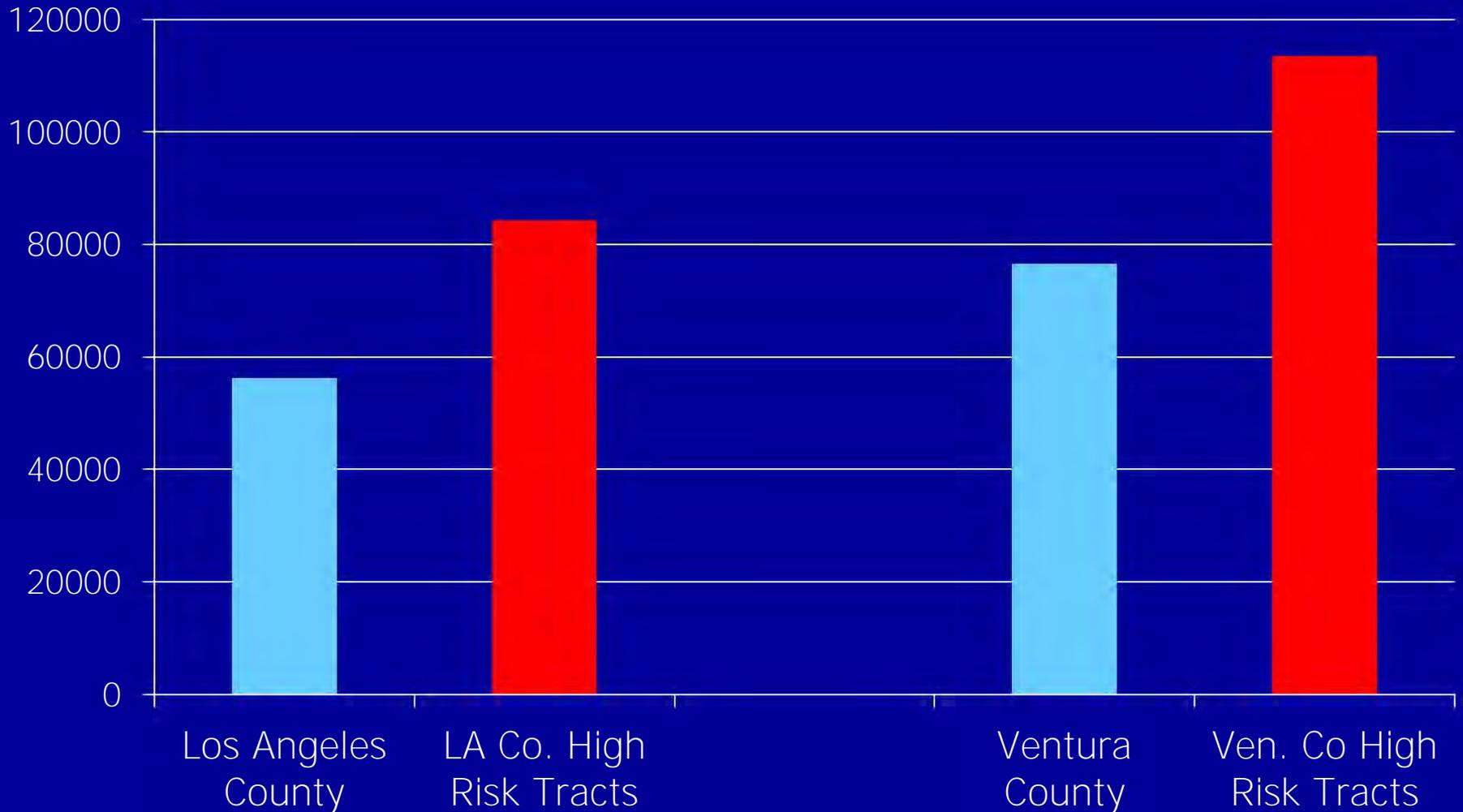


- European-American
- Latino-American
- Asian American
- African-American
- Native American
- Pacific Islander

Ventura County High-Risk Tracts



Median Family Income of Counties and of High Risk Tracts



From where do case reports come?

- Cancer reporting is mandatory since 1988
- California Cancer Registry covers the State
- All invasive malignancies (a few benign tumors)
- All cases found in a CA resident at diagnosis
- Hospitals collect reports to maintain certification
- Non-hospital labs, death certificates covered
- Reports returned to the place of residence
- Around 99% complete by regular audits using sampling and death certificates

Malignancies according to Annual (Age-Adjusted) New Cases /100,000

- **50+:** M Prostate, F Breast
- **30-49:** MF Lung, M/F Colorectum
- **10-29:** MF Melanoma, M Oropharynx, M Bladder, F Ovary, F Endometrium, MF Non-Hodgkin Lymphoma, M Leukemia
- **5-9:** M Stomach, M Larynx, M Testes, F Melanoma, F Thyroid
- F Cervix, F Oropharynx, F Leukemia, MF Pancreas, MF Kidney, MF Brain
- **<5:** M Thyroid, M Penis, F Stomach, F Larynx, F Bladder, MF Liver, MF Esophagus, MF Gallbladder, MF Hodgkin Lymphoma, MF Eye

Selection of malignancies

- Every cancer has a unique set of causes
 - (A few exposures, i.e. smoking, cause a portion of several cancers, but the rate of cancer at all sites is not informative)
- Cancers were selected for assessment:
- In all, thirteen different malignancies
 - The four most common cancers
 - Others possibly caused by chemicals/radiation

Cancers selected

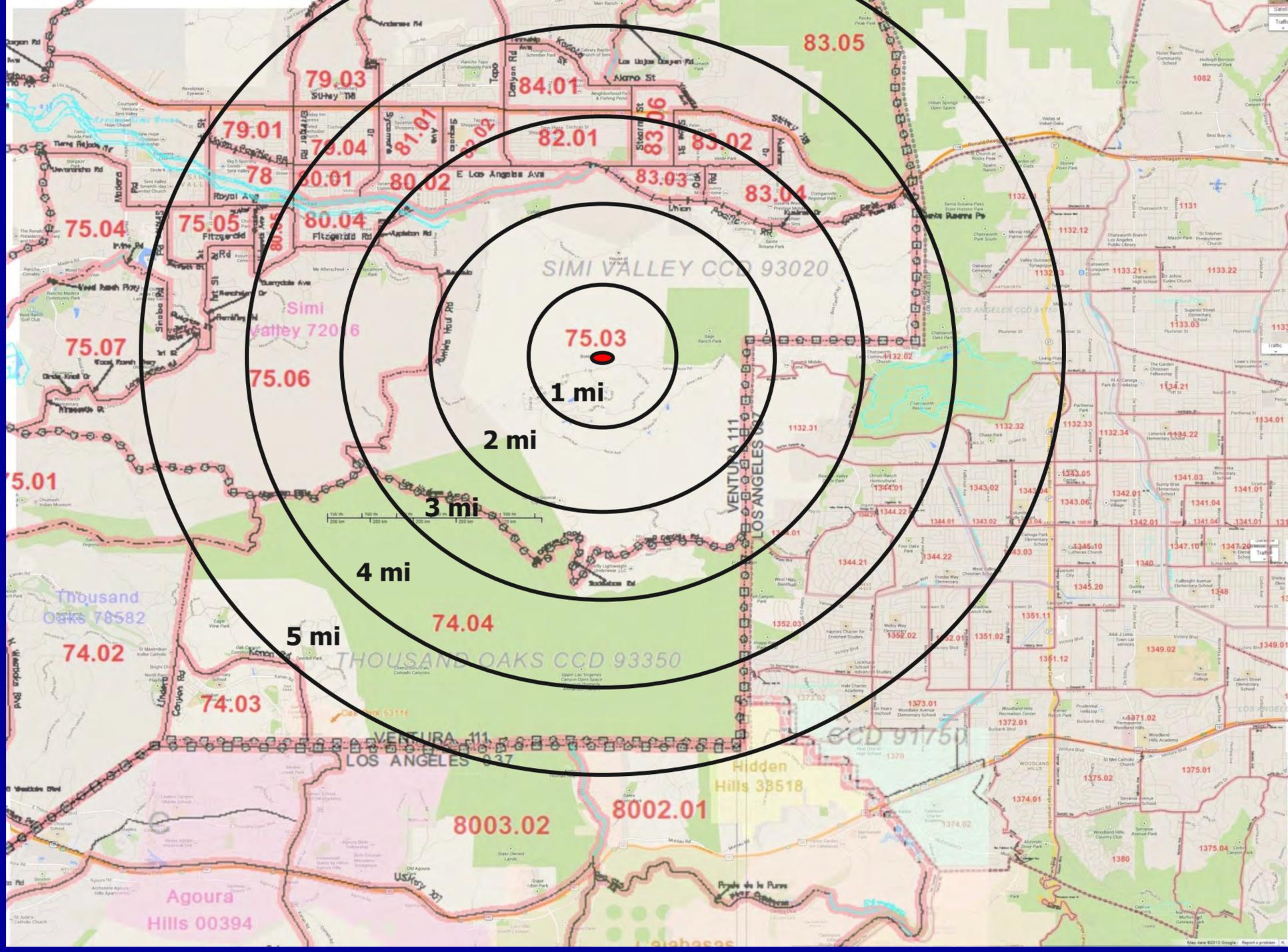
| Neoplasm | Major Causes | Descriptive Predictors |
|------------|---------------------------------|--------------------------------|
| Lung | Cigarette smoking | Blue collar occupation |
| Bladder | Cigarettes, aniline dyes (rare) | White Race |
| Pancreas | Cigarette smoking | None strong |
| Oropharynx | Tobacco, Alcohol, Pap.Virus | None strong |
| Leukemia | Genes, benzene, ? virus | None strong |
| Breast | Genes, Hormones | Higher education |
| Colorectal | Genes, Diet, Activity | None strong |
| Prostate | Genes, Diet | Race, Age, Access to screening |
| Thyroid | Ionizing radiation (rare) | Access to screening |
| Brain | Ionizing Radiation (rare) | None strong |
| Liver | Hepatitis B, C viruses | National origin |
| NHL | Immune depletion | None strong |
| Melanoma | Sunlight, light skin | Race, Higher education |

Screening Methods

- Genders assessed separately
- Three time periods:
 - 1988-95, 1996-2003, 2004-2010
 - Separate denominators from 3 censuses
- All census tracts within 5 miles of SSFL
 - 1988-95: 22 VEN, 16 LA census tracts
 - 1996-2003 : 29 VEN, 17 LA census tracts
 - 2004-2010: 29 VEN, 17 LA census tracts
- Number of comparisons:
 - $130 \text{ period-tracts} \times 24 \text{ gender-cancers} = 3120 \text{ searches}$
 - Up to 78 (3 per gender-cancer) “significantly” high-risk tracts by chance

Screening Criteria

- Significantly higher rate than County mean at the 95% confidence level ($p < 0.05$)
- At least a 50% increase in risk ($RR > 1,5$)
- Histological (Causal) homogeneity of excess



To find a result consistent with local cancer causation by disbursed carcinogen

- Consistent risk over calendar time
- High risk for both genders in the same area
- Higher risk proximate to SSRL
- Geographic clustering of high risk areas
- Pattern consistent with dispersion flow
- We screen by a relative risk (RR) of 1.5, but if RR is below 2.0, any observed case would likely have occurred anyway
- No plausible alternative explanation is available

Reasons for Caution in Assessing Impact

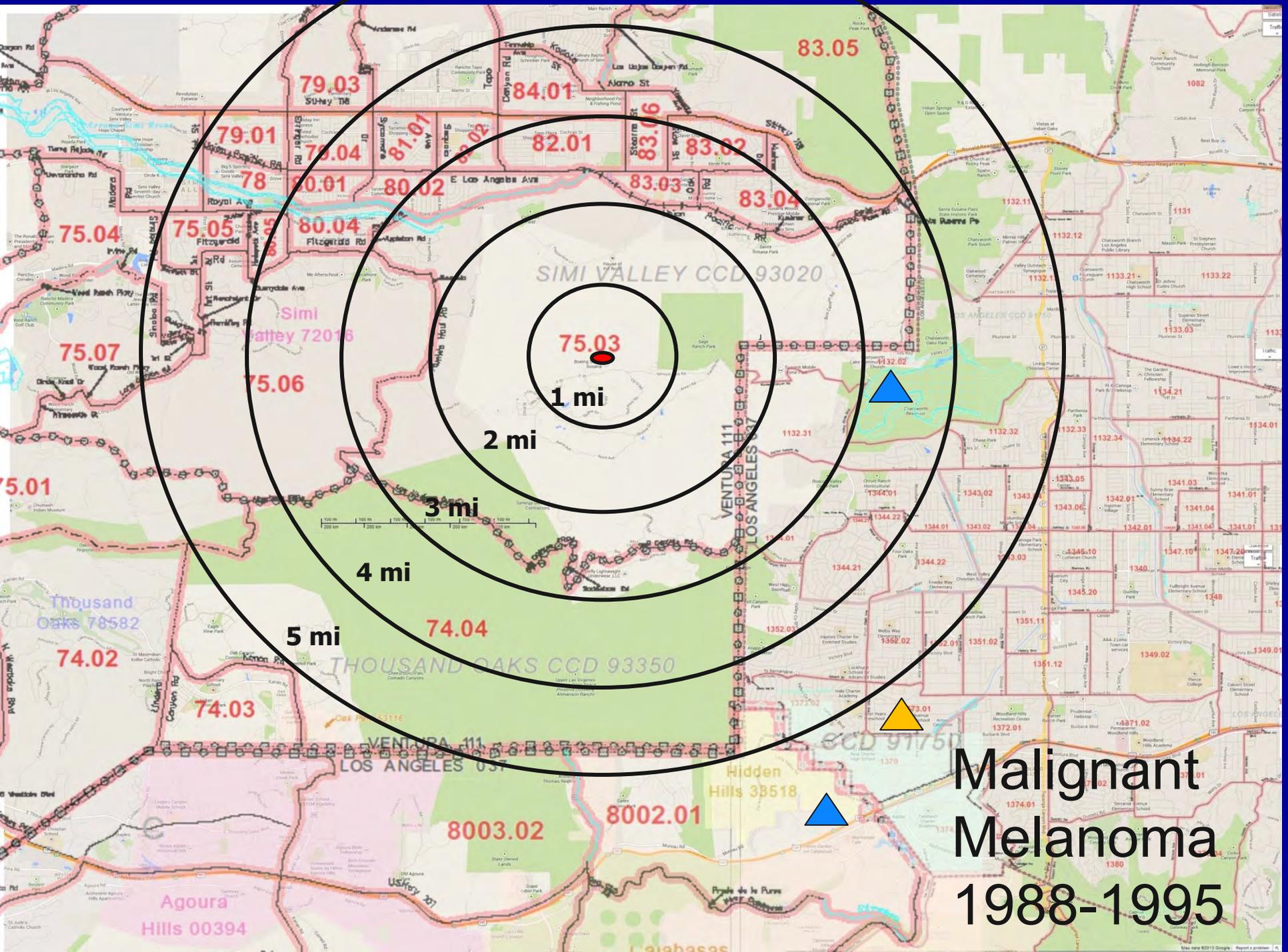
- 3 “Significant” excesses each are expected by chance
- No known clear evidence of personal exposure
- Waterborne and airborne dispersion imprecise
- Dosage is unknown
- Exposed workers are likely to reside together
- Census errors: rapid local growth may distort incidence estimates
- Evaluation is based on residential address at diagnosis

Summary Screening Findings

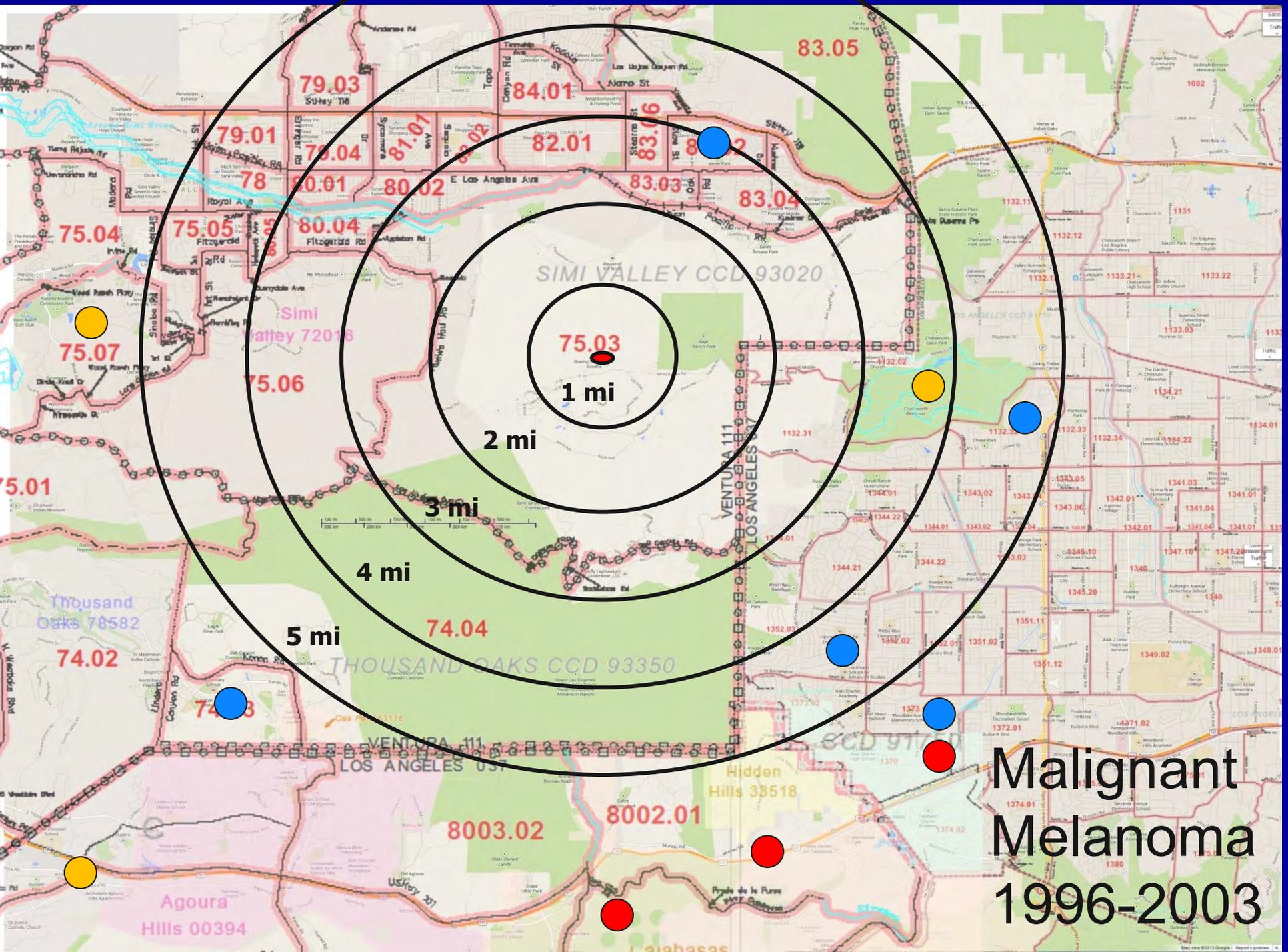
| Neoplasm | “Significant” tract-periods | In Both genders | In Adjacent tracts | In 2 or more periods |
|------------|-----------------------------|-----------------|--------------------|----------------------|
| Breast | 26 (3 exp) | --- | 8 | 6 |
| Melanoma | 23 (6 exp) | 8 | 17 | 7 |
| Colorectal | 7 (6 exp) | 2 | 0 | 0 |
| Lung | 4 (6 exp) | 0 | 0 | 1 |
| Prostate | 4 (3 exp) | --- | 0 | 0 |
| Thyroid | 3 (6 exp) | 0 | 0 | 0 |
| Brain | 3 (6 exp) | 0 | 0 | 0 |
| NHL | 2 (6 exp) | 0 | 0 | 0 |
| Leukemia | 1 (6 exp) | --- | --- | -- |
| Bladder | 1 (6 exp) | --- | --- | --- |
| Oropharynx | 0 (6 exp) | --- | --- | --- |
| Liver | 0 (6 exp) | --- | --- | --- |
| Pancreas | 0 (6 exp) | --- | --- | --- |

Legend

| Period | Males | Females | Both |
|-----------|---|---|---|
| 1988-1995 |  |  |  |
| 1996-2003 |  |  |  |
| 2004-2010 |  |  |  |



**Malignant
Melanoma
1988-1995**



75.03
1 mi

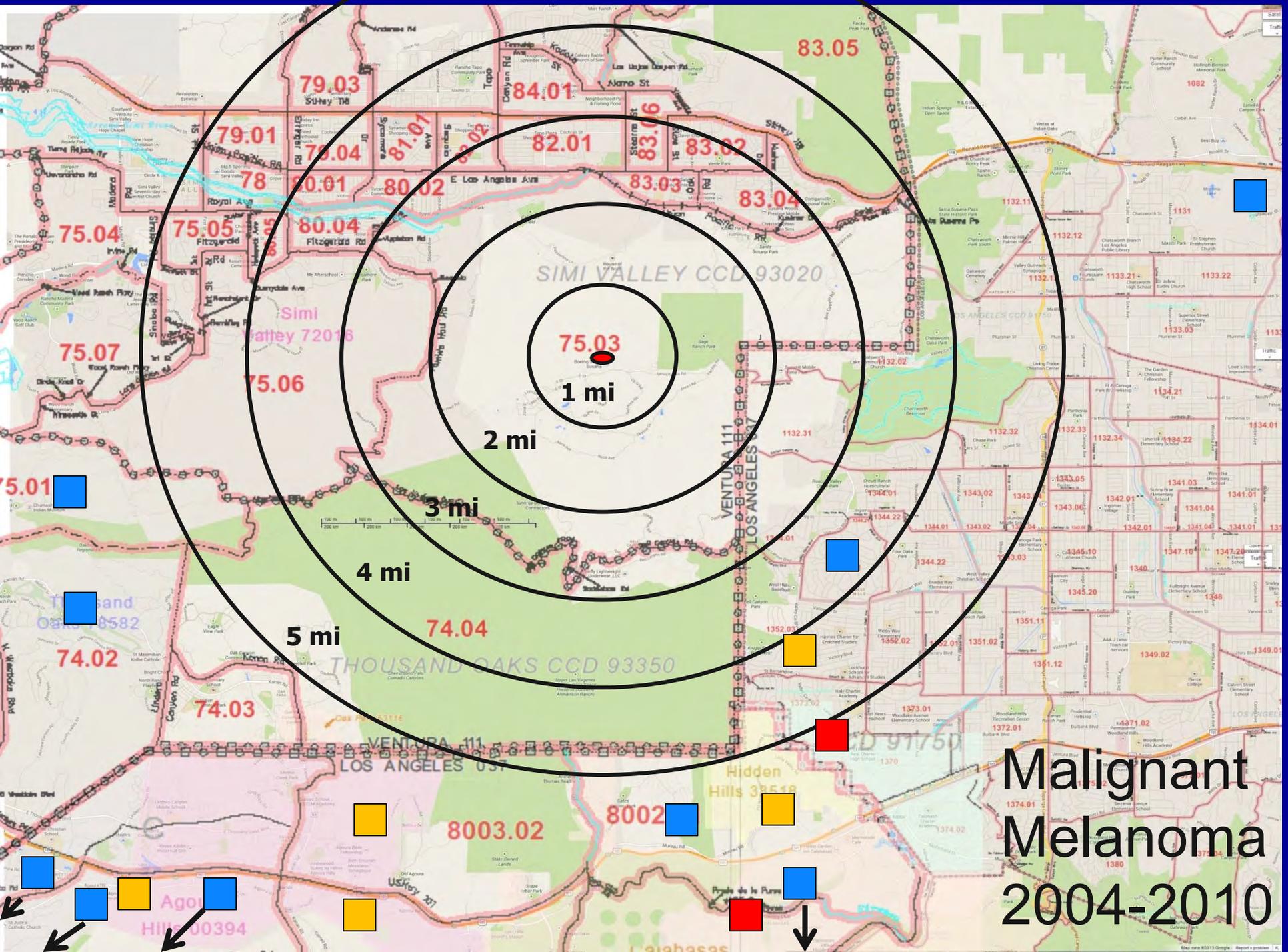
2 mi

3 mi

4 mi

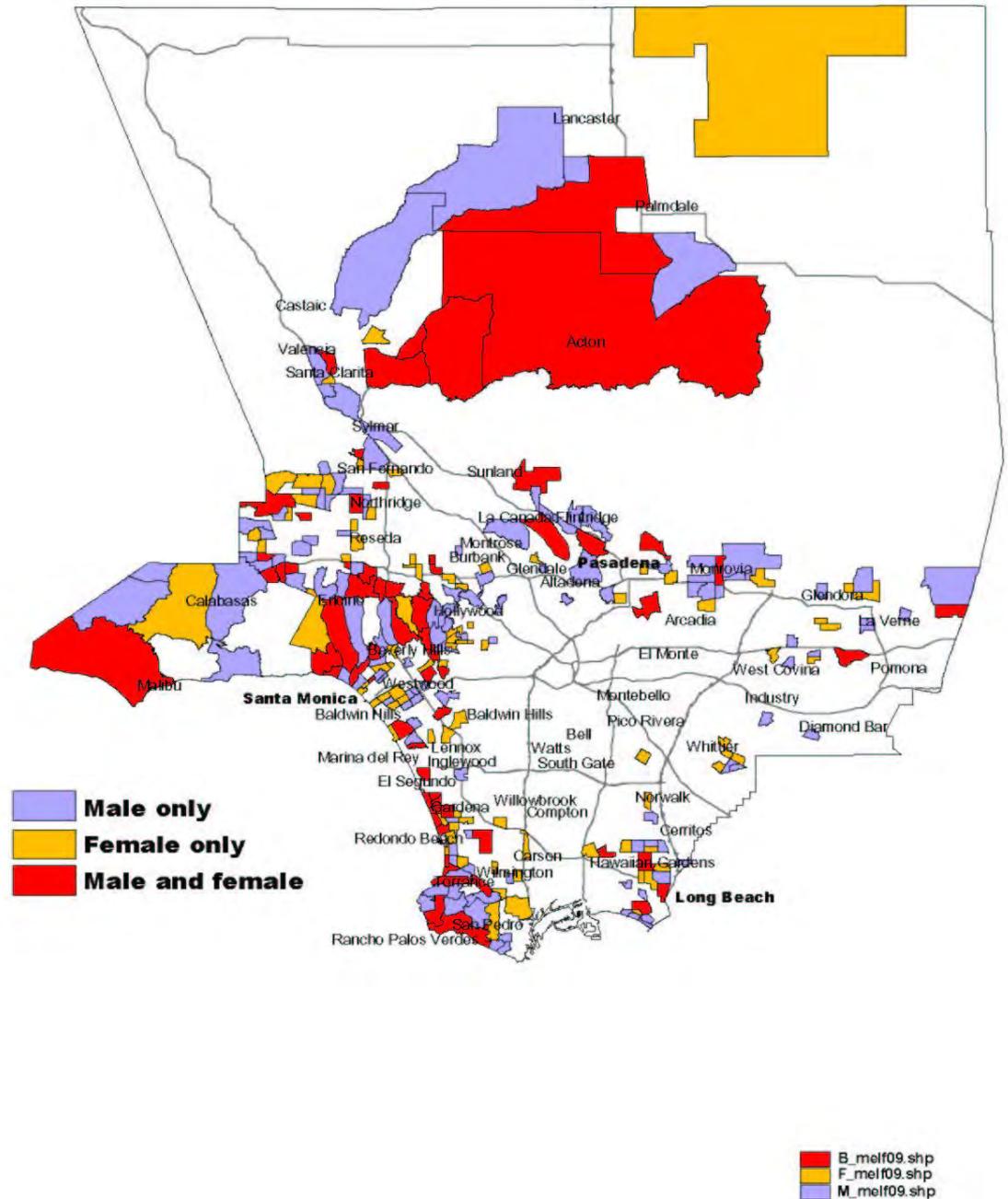
5 mi

**Malignant
Melanoma
1996-2003**

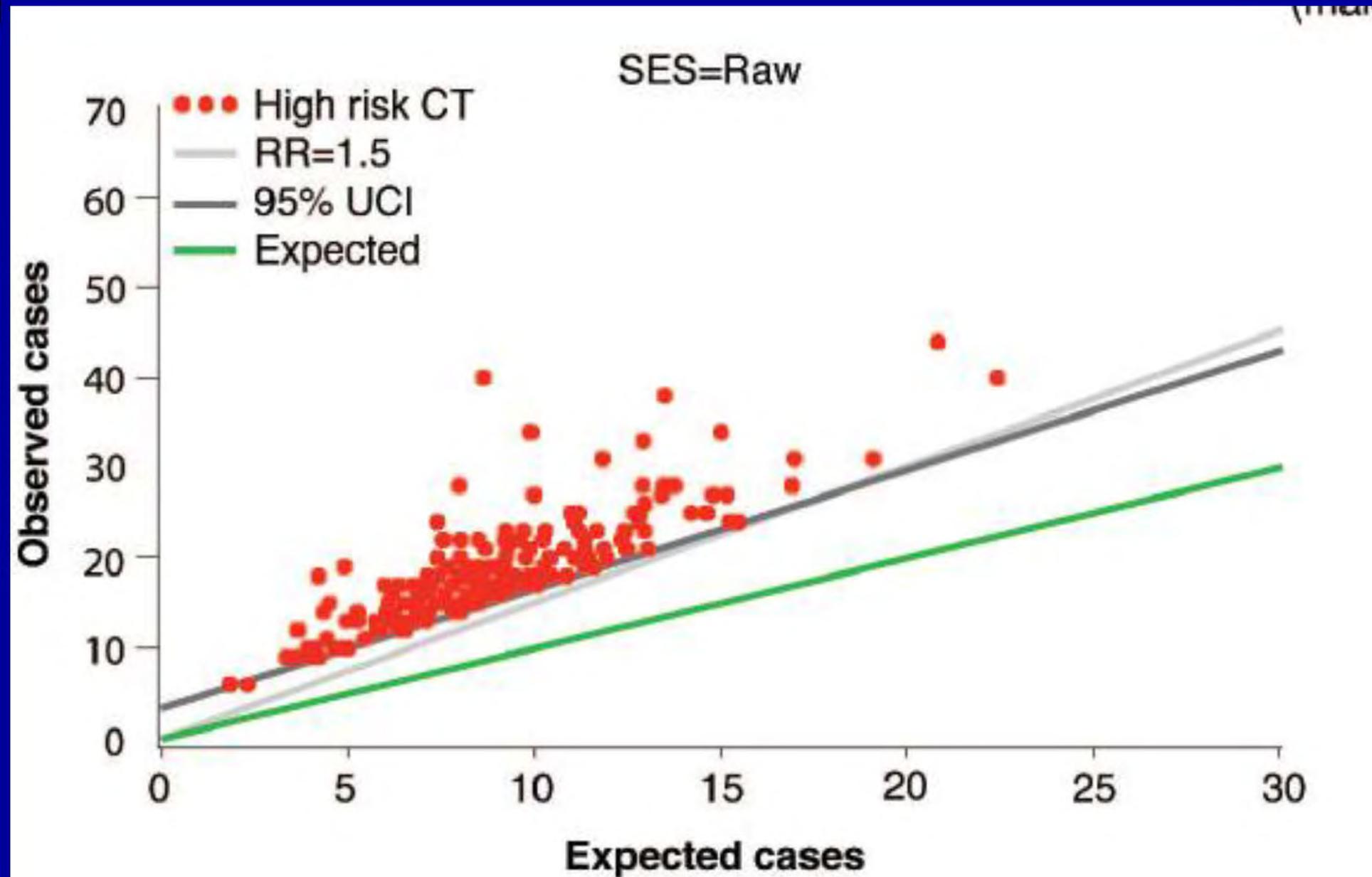


Malignant
Melanoma
2004-2010

Malignant Melanoma

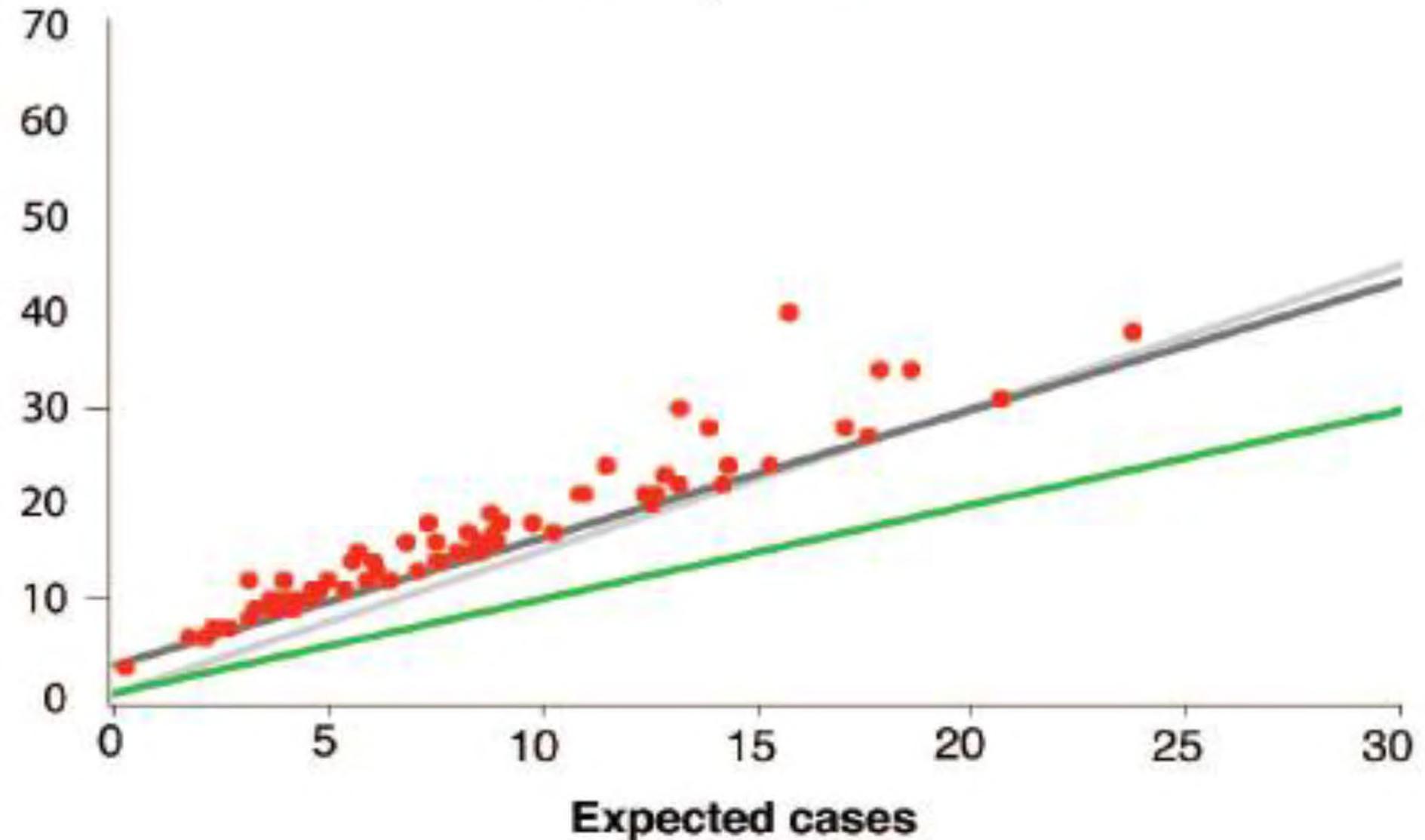


Malignant Melanoma

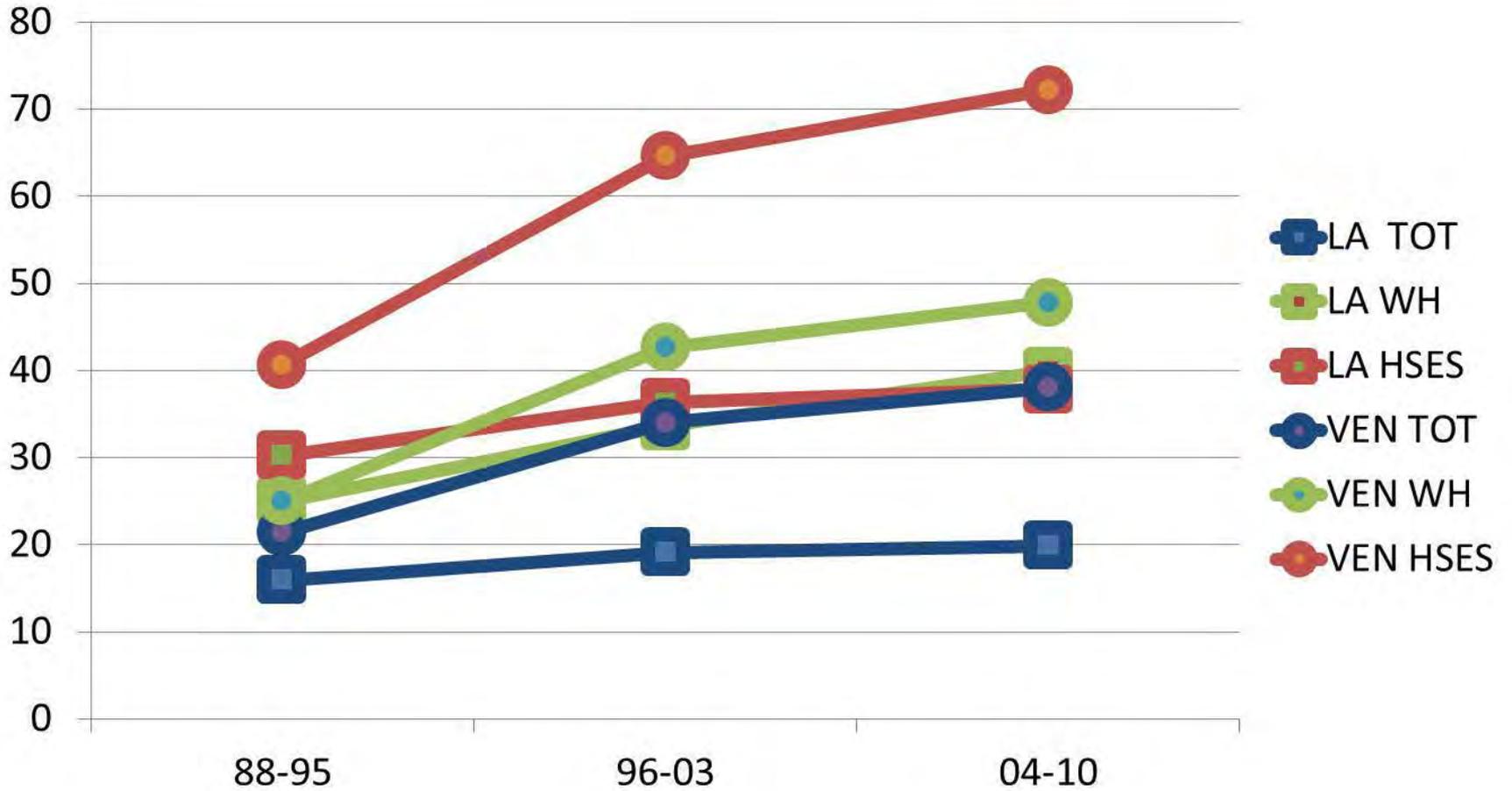


Malignant Melanoma-Adjusted for SES

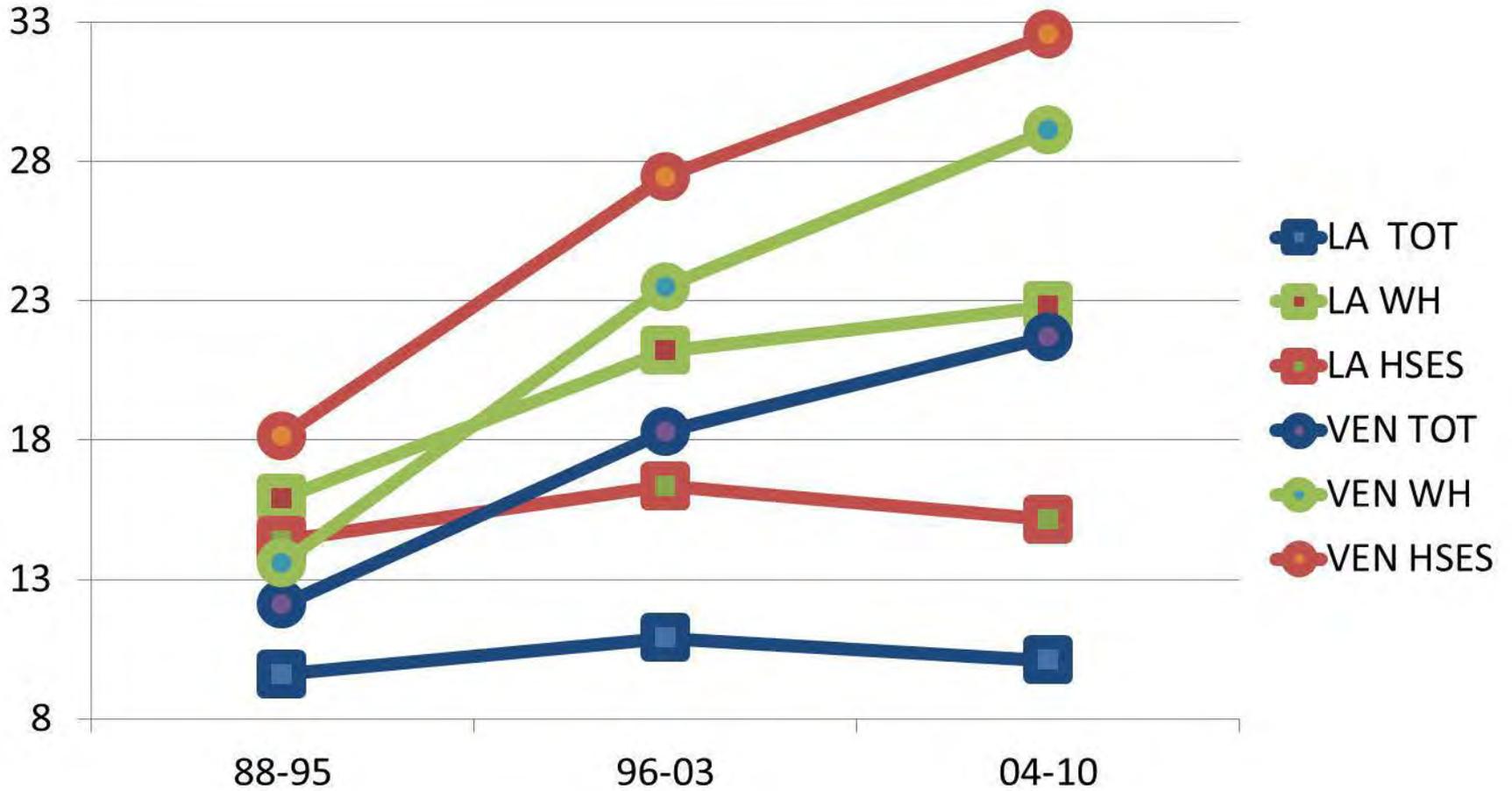
SES=Adj for SES

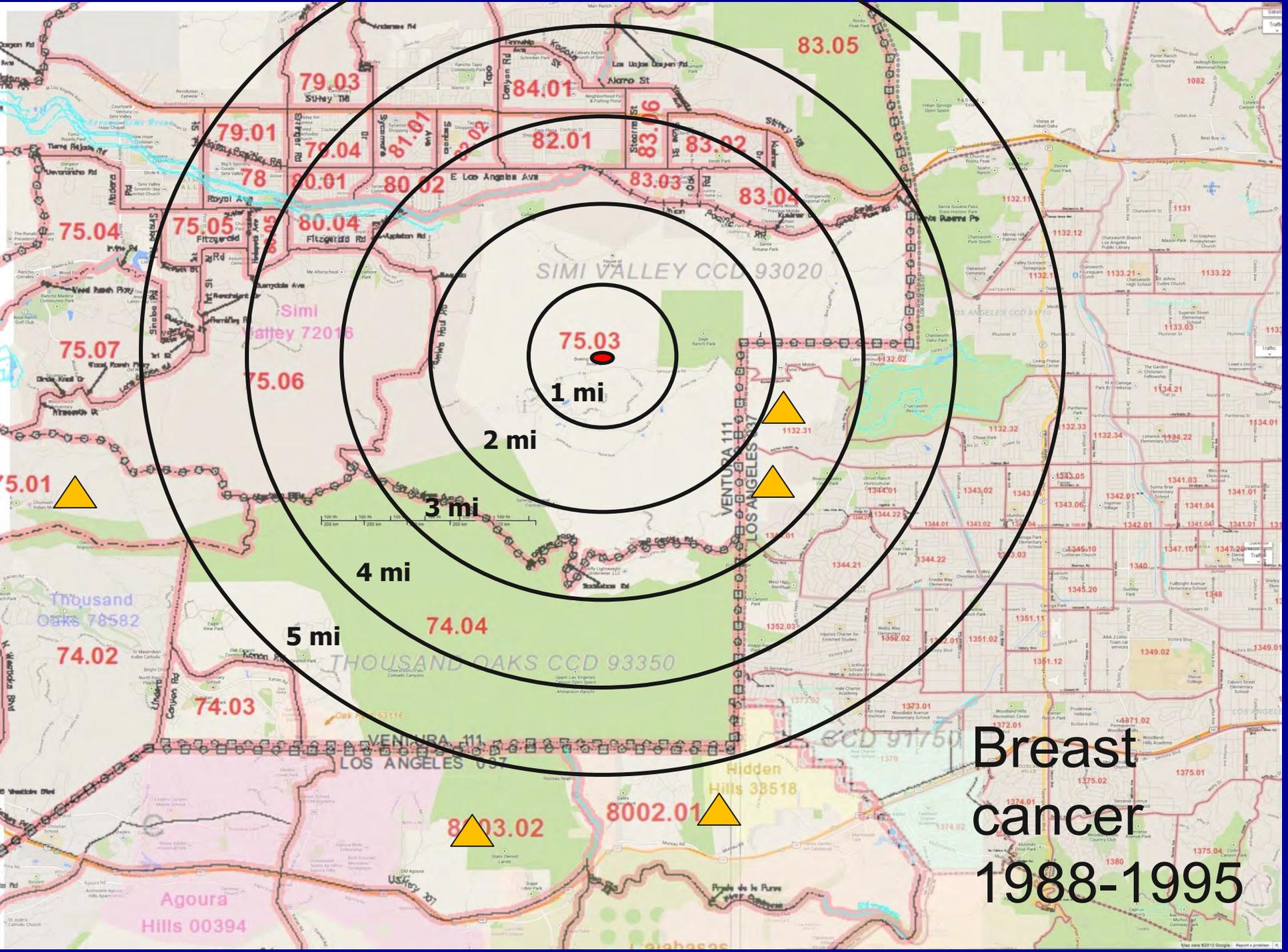


MALE MELANOMA

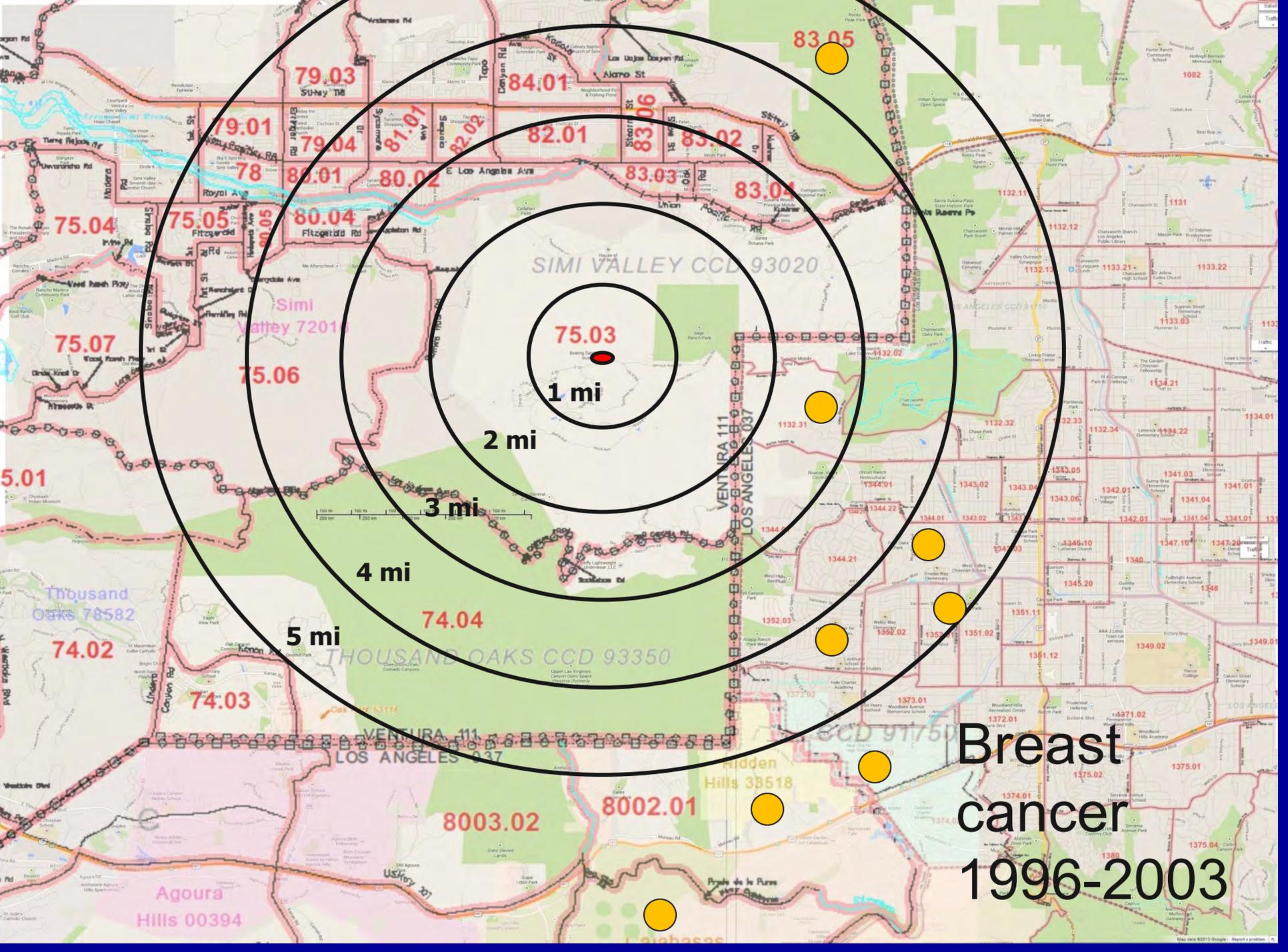


FEMALE MELANOMA





Breast cancer
1988-1995



75.03

1 mi

2 mi

3 mi

4 mi

5 mi

Breast cancer
1996-2003

79.03

79.01

78

75.04

75.05

75.07

75.06

74.02

74.03

74.04

74.03

8003.02

8002.01

84.01

82.01

80.01

80.02

80.04

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SIMI VALLEY CCD 93020

THOUSAND OAKS CCD 93350

VENTURA 111 LOS ANGELES 937

Hidden Hills 38518

Agoura Hills 00394

Thousand Oaks 78582

1082

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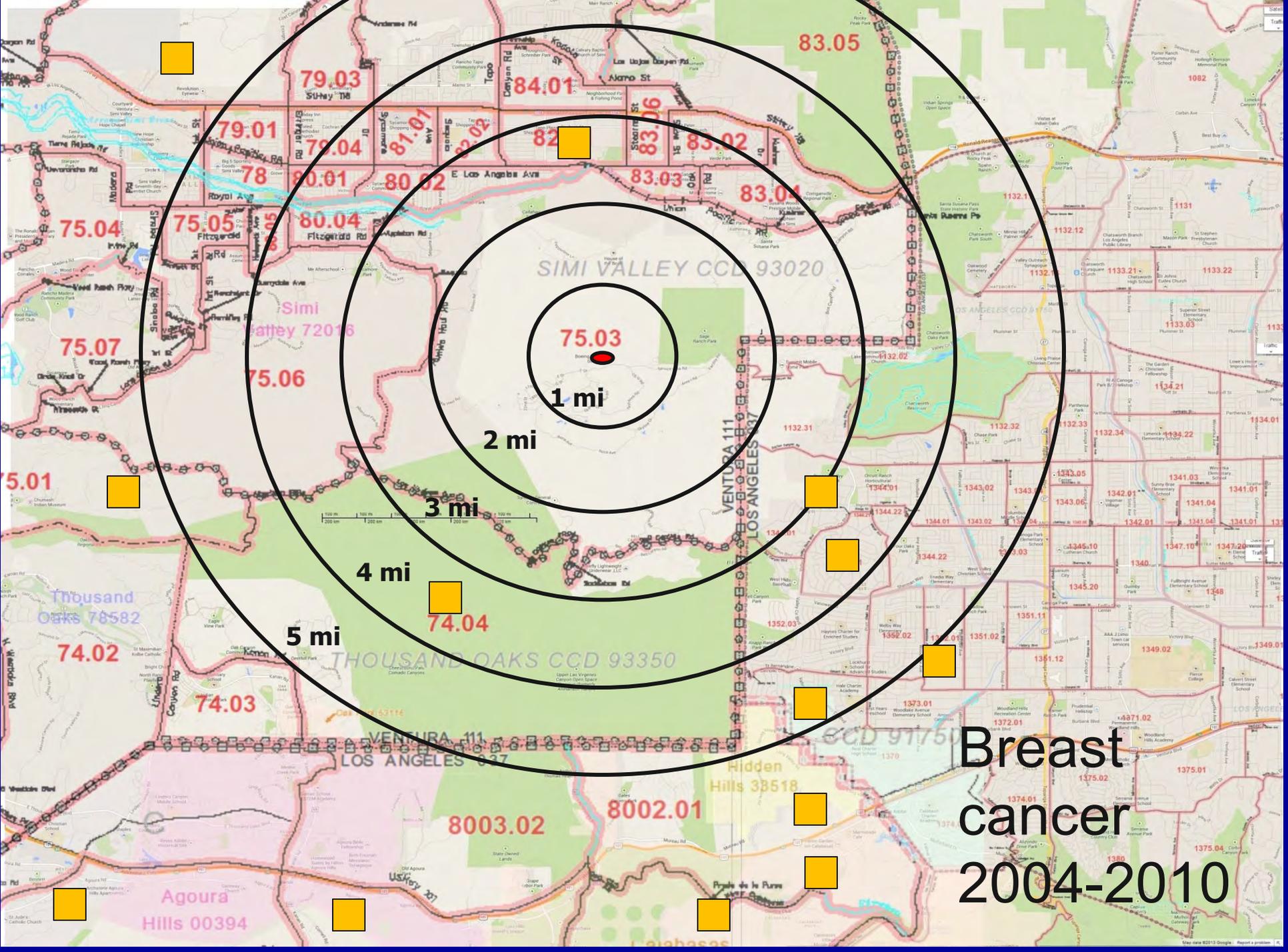
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1362



Breast cancer 2004-2010

75.03
1 mi

2 mi

3 mi

4 mi

5 mi



Agoura
Hills 0094

SIMI VALLEY CCD 93020

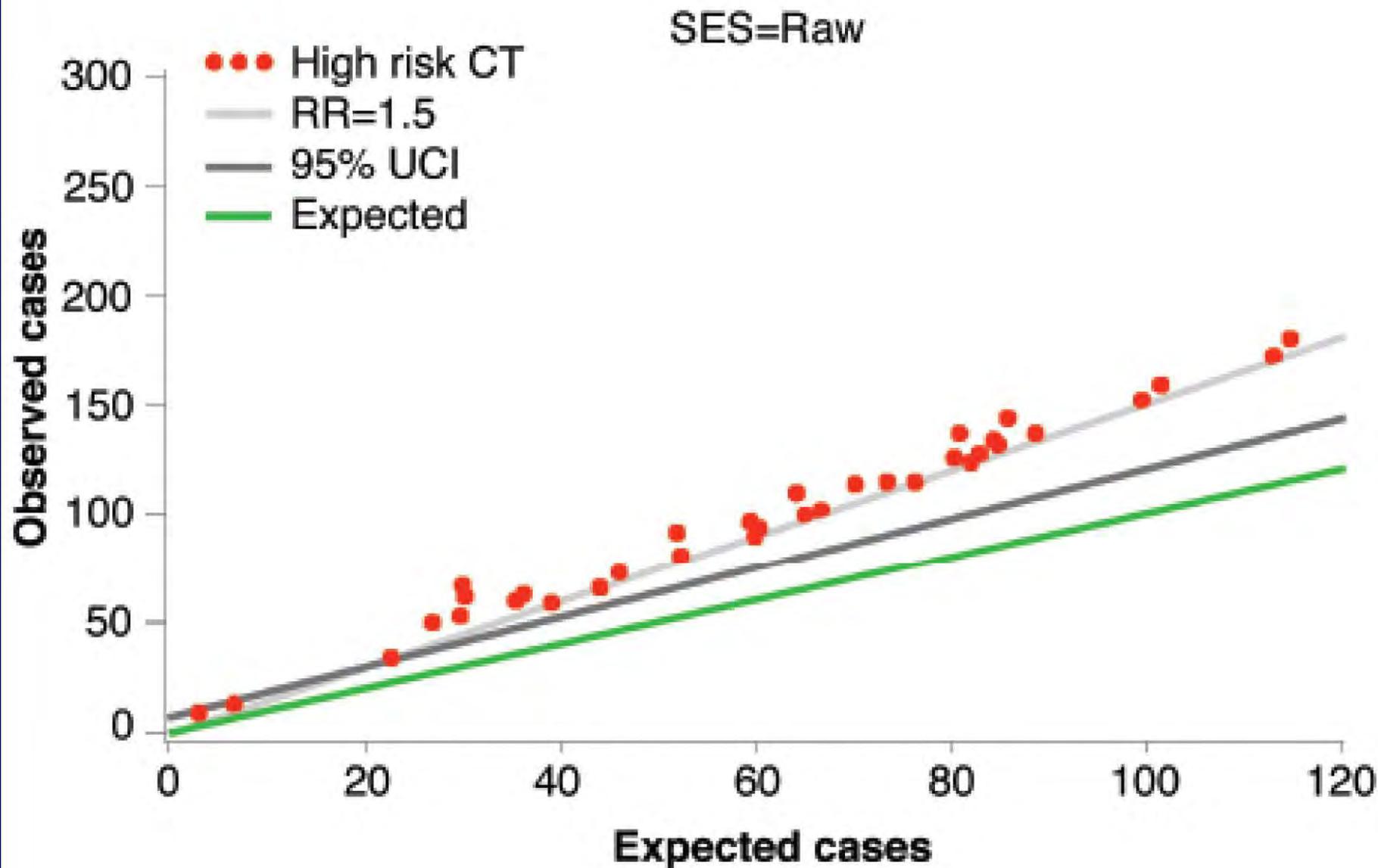
THOUSAND OAKS CCD 93350

VENTURA 111
LOS ANGELES 97

Hidden
Hills 38518

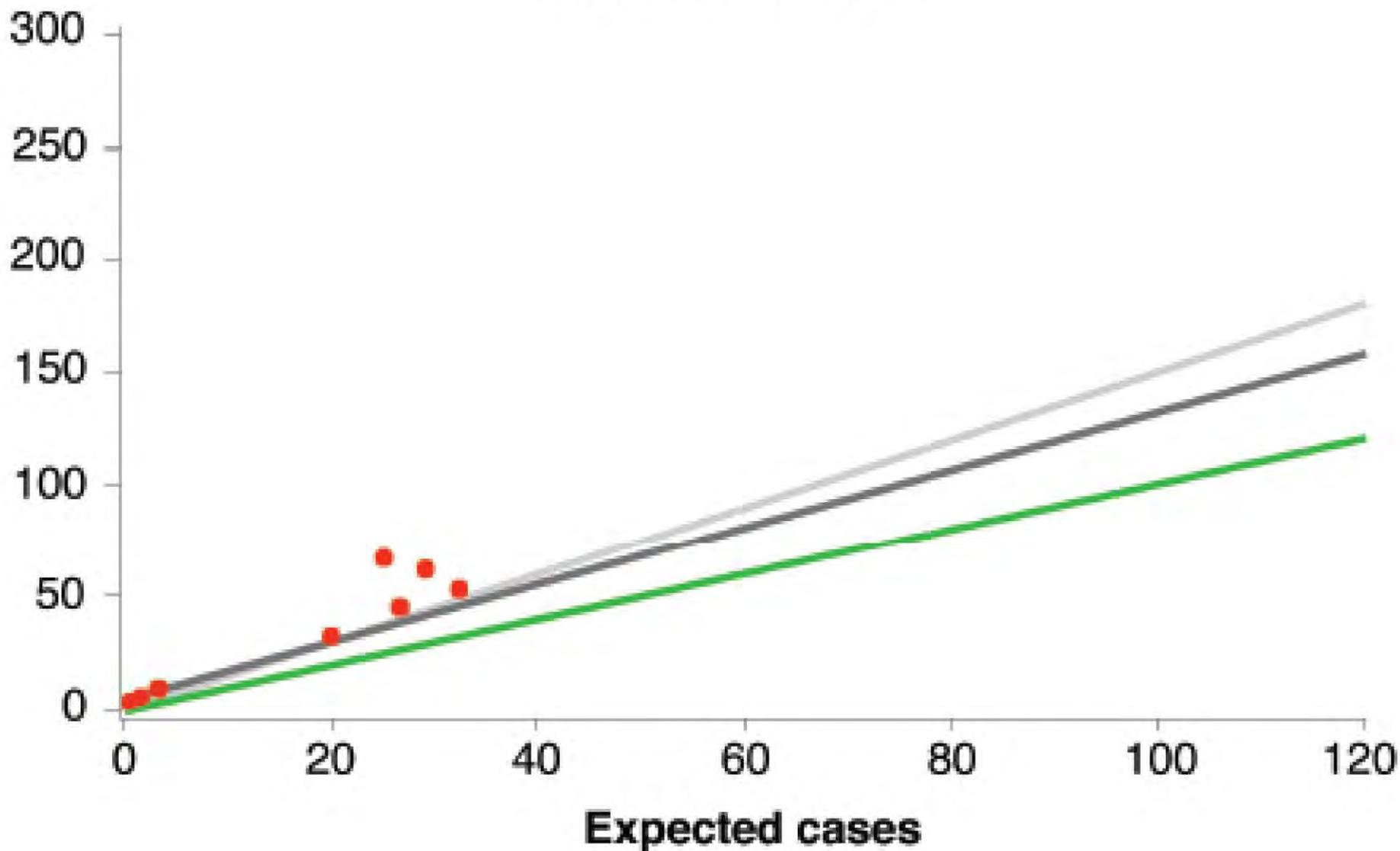
LOS ANGELES CCD 91751

Female Breast Cancer

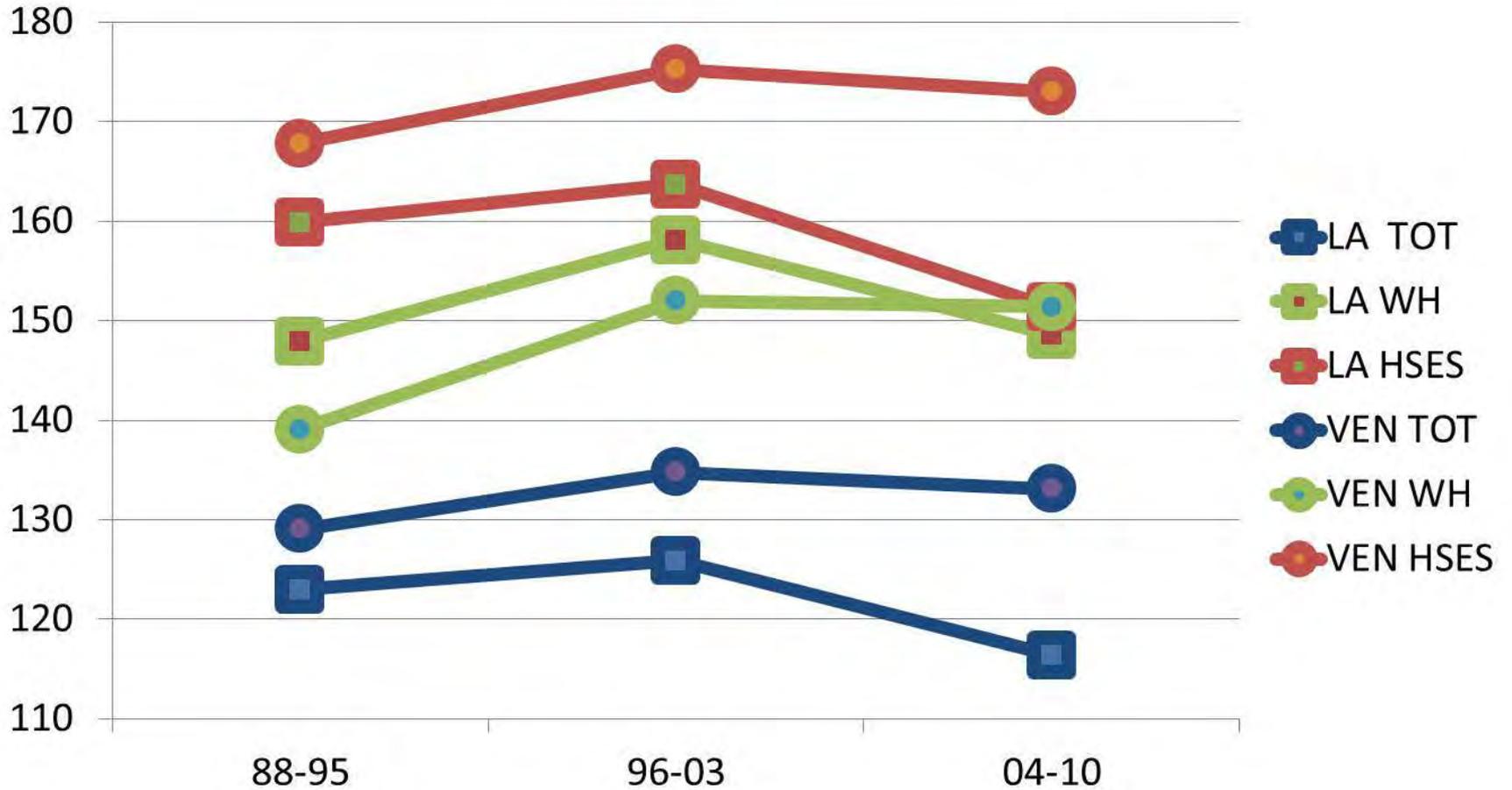


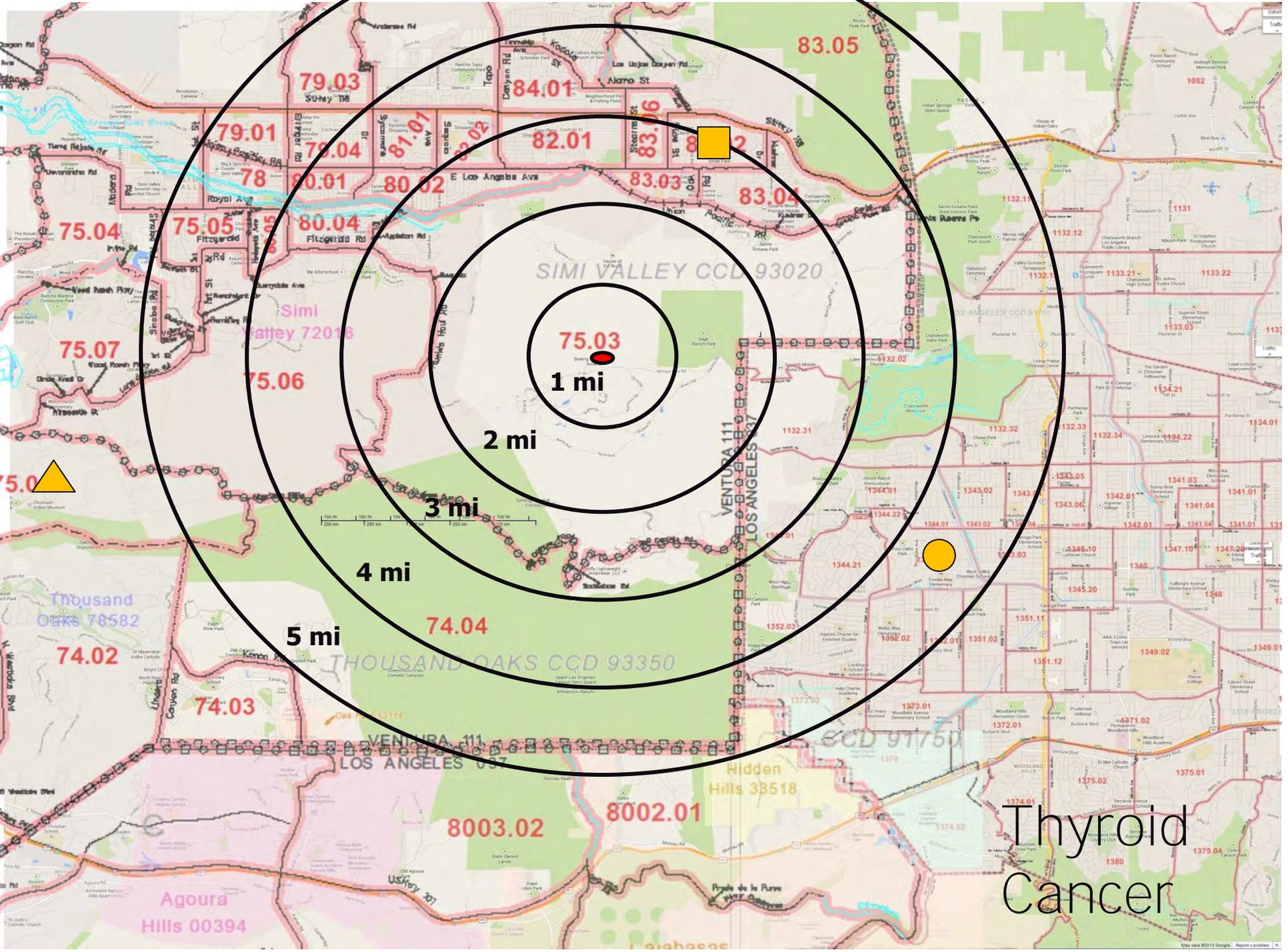
Female Breast Cancer

SES=Adj for SES



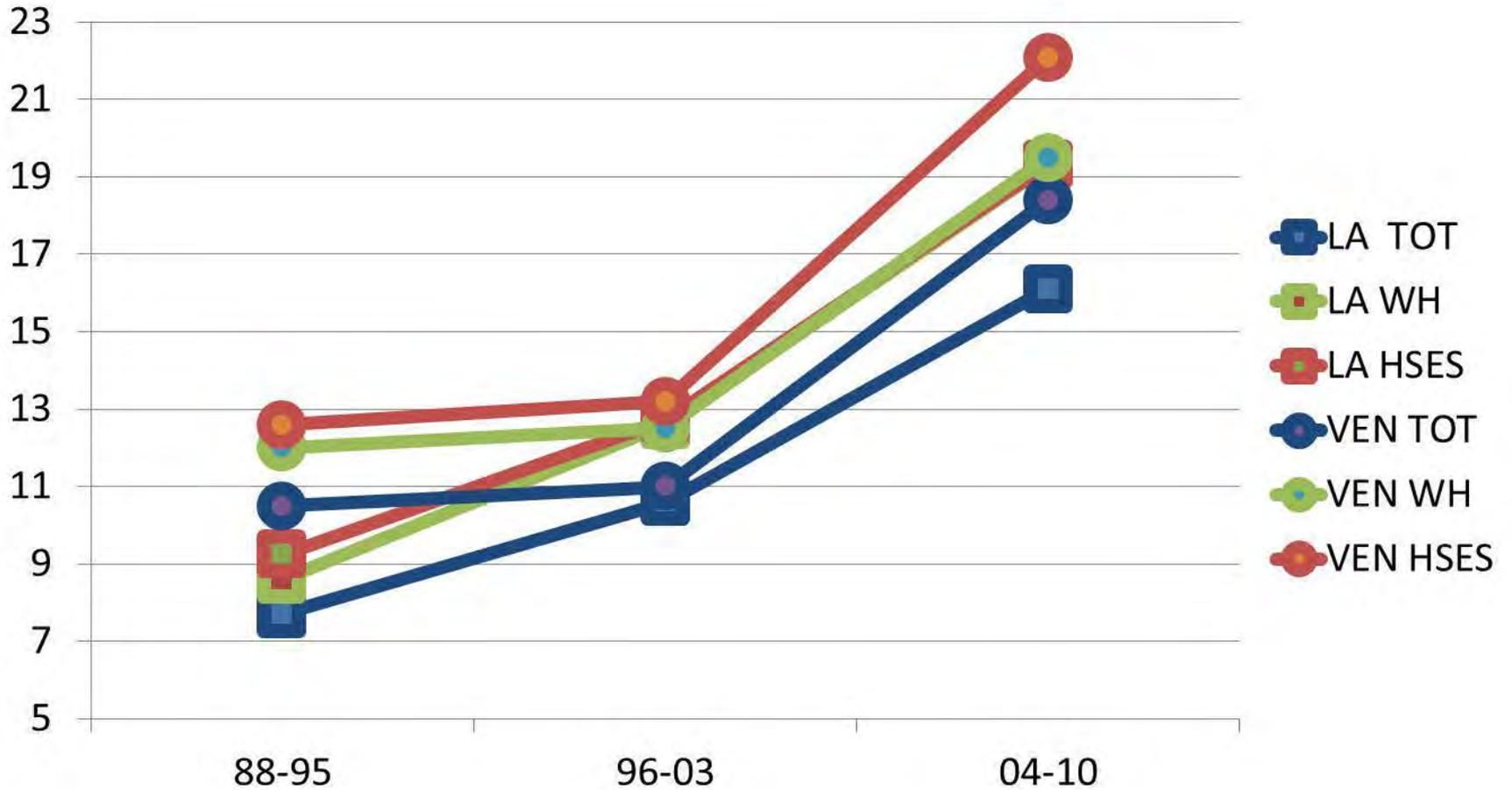
FEMALE BREAST

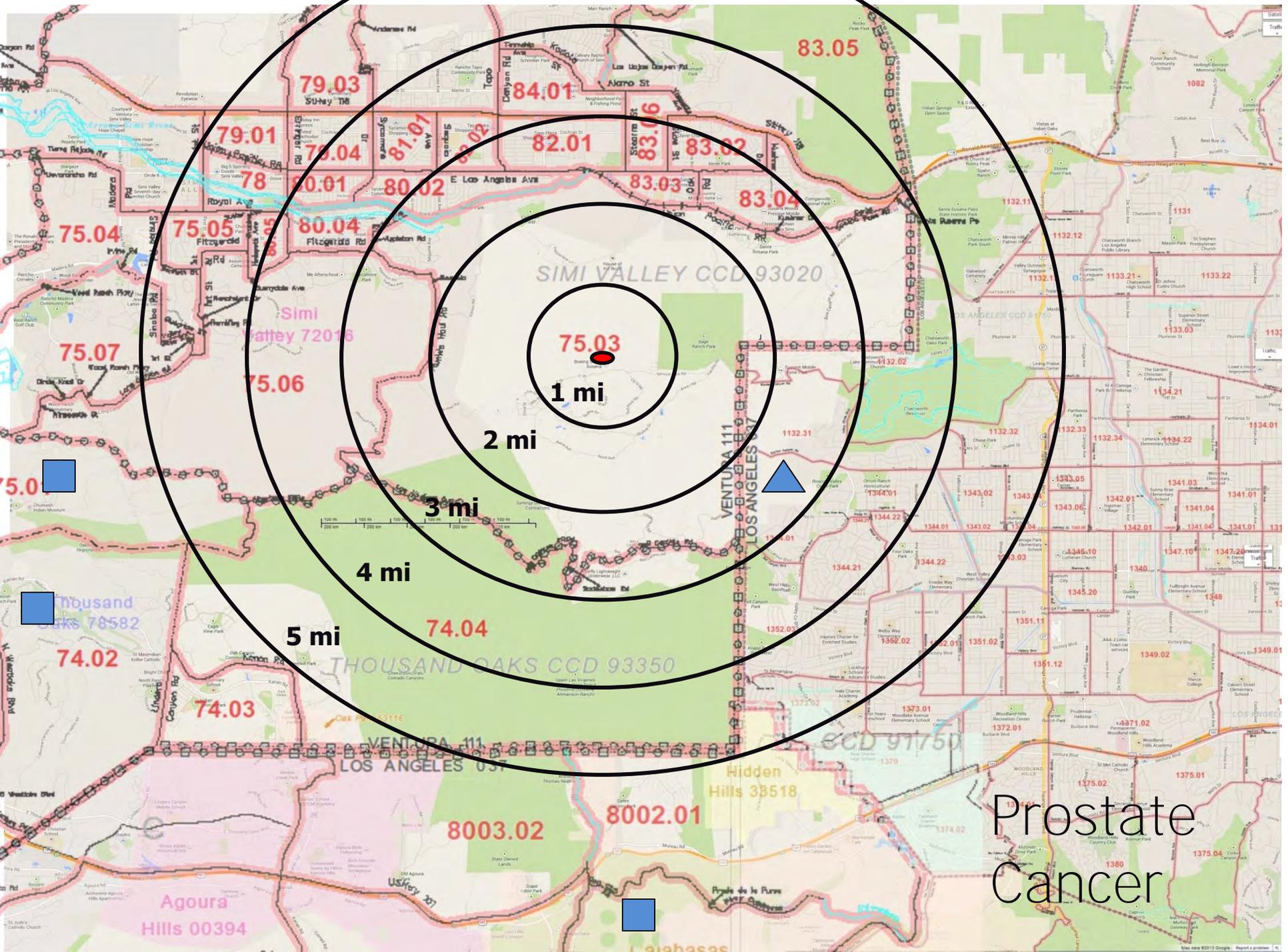




Thyroid
Cancer

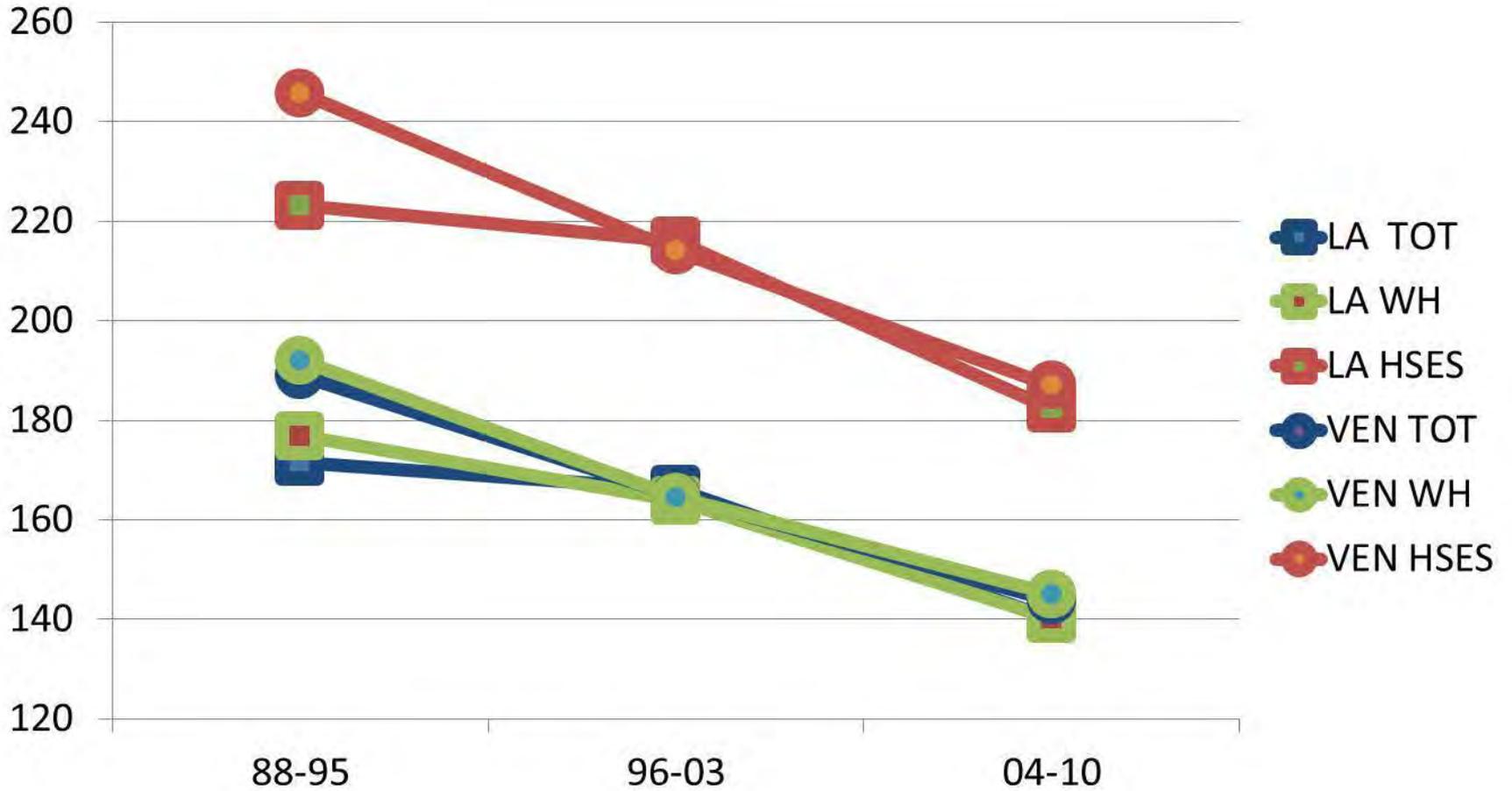
FEMALE THYROID

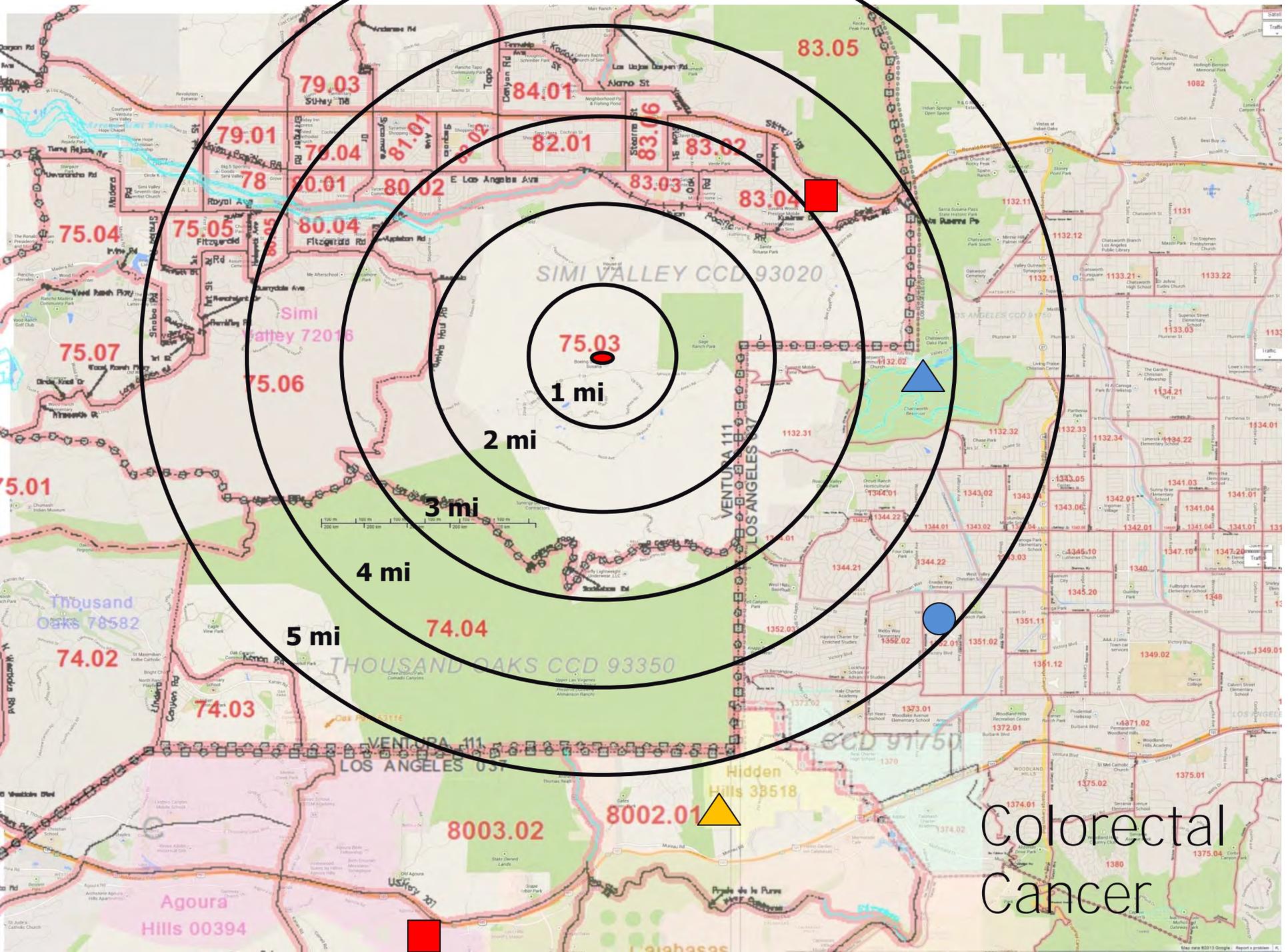




Prostate
Cancer

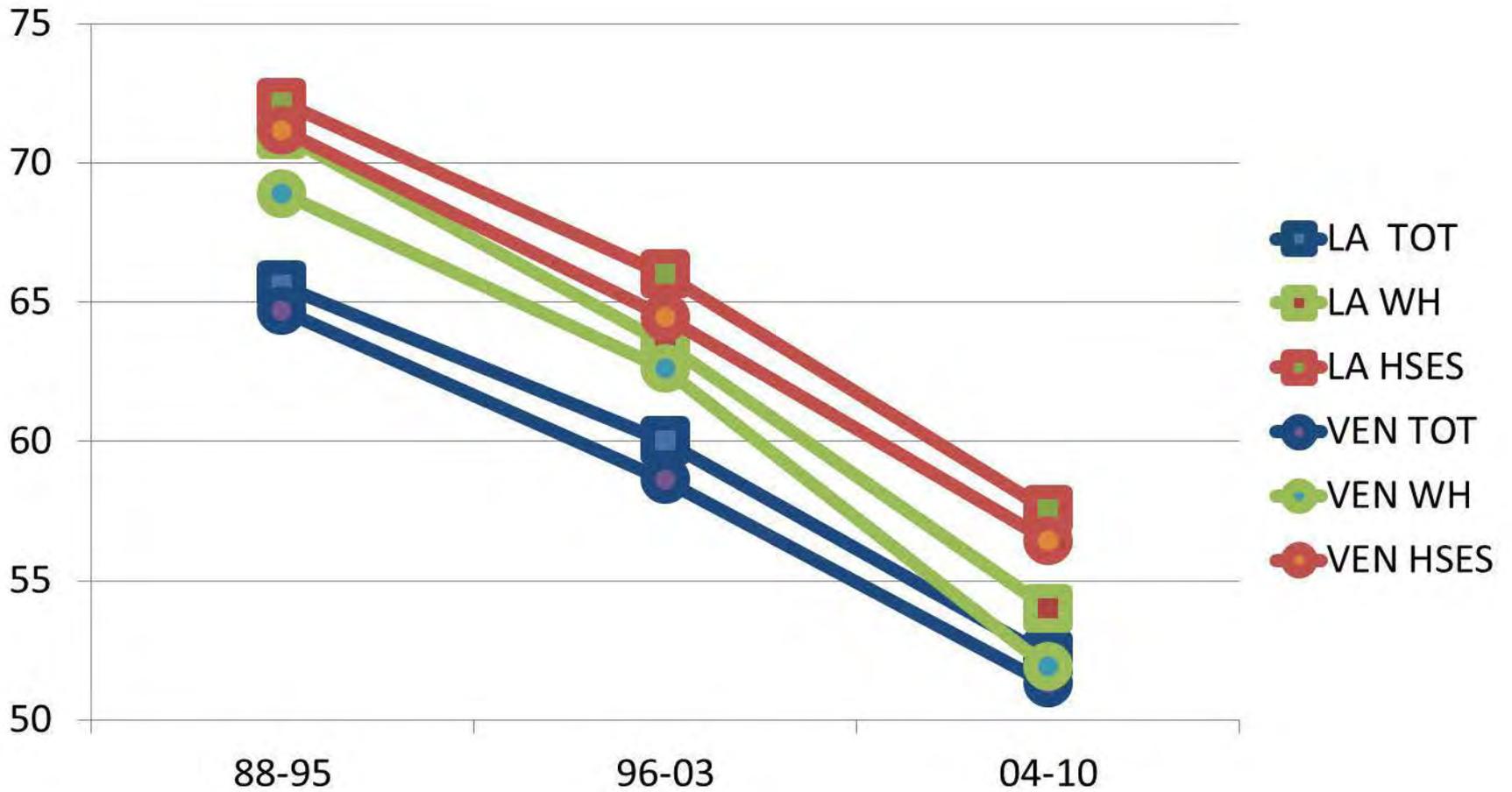
MALE PROSTATE



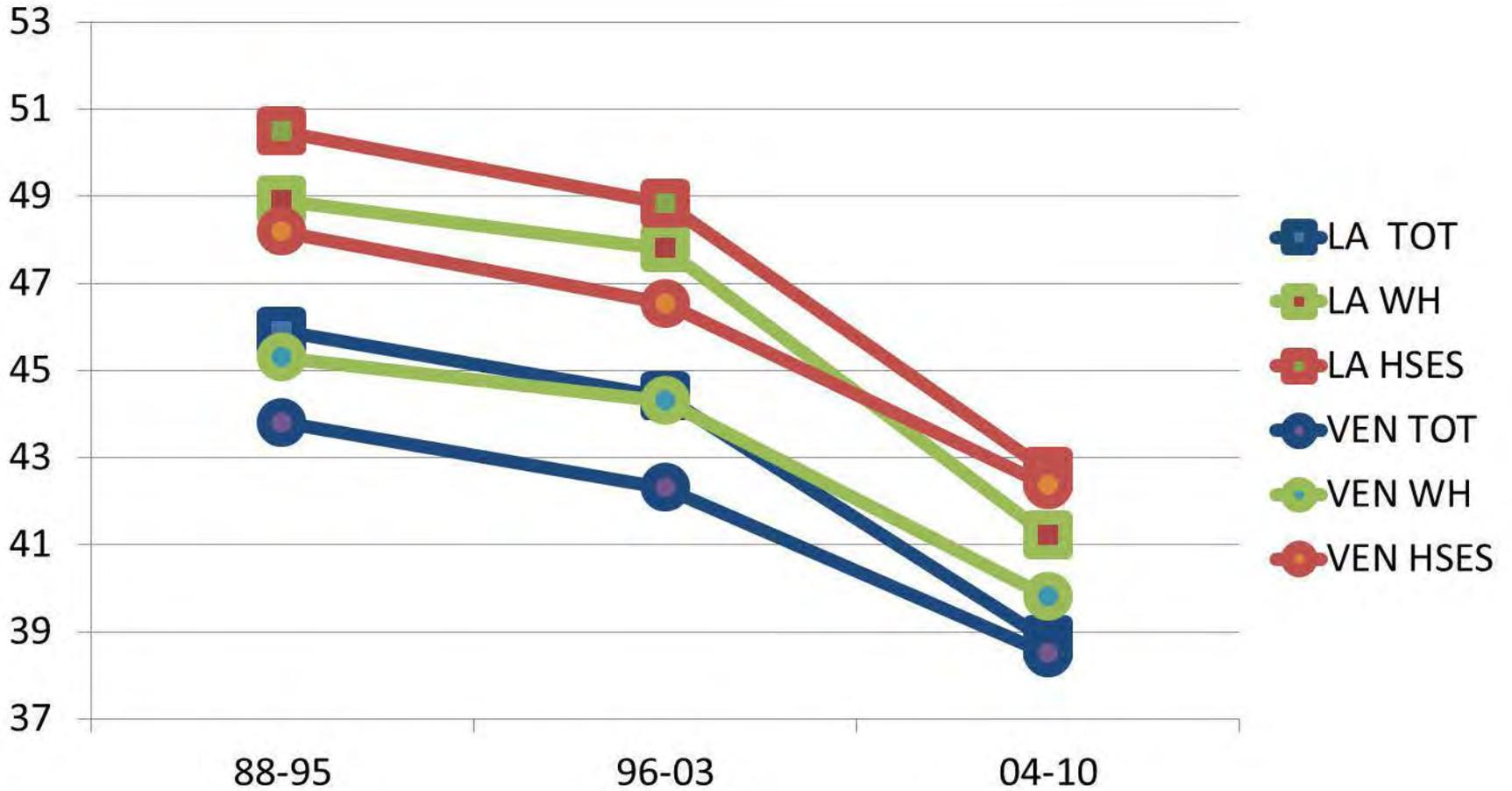


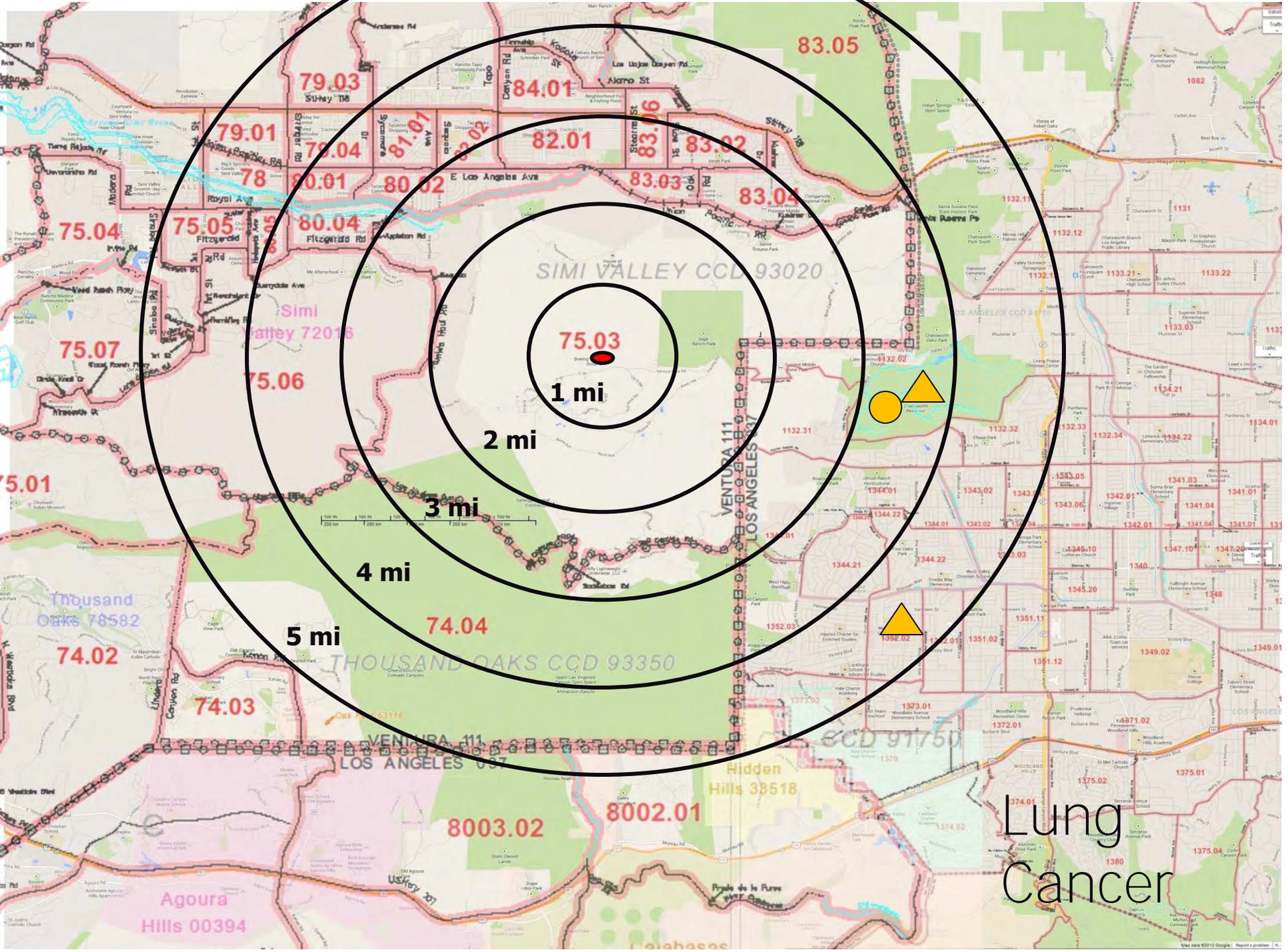
Colorectal
Cancer

MALE COLORECTAL



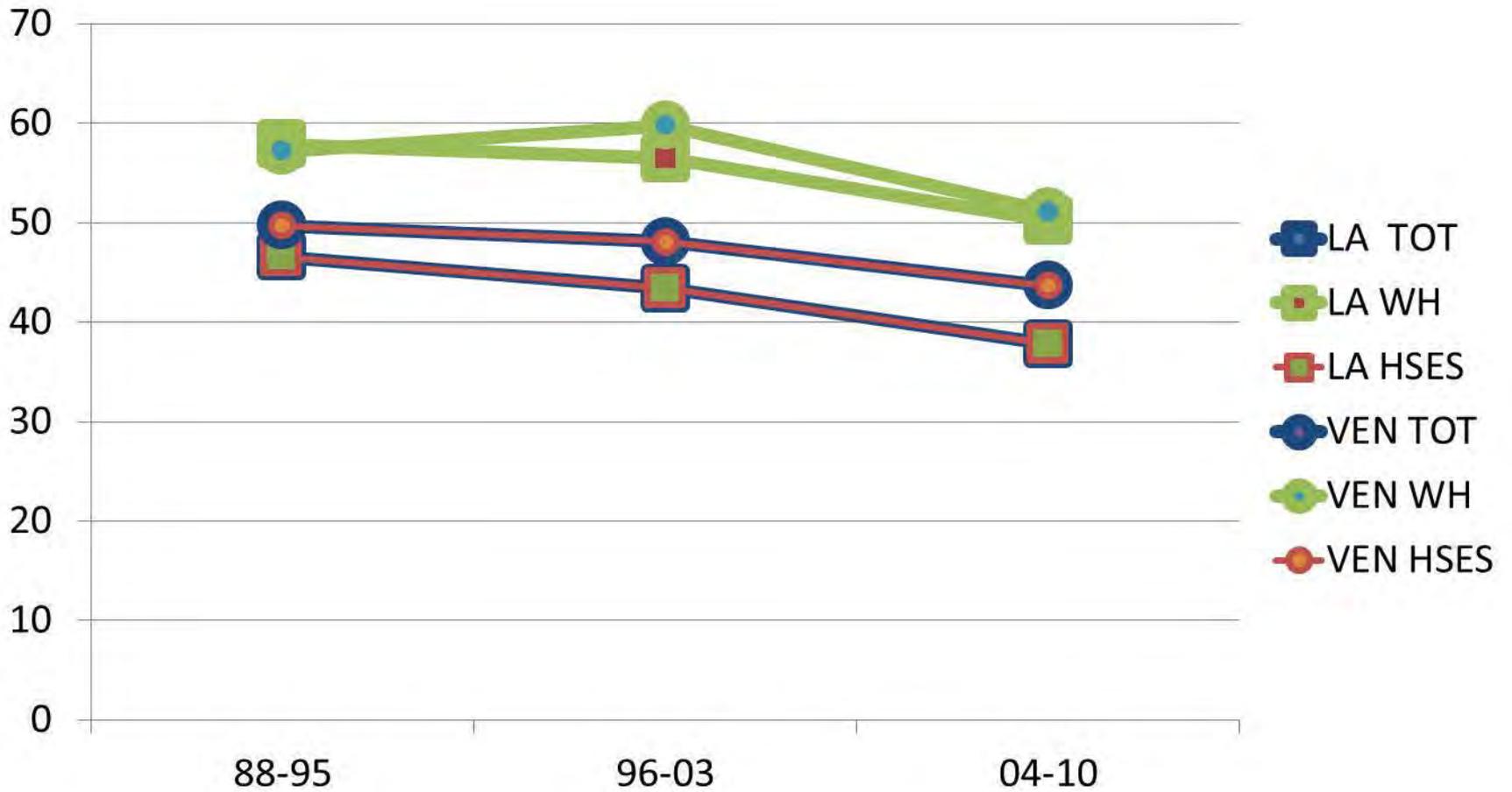
FEMALE COLORECTAL





Lung
Cancer

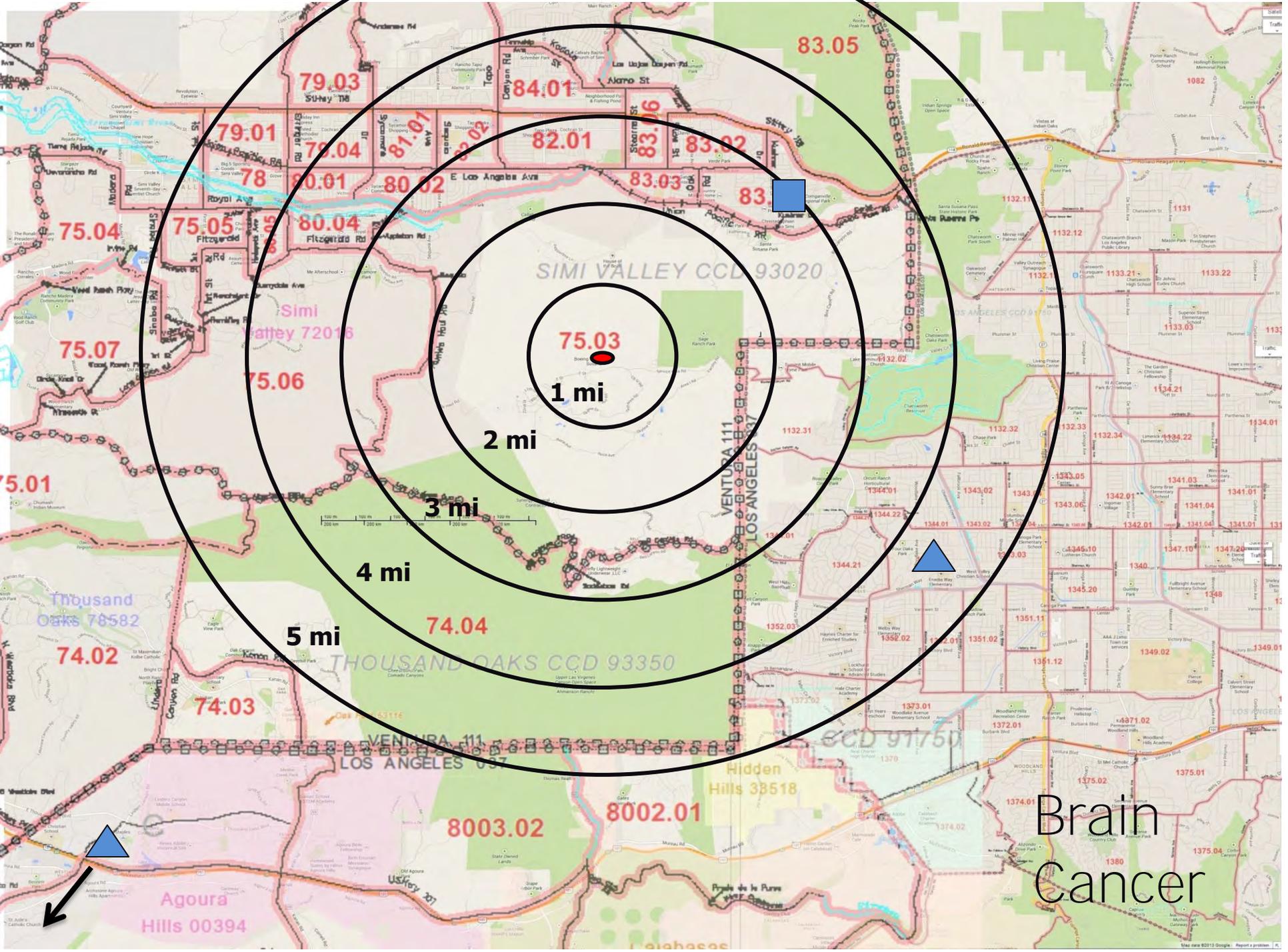
FEMALE LUNG



Likely effects of Lifestyle

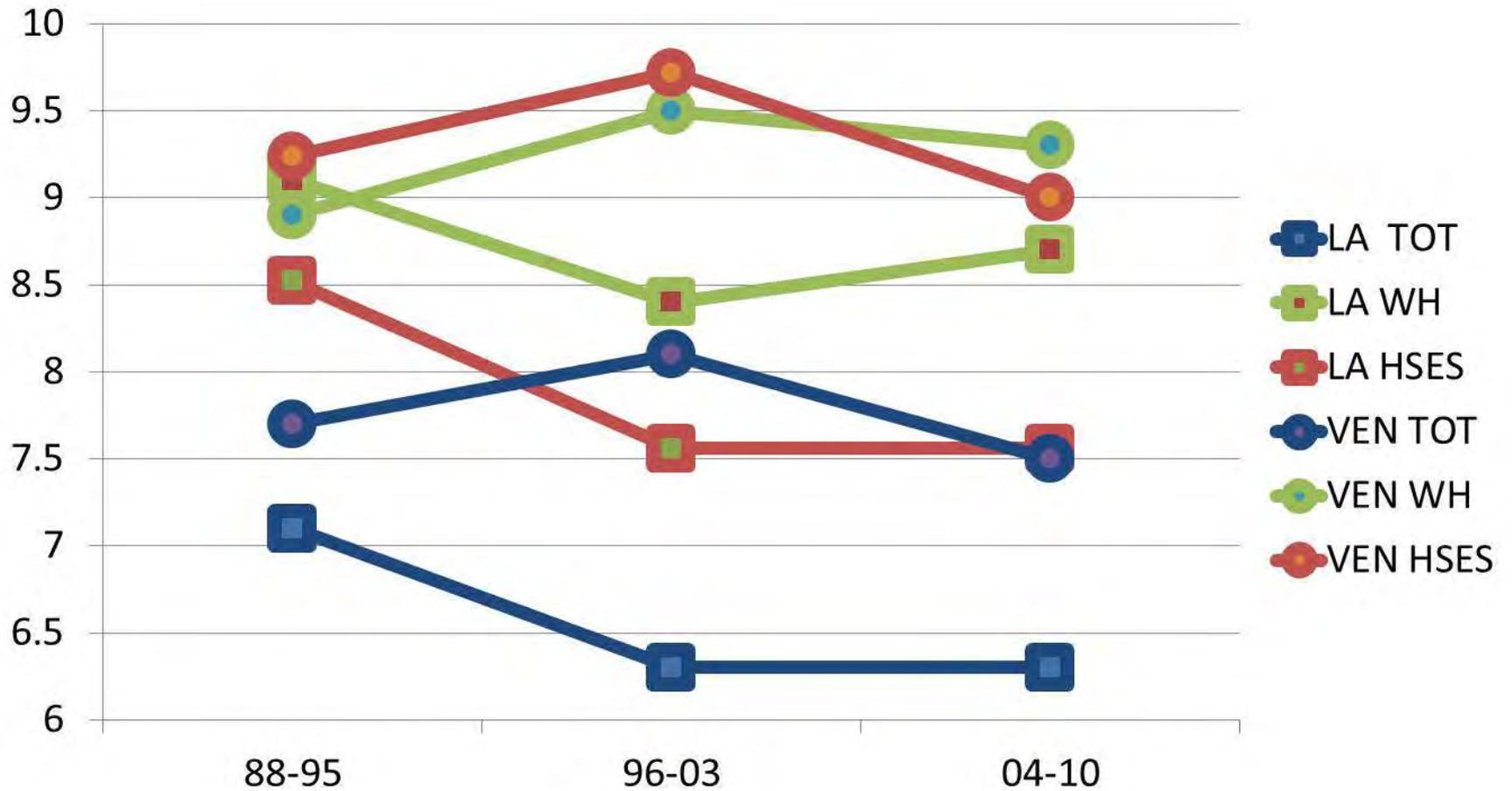
Some clustering of risk is expected

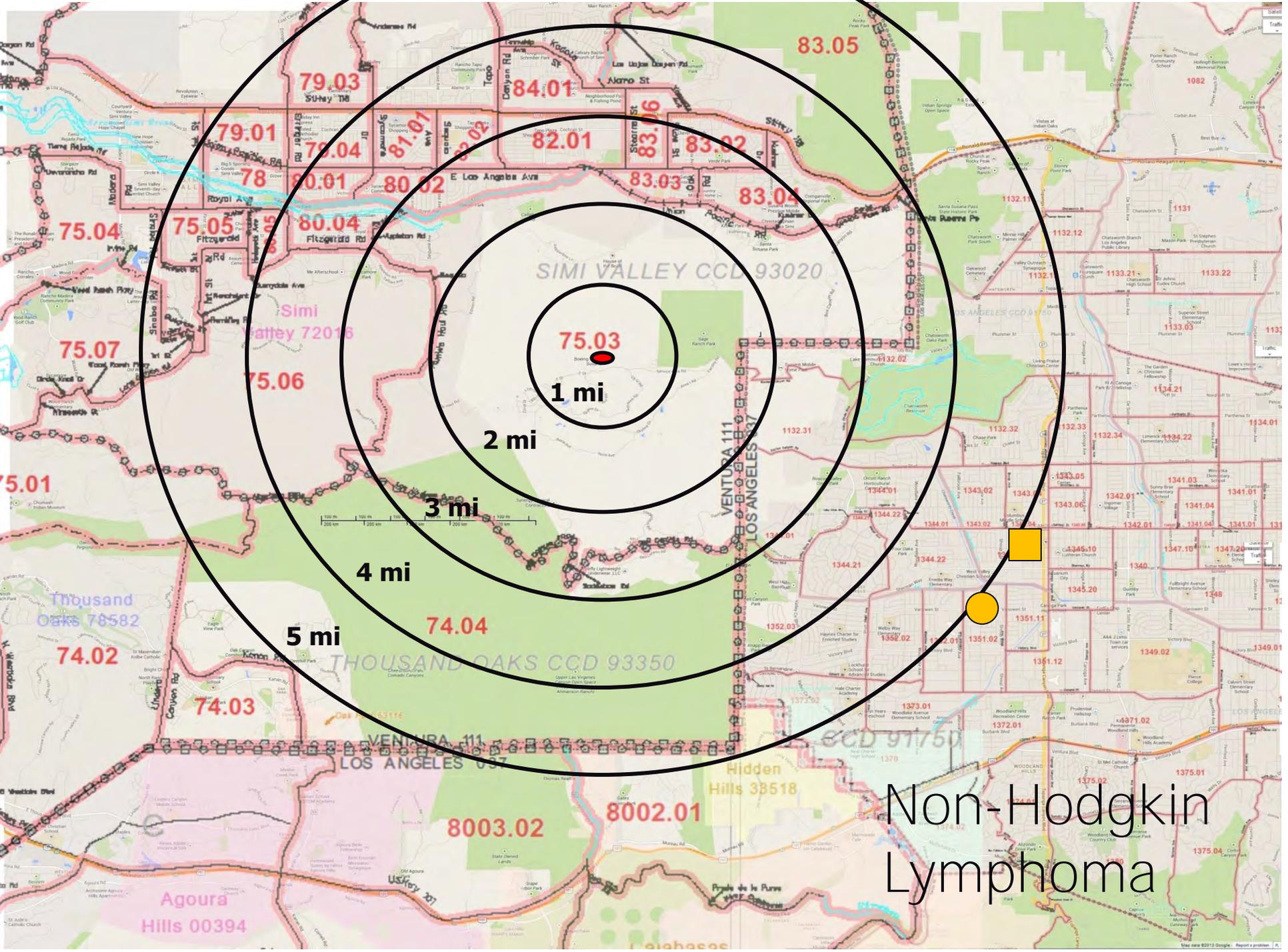
- Breast and Malignant Melanoma
 - Known strong risk of race and high income/education
- Prostate and Thyroid cancers
 - Known to often not progress; commonly found by asymptomatic screening (PSA, ultrasound) with high access to care (high income/education)
- Lung and Colorectal cancers
 - Strongly determined by habitual factors:
 - Smoking for lung, diet/physical inactivity for colorectal



Brain
Cancer

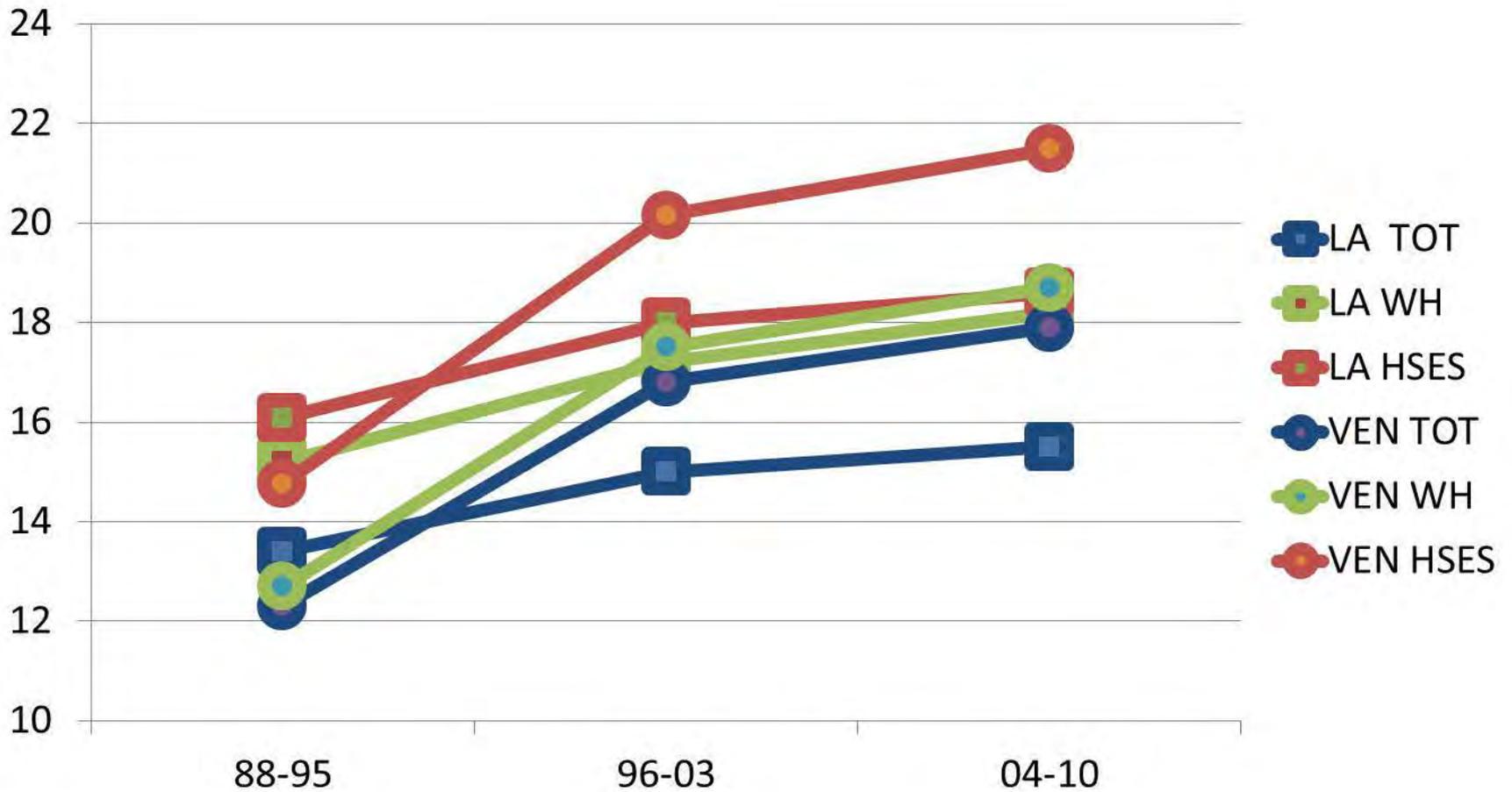
MALE BRAIN

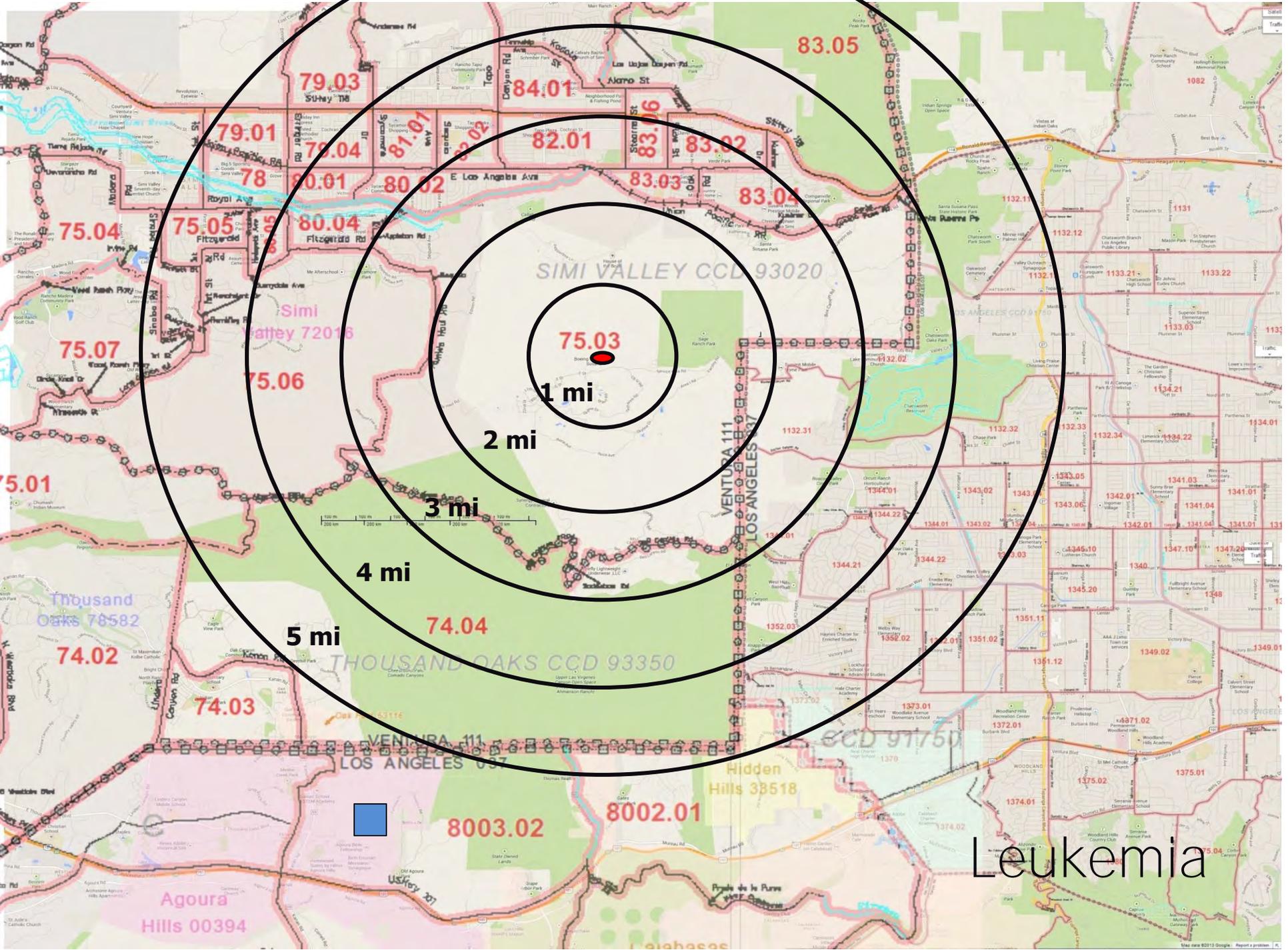




Non-Hodgkin
Lymphoma

FEMALE NON-HODGKIN'S LYMPHOMA





75.03

1 mi

2 mi

3 mi

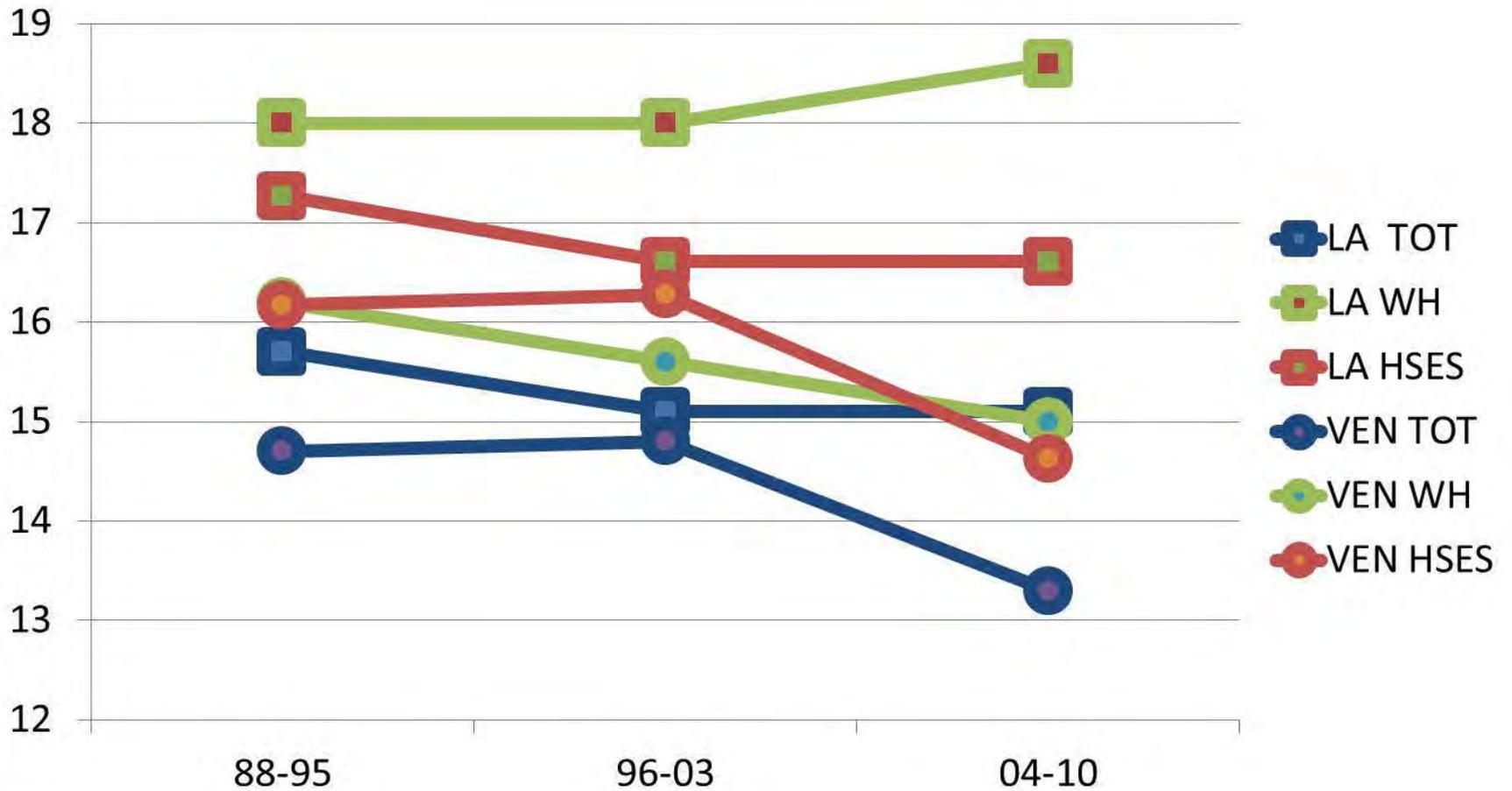
4 mi

5 mi

Leukemia

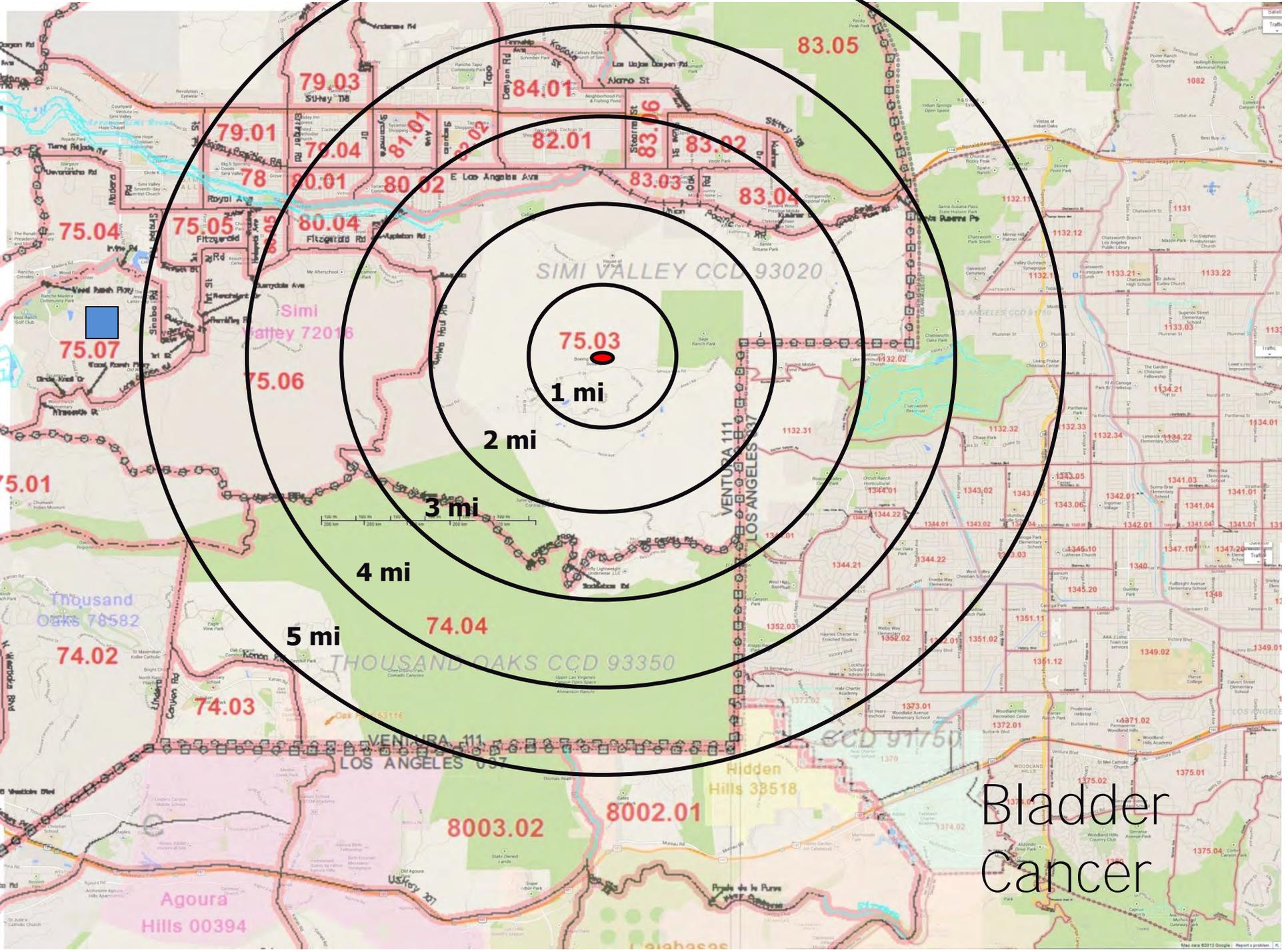


MALE LEUKEMIA



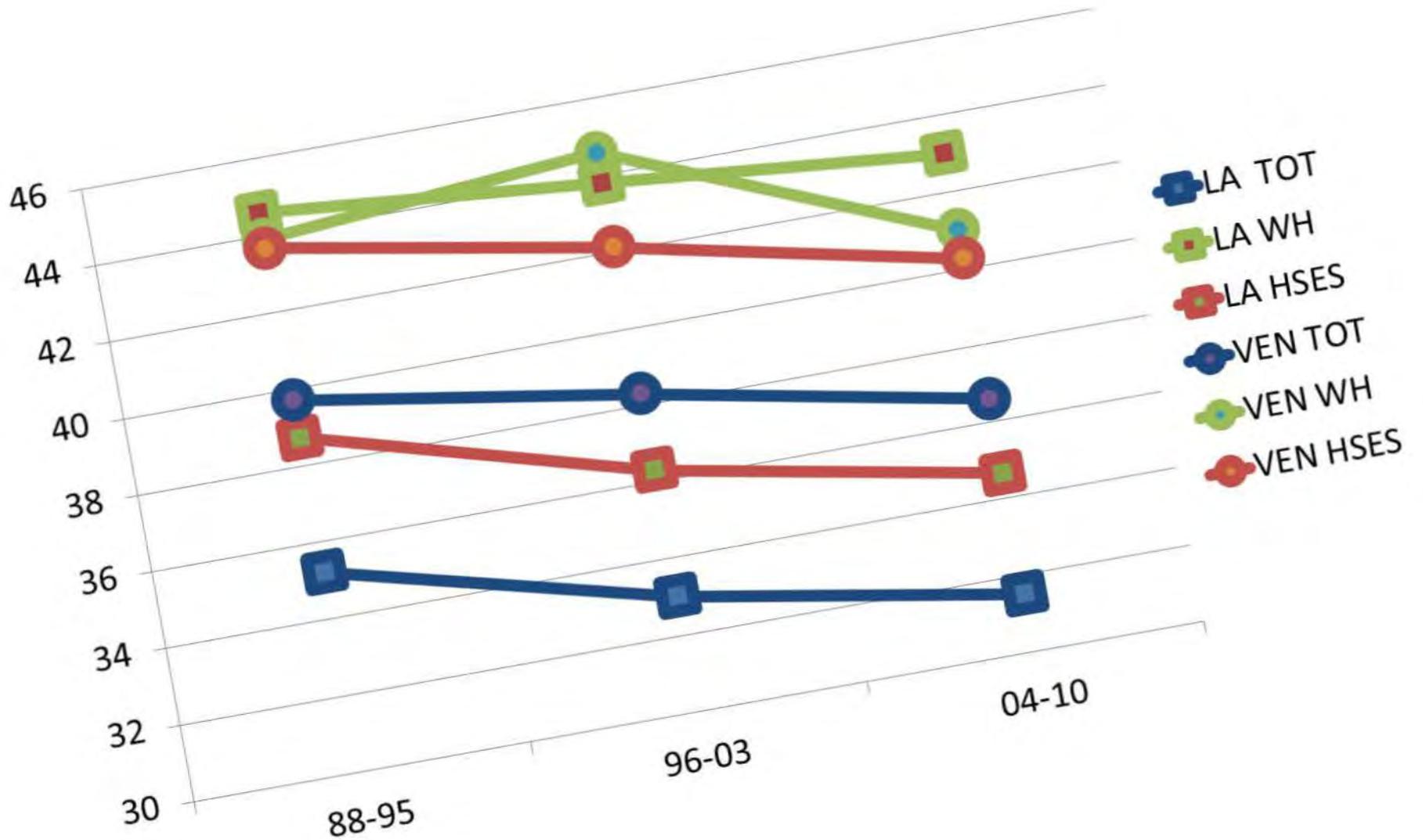
These cancer rubrics oversimplify causal heterogeneity

- Brain: several excess cases are benign, slow-growing tumors with different causes
- Non-Hodgkin lymphoma excess includes at least five different malignancies known to have different causes
- Leukemia excess also is made up of three common and several uncommon varieties
- In each of these, the “high-risk” tracts identified were no more numerous than was expected by chance, and included cases of diverse , most having no known environmental causation



Bladder
Cancer

MALE BLADDER



Excess of bladder cancer in one tract in 2004-2010

- Extreme finding: RR >4
- Case tumors had the same common histology
- Most residences scattered, but several are within one mile
- The most prevalent cause of bladder cancer is smoking
- Environmental causes are industrial, waterborne arsenic
- Diagnoses were not clustered in time
- The tract is more than 5 miles to the west of SSFL
- Residential community: no known exposure, specifically no high arsenic in tap water, no local industry, no increase in kidney cancer (another arsenic outcome)
- 66% of the cases were >75 at diagnosis, and all but one of those was over 85.
- Census may have undercounted seniors

| Neoplasm | “Significant” tract-periods | Observed/Expected number per tract | Interpretation | Estimated number of CA tracts with that many or more cases |
|----------|-----------------------------|------------------------------------|--|--|
| NHL | 2 (3 exp. by chance) | 8/2.5 12/5.3 | No clustering of high-risk tracts No evidence of proximity to SSFL Mixture of cell types, no trend | 50-100 |
| Brain | 3 (3 exp. by chance) | 6/0.9 8/2.3 11/3.5 | No clustering of high-risk tracts No consistent proximity to SSFL Mixture of cell types, no trend | 10-50 |
| Leukemia | 1 (3 exp. by chance) | 7/1.3 | No clustering of high risk tracts No evidence of proximity to SSFL Mixture of cell types, no trend | 10 |
| Bladder | 1 (3 exp. by chance) | 11/2.5 | No clustering of high risk tracts No evidence of proximity to SSFL No evidence of carcinogens Preponderance of elderly cases ? Smoking, census error | 1-2 |

Conclusion

- It is not possible to completely rule out any offsite carcinogenic effects from SSFL
- No evidence of measureable offsite cancer causation occurring as a result of emissions from the SSFL was found.
- Further, no evidence of any cancer causation by any environmental factor was found.

Thomas M. Mack, M.D.
USC/Norris Comprehensive Cancer Center
University of Southern California
Department of Preventive Medicine
1441 Eastlake Ave, Mail Stop 44
Los Angeles, California 90033-0800
~~213-764-0445, Fax 764-0141~~

323-865-0445 Fax 323 865-0141

e-mail: tmack@usc.edu



Dear Mrs. Rowe:

March 27, 2018

You have asked me to summarize my presentation to the staff of the Childrens' Hospital of Los Angeles regarding the recent leukemia experience in those regions of Los Angeles County adjacent to Ventura County and less than 5-6 miles from the Santa Susana Field Laboratory (SSFL).

As you know, SSFL has been in operation since 1948 and covered an area of nearly 3000 acres. During the 70's and 80's it was extensively used for the testing of rocket engines and rocket fuel by North American Aviation, Rocketdyne, NASA, DOE, and Boeing. The activities were not fully disclosed to the public, and many have presumed, with some reason that the materials used were probably not meticulously cleaned up, and the companies have not been especially forthcoming in the past. These materials included solvents, such as TCE, Hydrazine fuel, heavy metals, perchlorate, PCB's, PAH's, Dioxins, Furans, and nuclear research produced radionuclides such as Cesium 137 and Strontium 90. Many of these compounds are possible or probable carcinogens, and a study of Rocketdyne conducted by investigators from UCLA concluded that some lung cancers among the workers were probably due to radiation exposure on the job. For these legitimate reasons, there have been concerns among the residents of nearby areas since at least the 1970's that they and their children have been endangered by proximity to the SSFL location. However, attempts by the California Toxics agency and the EPA to identify dangerous levels of carcinogens and ionizing radiation in areas near to the site have not documented dangerous levels in any recent surveys. According to the EPA after their radiological survey results, they stated in their May 2012 newsletter: "Site access is restricted and therefore, the public is not exposed to this contamination." However, most would agree that in this case the empirical evidence of cancer incidence among nearby residents would be a better guide to the magnitude of the problem. Unfortunately, there is no way to measure levels of cumulative exposure to carcinogens on a personal basis. People move in and move out, unaffected families cannot always be expected to be as cooperative as affected families, and the levels of education and income among nearby residents are quite different from those of all residents of the two Counties. Studies of individuals are quite expensive and require extended periods to complete.

For these reasons, the studies that have been done are not of individuals, but of populations, and have been of the "quick and dirty" kind, in which the cases occurring among blocks of nearby residents have been compared to overall county rates. Such studies have their own problems. In addition to the above, counts of residents needed to estimate rates of incidence are only made every decade, and with particular reference to children, the inter-census extrapolations cannot be assumed to be accurate. None of the four studies conducted in the past were able to find evidence of a link between SSFL and "offsite" cancer occurrence, but these studies tended to make arbitrary assumptions about the uniformity of exposure to large groups, and paid insufficient attention to the differences between local residents and the population at

large. For these reasons I was requested by the State agencies to analyze the adult cancer occurrence by neighborhood (census tract), calendar period, gender and anatomic site. I examined 13 kinds of cancer in each gender in 130 different census tract-periods from 1988 to 2009 and found no evidence of a relationship between “offsite” residence and cancer incidence.

None of these studies considered childhood cases. I was recently asked by the State, by CHLA, and by some groups of local residents (understandably, residents are not in perfect agreement about the best course of action) to re-examine offsite risk, this time with attention to childhood (0-14) cancer and leukemia in particular. My colleagues and I have done so, again looking at each census tract within an area slightly greater than 5 miles from SSFL. At that farthest distance, carcinogens from on site would be unlikely to be present in doses that could produce extra cases, much less clustered cases. We looked at four periods, including the more recent one of 2010-2015.

You have asked that I describe our findings with respect to that period and in particular to the “offsite” census tracts in Los Angeles County, including West Hills. Overall we found no trend over time in the frequency of childhood cancer or of leukemia (ALL and AML), no consistent excess by census tract. Those census tracts within 3 or 5 miles of the site in either County saw no more cases than those more distant. No more than two cases of leukemia occurred in any one census tract, and even that number occurred only twice among the 60 tracts with such cases. As indicated above, calculation of local incidence is not feasible on account of the unreliability of the population counts, so we looked at the percent of all cancers diagnosed represented by childhood cancer (since the large number of adult cancer types has ensured that the total number closely reflects the population in California), and in each period these were consistent with the overall percentage.

With respect to leukemia occurring in areas of Los Angeles County adjacent to the Ventura County border and therefore relatively near SSFL, we counted cases in 15 census tracts and found 5 cases of acute leukemia. Based on an estimate of the combined population of those tracts, and the five years at risk, one should have expected two cases, so there were more observed than expected. However, before we conclude that the 3 unexpected cases were a result of exposure to the relatively distant (in dosage terms) SSFL site, we must calculate the probability that such an outcome would result by chance. That takes the form of estimating how many of the many groups of 15 tract combinations in either County would be likely to see this many or more cases of childhood cancer by chance. There are roughly 3000 census tracts in the two Counties, and even if they were divided such that no census tract was in more than one 15-tract set, there would be 200 sets. Using the Poisson statistical method of estimation, we calculated that 5.2% of all the units under surveillance would see 5 or more cases, given as indicated that the expected number was 2. Thus even under the unrealistic assumption that if no tract were to be in more than one 15-tract set, there would be about 10 such sets with 5 or more cases during 2010-2015 in the two Counties, and the true number appearing by chance would be substantially larger. We conclude therefore that the extra 3 cases can be explained reasonably on the basis of chance alone and that we have been unable to find evidence of local childhood cancers caused by SSFL. As you well know, we have to carefully say that we cannot rule out such causation, and can only say that we have been unable to find support for it.

I hope this explanation is satisfactory. If you have further questions, don't hesitate to ask.

Thomas Mack MD, MPH.

Dear Dr.x

You have asked me to summarize the recent leukemia experience in those regions of Los Angeles County adjacent to Ventura County and less than 5-6 miles from the Santa Susana Field Laboratory (SSFL).

As you know, SSFL has been in operation since 1948 and covered an area of nearly 3000 acres. During the 70's and 80's it was extensively used for the testing of rocket engines and rocket fuel by North American Aviation, Rocketdyne, NASA, DOE, and Boeing., The activities were not fully disclosed to the public, and many have presumed, with some reason that the materials used were probably not meticulously cleaned up, and the companies have not been especially forthcoming in the past. These materials included solvents, such as TCE, Hydrazine fuel, heavy metals, perchlorate, PCB's, PAH's, Dioxins, Furans, and Radionuclides such as Cesium 137 and Strontium 90. Many of these compounds are possible or probable carcinogens, and a study of Rocketdyne conducted by investigators from UCLA concluded that some lung cancers among the workers were probably due to radiation exposure on the job. At least part of the location has been designated a Superfund site.

For these legitimate reasons, there have been concerns among the residents of nearby areas since at least 1970 that they and their children have been endangered by proximity to the SSFL location. However, attempts by the California Toxics agency and the EPA to identify dangerous levels of carcinogens, and ionizing radiation in areas near to the site have never documented dangerous levels, and even those levels found on the site itself have not been excessive.

However, most would agree that in this case the empirical evidence of cancer incidence among nearby residents would be a better guide to the magnitude of the problem. Unfortunately, there is no way to measure levels of cumulative exposure to carcinogens on a personal basis. People move in and move out, unaffected families cannot always be expected to be as cooperative as affected families, and the levels of education and income among nearby residents are quite different from those of all residents of the two Counties. Studies of individuals are quite expensive and require extended periods to complete.

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Counties, and the true number appearing be chance would be substantially larger. We conclude therefore that the extra 3 cases can be explained reasonably on the basis of chance alone and that we have been unable to find evidence of local childhood cancers caused by SSFL. As you well know, we have to carefully say that we cannot rule out such causation, and can only say that we have been unable to find support for it.

I hope that this meets your need, and naturally I will be happy to answer any further questions.



Richard Williams <richard.williams@lacity.org>

Fwd: LOS ANGELES CITY COUNCIL FILE # 19-0145 and Council File: 18-0874 - Santa Susana Field Laboratory

Christine Rowe <crwhnc@gmail.com>
To: Andrew.Choi@lacity.org
Cc: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 9:35 PM

Mr. Choi,
Could you please send this to the Council File 19 - 0195 for tomorrow's Budget Committee meeting.

Thank you.
Respectfully,
Christine L. Rowe

From: **Christine Rowe** <crwhnc@gmail.com>
Date: Tue, Feb 26, 2019 at 2:36 AM
Subject: LOS ANGELES CITY COUNCIL FILE # 19-0145 and Council File: 18-0874 - Santa Susana Field Laboratory
To: <councilmember.smith@lacity.org>, Councilmember Bob Blumenfield <Councilmember.Blumenfield@lacity.org>, Councilmember Paul Krekorian <Councilmember.Krekorian@lacity.org>, Mayor Eric Garcetti <info@lamayor.org>, Mike Feuer <Mike.Feuer@lacity.org>
Cc: Herb Wesson (councilmember.wesson@lacity.org) <councilmember.wesson@lacity.org>, David Ryu (david.ryu@lacity.org) <david.ryu@lacity.org>, Paul Koretz <Paul.Koretz@lacity.org>, Nury Martinez (nury.martinez@lacity.org) <nury.martinez@lacity.org>, <Monica.Rodriguez@lacity.org>, Marqueece Harris-Dawson (Councilmember.Harris-Dawson@lacity.org) <Councilmember.Harris-Dawson@lacity.org>, Curren Price (councilmember.price@lacity.org) <councilmember.price@lacity.org>, Mike Bonin (mike.bonin@lacity.org) <mike.bonin@lacity.org>, Mitch O'Farrell (councilmember.ofarrell@lacity.org) <councilmember.ofarrell@lacity.org>, Jose Huizar (councilmember.huizar@lacity.org) <councilmember.huizar@lacity.org>, Joe Buscaino (Councilmember.Buscaino@lacity.org) <Councilmember.Buscaino@lacity.org>, Gil Cedillo, Sr. <councilmember.cedillo@lacity.org>, Controller Galperin <controller.galperin@lacity.org>

Council File amended 2/13/2019
http://clkrep.lacity.org/onlinedocs/2019/19-0145_mot_2-13-19.pdf
http://clkrep.lacity.org/onlinedocs/2018/18-0874_CAF_02-08-2019.pdf

"We acknowledge the technical contributions to this analysis provided by the Program on Environmental and Nuclear Policy at the University of California, Santa Cruz."

page 46 - http://clkrep.lacity.org/onlinedocs/2018/18-0874_pc_02-12-19.pdf

Dear Councilmember Smith, Councilmember Blumenfield, Councilmember Krekorian, Mayor Garcetti, and City Attorney Mike Feuer,

I have not been able to read the complete documents submitted by Ms. Duffield to these Council files. I thank you for sending this to the Budget Committee before taking further action. But it really should also go to your Health, Education, et al Committee and your Energy, Climate Change, and Environmental Justice Committees.

Rather than file a lawsuit, the City of Los Angeles should be seeking out independent experts (PhD's) to review the Department of Energy's Final Environmental Impact Statement, DTSC's Draft Environmental Impact Report - which your City Engineer commented on, and NASA Santa Susana's Record of Decision as well as the NASA Office of Inspector General's report. It appears based upon this quote in blue that the City did not independently review the Draft Environmental Impact Statement by the Department of Energy, but rather, the City Engineer just signed onto the letter by Dan Hirsch of Committee to Bridge the Gap, and also signed by an Attorney at the NRDC?

City of Los Angeles Mail - RESENDING - ...p - File 18-0874 an...30/88


April 5, 2017

Ms. Stephe Jennings
 NEPA Document Manager
 SSFL Area IV EIS
 U.S. Department of Energy
 4100 Guardian Street, Suite 160
 Simi Valley, CA 93063

Re: *Comments on Draft Environmental Impact Statement for
 Remediation of Area IV and the Northern Buffer Zone of the
 Santa Susana Field Laboratory*

Dear Ms. Jennings:

Let us start with the phrase that I pasted at the top of this page in blue:

"We acknowledge the technical contributions to this analysis provided by the Program on Environmental and Nuclear Policy at the University of California, Santa Cruz."

To the best of my knowledge, this program does not exist at UC Santa Cruz at this time. (I just searched for it on the UC Santa Cruz website and with a GOOGLE search).

I believe you should investigate that program, and find out what technical expertise people in that program had in order to read and comment on these highly technical documents. Mr. Daniel Hirsch who signed that letter has an A.B. degree from Harvard in "Special Studies - Modern Social Theory". To the best of my understanding, he has no additional advanced "hard" science degrees. I am happy to provide the documentation for this to you at your request. You should check this out with Mr. Hirsch for clarification.

Mr. Hirsch has been a part time (hourly) lecturer at UC Santa Cruz through the Sociology Department.

UC Salaries are searchable: <https://ucannualwage.ucop.edu/wage/>

"2016 Santa Cruz DANIEL HIRSCH LECT-AY-CONTINUING 18,893.00 18,678.00 0.00 215.00"

This is not the salary of a UC Professor.

Mr. Hirsch (as many people believe) was never a "Professor" at UCLA despite the fact that is posted on videos produced by PSR- LA et al. I have confirmed this with UCLA, and I have the documentation for that should you request it.

You need independent scientists from USC, CAL TECH, and UCLA (as long as they are not affiliated with Mr. Hirsch). If they are affiliated with Mr. Hirsch's earlier publications, they are not independent. I recommend contacting Dr. Mark Gold who is an Assistant Chancellor at UCLA, who is familiar with the Santa Susana Field Laboratory, and who would be able to find environmental experts to review the data in these highly technical documents.

<https://www.ioes.ucla.edu/person/mark-gold/>

In the DOE's Final Environmental Impact Statement for example, there are over 1700 pages of comments that were submitted and commented upon. These included comments from Neighborhood Councils, local environmental groups, and residents like me - a West Hills' resident of 41 years. I am one of the impacted residents that this cleanup will impact - I live within the five mile periphery of the SSFL site.

On December 3, 2018, I sent each of you this email: "Public Case Access System - Case: Physicians for Social Responsibility-Los Angeles v... - Document Filed Notification" with I believe 11 attachments. I do not know if anyone in the City of Los Angeles has read these documents, yet you are still talking about litigation.

<https://services.saccourt.ca.gov/PublicCaseAccess/Civil/SearchByCaseNumber>

That case system is for:

"Case Number: 2013-80001589

Case Title: Physicians for Social Responsibility-Los Angeles v...

ROA Entry 272 : RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF"

PSR- LA et al have now filed a Notice of Appeal which I am attaching.

Why are you planning legal action against the DOE and / or DTSC when these non-profits have been holding up the site cleanup in a CEQA case for more than 5 1/2 years? Don't you believe that others will also litigate the cleanup of this site? This site has been held up in litigation since you first filed suit against the DOE in 2004.

You also need to bring in Epidemiologists and other experts who can talk about the risks from the SSFL cleanup today v the potential risks to our community from the cleanup that you propose (the 2010 Administrative Order on Consent). I did reach out to UCLA Epidemiologists years ago, but I was referred to Dr. Hal Morgenstern formerly of UCLA, later at the University of Michigan, now retired.

And by the way, you should also consider the "Environmental Justice" impacts of your actions should they cleanup the SSFL site according to the "2010 Administrative Order on Consent" or AOC.

I will send you a letter with the most recent Epidemiological Studies of my community on a separate letter.

Respectfully,

Christine L. Rowe

B.S. in Health Education - CSUN

41 year resident of West Hills

 **1777592 PSR - LA et al v DTSC et al Notice of Appeal 01242019.pdf**
1375K

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 234004 NAME: Beverly Grossman Palmer FIRM NAME: Strumwasser & Woocher LLP STREET ADDRESS: 10940 Wilshire Boulevard, Suite 2000 CITY: Los Angeles STATE: CA ZIP CODE: 90024 TELEPHONE NO.: (310) 576-1233 FAX NO.: (310) 319-0156 E-MAIL ADDRESS: bpalmer@strumwooch.com ATTORNEY FOR (name): Petitioners Physicians for Social Responsibility-Los Angeles, et al. | FOR COURT USE ONLY <div style="border: 2px solid black; padding: 5px; margin: 10px auto; width: 80%;"> FILED/ENDORSED <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> JAN 24 2019 </div> By: <u> K. Michaud </u> Deputy Clerk </div> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 9th Street MAILING ADDRESS: 720 9th Street CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse | |
| PLAINTIFF/PETITIONER: Physicians for Social Responsibility-Los Angeles, et al. DEFENDANT/RESPONDENT: Department of Toxic Substances Control, et al. | |
| <input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE) | |
| CASE NUMBER: 34-2013-80001589 | |

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Physicians for Social Responsibility-Los Angeles, et al. appeals from the following judgment or order in this case, which was entered on (date): January 2, 2019

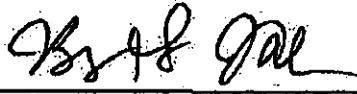
- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
- An order or judgment under Code of Civil Procedure, § 904.1(a)(3)-(13)
- Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

Date: 1/24/2019

Beverly Grossman Palmer
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

Filed By Fax

FILED / ENDORSED
JAN - 2 2019
By D. Ward, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

PHYSICIANS FOR SOCIAL
RESPONSIBILITY - LOS ANGELES, a
non-profit corporation; SOUTHERN
CALIFORNIA FEDERATION OF
SCIENTISTS, a non-profit corporation;
COMMITTEE TO BRIDGE THE GAP, a
non-profit corporation; and CONSUMER
WATCHDOG, a non-profit corporation,

Petitioners,

v.

DEPARTMENT OF TOXIC
SUBSTANCES CONTROL;
DEPARTMENT OF PUBLIC HEALTH;
and DOES 1 to 100,

Respondents,

THE BOEING COMPANY, a corporation;
ROES 1 TO 100,

Real Parties in Interest,

Case No. 34-2013-80001589

The Hon. Richard K. Sueyoshi

~~PROPOSED~~ JUDGMENT

Action Filed: August 6, 2013

Trial Date: November 9, 2018



1 The First Amended Verified Petition for Writ of Mandate and Complaint for Injunctive
2 and Declaratory Relief (the "First Amended Petition and Complaint") filed by Petitioners
3 Physicians for Social Responsibility – Los Angeles, Southern California Federation of Scientists,
4 Committee to Bridge the Gap, and Consumer Watchdog (collectively "Petitioners") came on for
5 oral argument on November 9, 2018 in Department 28 of the Sacramento County Superior Court.
6 After receiving and reviewing the parties' briefs, the pleadings and evidence herein, and the
7 arguments of counsel, the Court issued its Ruling on Submitted Matter re: Petition for Writ of
8 Mandate and Complaint for Injunctive and Declaratory Relief on November 19, 2018 in which it
9 adjudicated all of the claims brought in the First Amended Petition and Complaint as follows:

10 1. With respect to Respondent Department of Toxic Substances Control ("DTSC"),
11 judgment is entered in favor of DTSC and against Petitioners on the First, Third, Fourth and Fifth
12 Causes of Action in Petitioners' First Amended Petition and Complaint.

13 2. With respect to Respondent Department of Public Health ("DPH"), judgment is
14 entered in favor of DPH and against Petitioners on the First, Second, Third, Fourth and Fifth
15 Causes of Action in Petitioners' First Amended Petition and Complaint.

16 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED AS FOLLOWS:**

17 1. No writs of mandate shall be issued against Respondents DTSC and DPH on
18 Petitioners' First Amended Petition and Complaint and the causes of action therein.

19 2. The First Amended Petition and Complaint is hereby DISMISSED.

20 3. The preliminary injunction against Respondent DTSC entered by the Court on
21 December 11, 2013, via the Honorable Alan Sumner, shall fully dissolve on the sixtieth day after
22 the date on which this judgment is entered by the Court.

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1 4. Respondents DTSC and DPH and Real Party in Interest The Boeing Company shall
2 be awarded their costs of suit from Petitioners in amounts to be determined based on memoranda
3 and/or motions to be filed by the parties pursuant to the Code of Civil Procedure and the
4 California Rules of Court after entry of judgment.

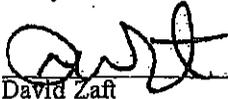
5 Dated: JAN - 2 2019

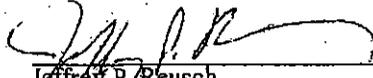


RICHARD K. SUEYOSHI

The Honorable Richard K. Sueyoshi
Judge of the Superior Court

6 Submitted by:

7
8 By: 
9 David Zaft
10 Attorney for Respondent
11 Department of Toxic Substances Control

12 By: 
13 Jeffrey P. Reusch
14 Attorney for Respondent
15 Department of Public Health

16 Approved as conforming to the Court's order:

17 By: _____
18 Beverly Grossman Palmer
19 Attorney for Petitioners Physicians
20 for Social Responsibility - Los
21 Angeles, Southern California
22 Federation of Scientists, Committee
23 to Bridge the Gap, and Consumer
24 Watchdog

25 By: _____
26 Gordon E. Hart
27 Attorney for Real Party in Interest
28 The Boeing Company

1 4. Respondents DTSC and DPH and Real Party in Interest The Boeing Company shall
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6 Dated: _____

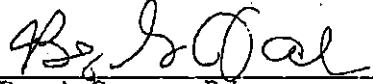
_____ The Honorable Richard K. Sueyoshi
Judge of the Superior Court

7 Submitted by:

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11 Attorney for Respondent
12 Department of Toxic Substances Control

13 By: _____
14 Jeffrey P. Reusch
15 Attorney for Respondent
16 Department of Public Health

17 Approved as conforming to the Court's order:

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20 Attorney for Petitioners Physicians
21 for Social Responsibility - Los
22 Angeles, Southern California
23 Federation of Scientists, Committee
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25 Watchdog

26 By: _____
27 Gordon E. Hart
28 Attorney for Real Party in Interest
The Boeing Company

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5
6 Dated: _____

The Honorable Richard K. Sueyoshi
Judge of the Superior Court

7 Submitted by: _____

8
9 By: _____

David Zaft
Attorney for Respondent
Department of Toxic Substances Control

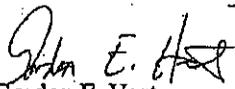
10
11
12 By: _____

Jeffrey P. Reusch
Attorney for Respondent
Department of Public Health

13
14
15 Approved as conforming to the Court's order:

16 By: _____

Beverly Grossman Palmer
Attorney for Petitioners Physicians
for Social Responsibility - Los
Angeles, Southern California
Federation of Scientists, Committee
to Bridge the Gap, and Consumer
Watchdog

17
18
19
20
21
22 By: 

Gordon E. Hart
Attorney for Real Party in Interest
The Boeing Company

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **PHYSICIANS FOR SOCIAL RESPONSIBILITY- LOS ANGELES, a non-profit corporation, et al., v. DEPARTMENT OF TOXIC SUBSTANCES CONTROL, et al.,**

No.: **34-2013-80001589**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On December 20, 2018, I served the attached **[PROPOSED] JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Michael J. Strumwasser, Esq.
Beverly Palmer, Esq.
Strumwasser & Woocher LLP
10940 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90024-3949
Attorneys for Petitioner

Harvey Rosenfield
Pam Pressley
Consumer Watchdog
6330 San Vicente Boulevard, Suite 250
Los Angeles, CA 90048
Attorneys for Petitioner

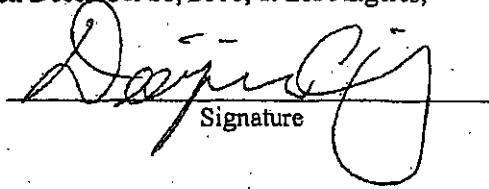
Peter C. Meier, Esq.
Gordon E. Hart, Esq.
Paul Hastings LLP
101 California Street
San Francisco, CA 94111
Real Party in Interest
Attorneys for Real Party in Interest

I also served the attached document via the Attorney General's inter-office mail, addressed as follows:

Jeffrey Reusch
Deputy Attorney General
Office of the Attorney General
1300 I Street, Suite 124
P.O. Box 944255
Sacramento, CA 95814
Attorneys for Respondent
Department of Public Health

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2018, at Los Angeles, California.

Dominique Colding
Declarant


Signature

Docket No.: LA2013950131
Document No.: 63068268

Filed By Fax

1 XAVIER BECERRA
 Attorney General of California
 2 SARAH E. MORRISON
 Supervising Deputy Attorney General
 3 KAVITA P. LESSER (SBN 233655)
 Deputy Attorney General
 4 DAVID ZAFT (SBN 237365)
 Deputy Attorney General
 5 300 South Spring Street, Suite 1702
 Los Angeles, CA 90013
 6 Telephone: (213) 269-6605/6372
 Fax: (213) 897-2802
 7 E-mail: David.Zaft@doj.ca.gov
 Kavita.Lesser@doj.ca.gov
 8 *Attorneys for Respondent*
Department of Toxic Substances Control

FILED / FORWARDED
 JAN 2 2019
 By D. Ward, Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF SACRAMENTO

13 **PHYSICIANS FOR SOCIAL**
 14 **RESPONSIBILITY - LOS ANGELES, a**
 15 **non-profit corporation; SOUTHERN**
 16 **CALIFORNIA FEDERATION OF**
 17 **SCIENTISTS, a non-profit corporation;**
COMMITTEE TO BRIDGE THE GAP, a
non-profit corporation; and CONSUMER
WATCHDOG, a non-profit corporation,

Petitioners,

v.

20 **DEPARTMENT OF TOXIC**
 21 **SUBSTANCES CONTROL;**
 22 **DEPARTMENT OF PUBLIC HEALTH;**
and DOES 1 to 100,

Respondents,

24 **THE BOEING COMPANY, a corporation;**
 25 **ROES 1 TO 100,**

Real Parties in Interest,

Case No. 34-2013-80001589

The Hon. Richard K. Sueyoshi

[PROPOSED] ORDER DENYING
PETITIONERS' FIRST AMENDED
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

Action Filed: August 6, 2013

Trial Date: November 9, 2018

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The First Amended Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief (the "First Amended Petition and Complaint") filed by Petitioners Physicians for Social Responsibility -- Los Angeles, Southern California Federation of Scientists, Committee to Bridge the Gap, and Consumer Watchdog (collectively "Petitioners") came on for oral argument on November 9, 2018 in Department 28 of the Sacramento County Superior Court.

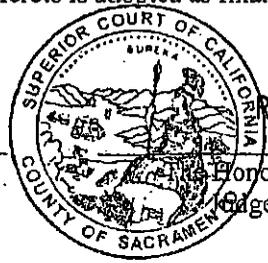
Beverly Grossman Palmer and Andrea Sheridan Ordin of Strumwasser & Woocher LLP and Pamela Pressley of Consumer Watchdog appeared on behalf of Petitioners. Deputy Attorney Generals David Zaft and Kavita Lesser appeared on behalf of Respondent Department of Toxic Substances Control ("DTSC"). Deputy Attorney General Jeffrey P. Reusch appeared on behalf of Respondent Department of Public Health ("DPH"). Gordon E. Hart of Paul Hastings LLP appeared on behalf of Real Party in Interest The Boeing Company.

The Court having considered the parties' briefs, the pleadings herein, and arguments made by counsel during oral argument, and good cause appearing, hereby ORDERS as follows:

1. The First Amended Petition and Complaint, and each cause of action therein, are DENIED in their entirety.

2. This Court's ruling attached hereto is adopted as final and incorporated fully herein.

Dated: JAN - 2 2019

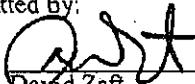


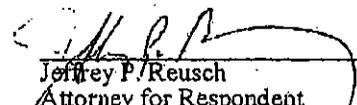
RICHARD K. SUEYOSHI

Honorable Richard K. Sueyoshi
Judge of the Superior Court

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Submitted by:

By: 
David Zaft
Attorney for Respondent
Department of Toxic Substances Control

By: 
Jeffrey P. Reusch
Attorney for Respondent
Department of Public Health

Approved as conforming to the Court's order:

By: _____
Beverly Grossman Palmer
Attorney for Petitioners Physicians
for Social Responsibility - Los
Angeles, Southern California
Federation of Scientists, Committee
to Bridge the Gap, and Consumer
Watchdog

By: _____
Gordon E. Hart
Attorney for Real Party in Interest
The Boeing Company

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Submitted by:

By: David Zaft
Attorney for Respondent
Department of Toxic Substances Control

By: Jeffrey P. Reusch
Attorney for Respondent
Department of Public Health

Approved as conforming to the Court's order:

By: Beverly Grossman Palmer
Attorney for Petitioners Physicians
for Social Responsibility - Los
Angeles, Southern California
Federation of Scientists, Committee
to Bridge the Gap, and Consumer
Watchdog

By: Gordon E. Hart
Attorney for Real Party in Interest
The Boeing Company

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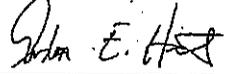
Submitted by:

By: David Zaft
Attorney for Respondent
Department of Toxic Substances Control

By: Jeffrey P. Reusch
Attorney for Respondent
Department of Public Health

Approved as conforming to the Court's order:

By: Beverly Grossman Palmer
Attorney for Petitioners Physicians
for Social Responsibility - Los Angeles, Southern California
Federation of Scientists, Committee
to Bridge the Gap, and Consumer
Watchdog

By: 
Gordon E. Hart
Attorney for Real Party in Interest
The Boeing Company

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

| | | | |
|--|---|---|-------------------|
| DATE/TIME JUDGE | NOVEMBER 19, 2018 HON. RICHARD K. SUEYOSHI | DEPT. NO CLERK | 28 E. GONZALEZ |
| <p>PHYSICIANS FOR SOCIAL RESPONSIBILITY – LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non-profit corporation,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100,</p> <p style="text-align: center;">Respondents.</p> <p>THE BOEING COMPANY, a corporation; ROES 1 to 100,</p> <p style="text-align: center;">Real Party in Interest.</p> | | <p>Case No.: 34-2013-80001589</p> | |
| Nature of Proceedings: | | <p>RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF</p> | |

The petition for writ of mandate and complaint for injunctive and declaratory relief came before the Court for oral argument on November 9, 2018. Prior to the hearing, the Court issued an order to appear, with questions it wished the parties to discuss as part of their oral presentations. Upon hearing oral argument, the Court took the matter under submission. Having considered the briefs and arguments pertaining to each motion, the Court now rules as set forth herein.

I. FACTUAL BACKGROUND

The Santa Susana Field Laboratory (hereinafter, "SSFL") is a former research facility situated on approximately 2,850 acres in southeastern Ventura County. (*Boeing Co. v.*

Mavoassughi (9th Cir. 2014) 768 F.3d 832, 834.)¹ Beginning shortly after World War II, the federal government made and tested rockets, nuclear reactors, and various nuclear applications for war and peace at SSFL. (*Id.*) When built, the site was remote from developed communities, however, as of 2014 approximately 150,000 people lived within five miles of the site, and half a million people lived within ten miles. (*Id.*)

All of the nuclear and rocket research at SSFL has ended. (*Id.* at 835.) The federal Department of Energy (hereinafter, "DOE") ended its nuclear research there in the 1980s, and in 1996 decided to close its research center and remove many of its facilities. (*Id.*) The Air Force's and-NASA's rocket research ended in 2006. (*Id.*) Operations at the site now consist of efforts to clean it up. (*Id.*)

There are multiple and substantial environmental impacts at the site. The soil and groundwater is contaminated with solvents, heavy metals, and other toxins. (*Id.* at 835.) Portions of the site are also impacted by radioactive contamination. (*Id.* at 836.)

A 290-acre area of the SSFL is known as Area IV. Historically, ten small nuclear research reactors were operated in Area IV to support the United States space program and for commercial applications. (DTSC 5891.)² This lawsuit concerns the demolition and disposal of the following six structures: Building 4005 (uranium carbide manufacturing facility, slab remaining only: above ground structure demolished in 1996), Building 4009 (OMR/SGR facility), Building 4011 (low bay), Building 4055 (nuclear materials development facility), Building 4093 (also called L-85, a research reactor with remaining slab and west wall, other above-ground structure demolished in 1995), and Building 4100 (fast critical experiment laboratory/advanced epithermal thorium reactor.) (DTSC 7647.)

Respondent Department of Toxic Substances Control (hereinafter, "DTSC") is the lead regulatory agency for the environmental soil and groundwater cleanup activities at SSFL pursuant to the Hazardous Waste Control Law (hereinafter "HWCL") and the Hazardous Substance Account Act (hereinafter, "HSAA"). (Health & Saf. Code §§ 25100 *et seq.*, 25300 *et seq.*)³ These are the state law counterparts to the two federal laws that regulate hazardous wastes and hazardous waste cleanups, the Resource Conservation and Recovery Act (hereinafter, "RCRA"), and the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter, "CERCLA"). (42 U.S.C. §§ 6901 *et seq.*, 9601 *et seq.*)

Respondent Department of Public Health (hereinafter, "DPH") has authority as to radioactive materials that generally falls into three categories pursuant to two laws, the Radiation Control Law (§§ 114960-115273) and the Containment Law (§§ 114705-114835.) The three categories are: 1) radioactive materials licensing; 2) surveillance and control of radioactive materials, and 3) precluding the disposal of a particular category of radioactive material known

¹ Petitioners as well as Respondents cite to this case to provide general factual background concerning the SSFL site.

² The parties have submitted three "records" for the Court's review. The parties refer to these as the "DTSC" record, the "DPH" record, and the "Stipulated Exhibits." The Court will refer to the documents in accordance with these designations. For purposes of the general factual background and history of this matter, the Court will refer primarily to the DTSC record. The Court will refer to the DPH record or the stipulated exhibits when necessary, and when evaluating the specific relevant claims in the "Discussion" section herein.

³ All further statutory references are to the Health and Safety Code unless otherwise so indicated.

as "low level radioactive waste" at any facility not specifically licensed to receive it. SSFL has a DPH license for radioactive materials. (DPH 1.)

As part of ongoing cleanup and remediation efforts, in 2004, Boeing, NASA, and DOE jointly submitted to DTSC an RCRA Facility Investigation Report providing a description of a soil investigation completed at SSFL as well as the sampling data. (See DTSC 1189.) In 2007, DTSC entered into a Consent Order for Corrective Action for SSFL with Boeing, DOE, and NASA (hereinafter, the "2007 Consent Order"). (DTSC 1184-1257; DTSC 1223.) The 2007 Consent Order directs the signatories to prepare and submit, among other things, a plan for remediation of chemically contaminated soils, take certain interim measures including assessing available data, and prepare a Corrective Measures Study. The 2007 Consent Order acknowledges that the implementation of the final remedy for the contaminated soil and groundwater at SSFL is subject to environmental review pursuant to the California Environmental Quality Act (hereinafter, "CEQA"). (DTSC 1206.)

Also in 2007, the California legislature attempted to shift the regulatory authority over radioactive contamination (which authority belonged to the federal government) at SSFL to DTSC by passage of SB 990. (Health & Saf. Code § 25359.20.) In *Boeing v. Movassaghi*, the Ninth Circuit found SB 990 unconstitutional as violating the Supremacy Clause. (*Movassaghi*, 768 F.3d at 840-42.)

In 2010, DOE and DTSC entered into an Administrative Order on Consent (hereinafter, the "2010 AOC"). (DTSC 2101.) This AOC applies to Area IV and the Northern Buffer Zone of SSFL. The purpose of the order is to "define and make more specific DOE's obligations with respect to only the cleanup of soils at the Site." (DTSC 2102.) "Soils" is defined as "saturated and unsaturated soil, sediment, and weather bedrock, debris, structures, and other anthropogenic materials." (DTSC 2105.) However, "[a]ll provisions of the 2007 Order applicable to NASA and Boeing are not affected by the provisions of [the 2010 AOC] in any way." (DTSC 2102.)

Separate from DTSC's cleanup program, over the years Boeing undertook a building decommissioning and demolition program at SSFL. (See DTSC 2069.) Pursuant to California law, "decommission" means "to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license." (Cal. Code Regs., tit. 17, 30100, subd. (c).)

In 2012, Boeing amended its 2010 "Standard Operating Procedures: Boeing Demolition Debris Characterization and Management" (hereinafter, the "2012 SOP"). (DTSC 5898.) The 2010 SOP describes Boeing's efforts to demolish obsolete structures at SSFL. The 2010 SOP provides that it does not "include any soil removal action that might otherwise be considered site remediation." (DTSC 7827.)

The 2012 SOP "describes the process for demolishing non-radiological Boeing-owned buildings at SSFL. As part of that process, Boeing performs pre-demo radiological surveys and prepares a radiation survey and waste certification report..." (*Id.*) The 2012 SOP indicates that it was "approved by" DTSC. It further provides that "Boeing acknowledges the heightened interest in Area IV operations, and has coordinated with DTSC in planning demolition of Boeing-owned

buildings in Area IV. As a result of that coordination, DTSC has requested that the SOP be amended to specifically address application of the SOP to Area IV." (*Id.*) Accordingly, in 2012 and 2013, Boeing demolished the non-radiological structures and disposed of their debris. (DTSC 7809.)

During this time, DTSC entered into a contract with DPH, and an inter-governmental agreement with US EPA, to provide reviews of release survey documents for each of Boeing's six former radiological buildings. (DPH 6269-6276.) The scope of work provides,

DTSC seeks [DPH] expertise on assessing the adequacy and completeness of the previous radiological surveys and release decisions, which were generated between 1980 and 1999...DTSC also seeks comment on the adequacy of post-decommissioning surveys conducted by the United States Environmental Protection Agency in 2002 and expertise and involvement in evaluating soils and building materials disposition. In the event that additional pre-demolition radiological surveys are recommended, DTSC seeks [DPH] support in reviewing the results and conclusions from such new surveys. (DPH 6272.)

In April 2013, DTSC requested Boeing revise the SOP with amendments to apply to Boeing-owned former radiological buildings in Area IV. (DTSC 7824.) In a cover letter to DTSC, Dave Dassler, Boeing Program Director of Santa Susana Site Closure comments that the amendments "address DTSC and Boeing comments during several conversations between DTSC, Boeing staff and representatives from DOE in recent months. Based on this level of involvement we are confident this procedure is acceptable to DTSC." (*Id.*) The SOP amendment itself provides,

Boeing acknowledges the heightened interest in released former radiological buildings in Area IV, and has coordinated with DTSC and [DPH] in planning demolition of these buildings. As a result of that coordination, DTSC has requested that the SOP be amended to specifically address application of the SOP to former radiological buildings [sic] Area IV. (DTSC 7848.)

The SOPs are not signed, including either by DPH or DTSC.

In May 2013, DTSC notified Boeing via letter as to the results of its "Review of Notification Package for Planned Removal of Concrete and Asphalt at Former L-85 Area (Area IV...)" (DTSC 7921.) The letter provides, "the proposed demolition and removal of the Buildings...from the site should not disturb chemically-impacted soil or other impacted surficial media currently under investigation by the SSFL Remedial Investigation program." (DTSC 7922.) The letter concludes,

"DTSC will plan to be onsite during key phases of the demolition process to assure that the proposed activities and waste management procedures are implemented...DTSC will also observe additional radiological screening as recommended...Onsite demolition oversight may include a review of relevant

demolition documentation, including pre-demolition activities such as building abatement.” (DTSC 7925.)

Between May 2 and May 7, 2013, Boeing removed the remaining asphalt, concrete, and wall at the L-85 site. (DTSC 7937.) During July and August 2013, Boeing prepared and submitted demolition notification packages for four of the remaining former radiological buildings.

Petitioners filed suit on August 6, 2013. Petitioners have alleged a cause of action against DTSC for violation of CEQA, a cause of action for unlawful underground rulemaking; and a cause of action for declaratory relief as to the allegations made in connection with the two prior causes of action.⁴ Against DPH, Petitioners have alleged a cause of action for violation of CEQA, a cause of action for “violation of prior writ of mandate,” a cause of action for unlawful underground rulemaking, and a cause of action for declaratory relief as to the prior allegations.

The Court, via the Honorable Alan Sumner, granted Petitioners’ motion for preliminary injunction on December 11, 2013. The Court found that based “on the record to date” Petitioners were reasonably likely to prevail on their CEQA claim against DTSC, but not against DPH. The Court also concluded Petitioners were not reasonably likely to prevail on their APA claim. The Court also stressed “the preliminary nature of this motion.” The Court then enjoined DTSC from approving Boeing’s demolition and disposal activities without DTSC complying with CEQA.⁵

II. STANDARD OF REVIEW

Whether or not an activity is a “project” for purposes of CEQA is a question of law to be decided by the Court. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131.)

III. DISCUSSION

Preliminary Issues

A. Letter from Christine L. Rowe

On May 1, 2018, the Court received a letter apparently sent from a Christine L. Rowe, with a number of documents attached, regarding the Court’s ruling in this matter. This letter is not copied to any counsel or party in this matter nor does it otherwise indicate proof of service on the parties. Even if it had, the sender is not a party to this case, and has not filed for and obtained an order permitting it to file an *amicus curiae* brief in this matter. While the Court generally does not and cannot prevent members of the public from sending correspondence to the courthouse or from filing certain documents in pending cases, it is an entirely separate issue whether such materials can be properly considered by the Court. The Court is not permitted to consider improper ex parte communications, like this letter, which are intended to affect the Court’s

⁴ Petitioners also have a cause of action for “injunctive relief,” which is not actually a separate cause of action but instead, a request for relief.

⁵ Boeing subsequently filed a motion for summary judgment, which the Court, via the Honorable Alan Sumner, denied.

consideration of the merits of this case without notice to the parties and without following proper procedure to allow such submission. Under the law, the Court cannot consider and has not considered the letter in ruling on this matter.

B. Evidentiary objections

Petitioners have provided a section of their brief concerning alleged harms that have resulted from the "reliance upon underground regulations." In this section, Petitioners acknowledge that entitlement to the requested writ does not require demonstration of harm. The Court agrees, and finds the discussion provided in this section is irrelevant to the issues currently before the Court. Accordingly, the Court has not considered this part of Petitioners' brief, any opposition to these arguments presented by Respondents, or any arguments made in reply with regard to these arguments in ruling on this matter.

Given the Court's ruling herein, the Court declines to rule on the objections to evidence.

C. Request for judicial notice

In connection with their initial reply brief, Petitioners filed a request for judicial notice as to four documents. The Court notes it is improper for a party to seek to introduce new evidence in connection with a reply. The Court also finds that exhibits 1-3 are not relevant, and exhibit 4 is not appropriate for judicial notice. The request for judicial notice is DENIED.

Claims against DTSC

A. Violation of CEQA

It is undisputed that no agency has prepared an EIR in connection with the subject demolitions and removals. The sole question before the Court for purposes of this claim is whether Boeing's demolition and removal of the subject SSFL structures constitute a "project" (or multiple "projects") within the meaning of CEQA.

The Court notes that what is *not* before it for purposes of the instant claim is the propriety of the proposed or anticipated demolitions, and the Court cannot and does not make any determination as to the environmental impacts of the subject activities as the record does not contain an EIR for it to review.

A project is defined by Public Resources Code section 21065 as, an activity which may cause direct or indirect physical change in the environment and which is an activity carried out by a public agency, an activity approved by a public agency, or an activity funded by a public agency. In considering what activity constitutes a project, the Court is to consider "the whole of an action" that may directly or ultimately physically change the environment and includes the overall activity that is being approved. (14 Cal. Code of Regs. §15378.) If a state agency is considering approval of a project that is subject to CEQA, then it must prepare an Environmental Impact Report ("EIR") if the project "may have a significant effect on the environment." (Pub. Res. Code § 21100).

Here, Petitioners contend Boeing's activities constitute a project because DTSC *approved* the demolition and disposal.⁶ Pursuant to Public Resources Code section 21065, subdivision (c)⁷ a project is "an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." To support the argument that DTSC issued a "lease, permit, license, certificate, or other entitlement for use", Petitioners cite to a myriad of communications between DTSC and Boeing, which the Court will attempt to summarize herein.

Petitioners contend that DTSC has been "approving" Boeing's structure demolitions for years, even in areas outside of Area IV. Petitioners cite to 2008 email communications, including a June 2008 email between DTSC employees that states,

we notified Boeing that we wished to inspect ALL buildings prior to demolition and observe building demolitions... We asked for a schedule of building demos... Boeing is to provide us with a building inspection protocol this week for our review and approval with an updated Building demolition schedule. We are requiring advance notice for all building demos. We plan to inspect each building prior to demolition and we plan to be present to observed [sic] building demolitions. A similar request was made to NASA... (DTSC 1287.)

An August 11, 2009 DTSC internal email provides, "DTSC sent an email to Boeing requesting they provide information on the planned building demolitions...DTSC never provided approval for the building demolitions." (DTSC 1456.) Other internal emails cited by Petitioners discuss the demolition activities in the same manner, with reference to requesting documentation from Boeing and making certain determinations prior to approving or "allowing" structure removal. (See DTSC 1639.)

In 2009, DTSC sent communications to Boeing expressing concerns about the demolition activities and the SOPs, stating that they "may not result in DTSC being advised and involved in those demolition activities that require DTSC's oversight or approval." (DTSC 1520.) Boeing then undertook to revise the SOP, and DTSC internal emails discussing this revision provide, for example,

The intent of the revised SOP is to assure there is a review process to identify - before demolition - that materials or media that have been impacted by chemical releases in areas proposed for building demolition are properly managed and disposed, and removal does not by-pass DTSC's approval obligation, CEQA assessment, and notification to the community. (DTSC 1661.)

⁶ There are no arguments that the actions are being carried out by DTSC or funded by DTSC, so the Court will not discuss those aspects of section 21065.

⁷ For the first time on reply, Petitioners argue section 21065, subdivision (a) also applies to their claims. It is generally improper for a party to introduce evidence for the first time on reply. (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794 FN3; *Landis v. Pinkertons* (2004) 122 Cal.App.4th 985, 993.) Accordingly, the Court will not consider this argument.

The Court notes this same email chain includes a question as to “[w]hat is the facility allowed to remove before it becomes an interim ‘cleanup activity’ and trigger CEQA.” (*Id.*)

DTSC then requested Boeing make changes to the SOP, after which DTSC initiated a 30-day comment period “to provide the community an opportunity to review and comment on the SOP prior to DTSC’s final review and approval.” (DTSC 1721.)

In June 2012, Boeing notified DTSC that it was going to demolish certain structures in Area IV. DTSC notified Boeing that it was “reviewing radiological characterization issues” for the structures and could not “concur with pre-demolition activities...that involve the removal or disturbance of any site features” until it concluded that review. (DTSC 2924.) Then, in September 2012, DTSC emailed Boeing that it had concluded its review and,

concur that pre-demolition radiological screening procedures meet or exceed regulatory and industry standards and that surface activity limits meet regulatory standards. Both the procedures and limits provide adequate assurance that fixed and removable radiological contaminants are not present in the pre-demolition materials. (DTSC 2969.)

The letter concludes,

we are still reviewing the radiological screening criteria and standards for the full Area IV non-radiological building demolitions, and we plan to provide Boeing with our final comments and recommendations by early October 2012. (DTSC 2970.)

Via letter in October 2012, DTSC indicated that it had reviewed Boeing’s notification of planned demolition for Area IV (building 4015) pursuant to the “requirements of a February 11, 2010 DTSC letter to Boeing, which allows DTSC thirty days to review and comment on Boeing’s proposals for SSFL Building and structure demolitions.” (DTSC 5805.) The letter then provides DTSC’s “comments” on the planned demolition, including a finding that the activities “should not disturb chemically-impacted soil or other impacted surficial media currently under investigation by the SSFL Remedial Investigation (RI) program.” (DTSC 5806.)

In December 2012, Boeing sought to begin demolition of the six structures at issue in this litigation. Boeing noted via email to DTSC that they were wondering when to “expect to receive an ok to proceed with pre-demolition and waste characterization sampling for the former radiological buildings (Boeing) in Area IV.” (DTSC 6540.) The email requests that Boeing “be allowed to proceed” with the pre-demolition effort in advance of an “ok to proceed with demolition.” (*Id.*)

In February 2013, an internal DTSC email indicates it received two Boeing proposals for demolition in Area IV. (DTSC 7039.) The email notes this is the “first former radiological site proposed under our oversight program with Boeing.” (*Id.*) Boeing’s second amendment to its SOP was submitted in March 2013, and in April 2013 Boeing indicated that it had “accepted

DTSC's comments" and attached a final version. (DTSC 7645.) The SOP indicates that it was "approved by [DTSC]." (DTSC 7647.) The Court notes the SOP also indicates Boeing has "coordinated with DTSC and [DPH] in planning demolition" of the buildings, in light of the "heightened interest in released former radiological buildings in Area IV." (*Id.*)

In May 2013, DTSC provided that it had reviewed Boeing's L-85 "Removal Package" and requested that Boeing submit certain debris for additional radiological screening. (DTSC 7921-22.)

Petitioners assert that these documents demonstrate that the Area IV radiologic demolition is a "project" on its own, and subject to CEQA requirements. Petitioners also argue the Area IV radiologic demolition is "part of the overall site remediation project for which the agency has acknowledged that an EIR is required." (MPA, pp. 24-25.)⁸

DTSC argues the subject structure demolitions are not a "project" because they do not require DTSC's prior authorization. DTSC argues Boeing is *already authorized* to demolish the subject buildings, and does not need DTSC to issue a "lease, permit, license, certificate, or other entitlement for use." DTSC contends,

Petitioners have not identified anything in the [record] that is even arguably a lease, permit, license, certificate, or other entitlement for use issued by DTSC to Boeing that authorized the demolitions. This is because no such document exists... Nor do [the documents cited] identify a statute vesting DTSC with the power to authorize or not authorize Boeing to undertake its demolitions. Nor do [the documents cited] purport to grant Boeing a legal entitlement... (Oppo., p. 27.)

DTSC maintains its actions in connection with Boeing's proposed demolition activities are in accordance with efforts to gather information and observe private activities that could impact the SSFL site investigation and cleanup. DTSC argues these efforts are part of its responsibilities under the HWCL and the HSAA, but are not the equivalent of the issuance of a permit, license, certificate, or other entitlement for use.

Pursuant to section 25185, DTSC has the authority to conduct inspections in any environment where hazardous wastes are stored, handled, processed, disposed of, or being treated. DTSC can also carry out any sampling activities necessary, inspect and copy records, and photograph waste. (*Id.*) (See also § 58009.) DTSC maintains it was exercising its broad investigative authority when it requested that Boeing amend its SOP, commented on its demolition packages, and observed the demolitions themselves. DTSC cites to sections in its letters where it analyzes whether the proposed demolition would "disturb chemically-impacted soil or other impacted surficial media currently under investigation by the SSFL Remedial Investigation program" (DTSC 7922.)

⁸ The Court notes that it will not include a discussion of the 2010 AOC between DOE and DTSC, despite Petitioner's insistence that it is relevant. Boeing is not a party to the 2010 AOC, and it acknowledges the fact that DOE does not control the Boeing-owned structures.

DTSC then asserts, without citation to any legal authority, that "[h]ad DTSC determined that a demolition might compromise the site investigation, the HWCL and the HSAA authorize DTSC to issue an enforcement order enjoining the demolition." DTSC states that Petitioners have not alleged a cause of action in this matter for abuse of discretion as to DTSC's enforcement authority over Boeing, and accordingly, not only does the decision regarding an enforcement action *not* trigger CEQA, but Petitioners also do not state a claim as to the enforcement authority itself.

The parties argue as to the application of *Bozung v. Local Area Formation Comm.* (1975) 13 Cal.3d, 263.⁹ In *Bozung*, taxpayers sought to establish that CEQA required a Local Agency Formation Commission to prepare an EIR prior to approving a city's annexation of property intended for future development. (*Id.* at 267.) The LAFCO acknowledged that it had approved the annexation, but contended it was bound by the Knox-Nisbet legislation, which governed LAFCOs specifically. (*Id.* at 273-74.) The Court determined the annexation clearly involved an "entitlement for use" that the city could choose to use, or not use should it choose not to go forward with the annexation. (*Id.* at 279.)

DTSC argues *Bozung* demonstrates that CEQA involves a statutorily required approval, versus here, where Boeing was not required to obtain any sort of approval from DTSC prior to engaging in its demolition activities. Petitioners argue DTSC is incorrect, and cite to the following language, "even complete impotence to approve or disapprove contemplated actions of a local agency does not make the consideration of an EIR by a regional agency an idle act." (*Id.* at 284.) Petitioners contend this language demonstrates that even if DTSC cannot stop the demolition project, its "analysis of the environmental impacts of demolition... are critical to ensure that the public and the environment will not be adversely impacted by the activity." (Reply, p. 14.)

The Court does not find the passage cited by Petitioners to be persuasive in this matter. The language contemplates a regional agency which is approving a local agency's actions. Further, *Bozung* goes on to indicate that this quote is directing that a regional agency should review an EIR that has been prepared by a local agency:

[A] threshold question before the appellate court was whether the plaintiffs should have challenged the adequacy of the EIR by administrative mandamus directed to the county planning commission. The plaintiffs asserted that an injunction against the water district was the proper remedy, because the planning commission had no authority to veto the project. [citation] The court agreed with plaintiff's basic position, and rejected the defendant's contention that the court's decision would make the district's filing of an EIR with the planning commission an idle act: "We do not accept this conclusion... [The] planning agency by criticism and by adverse comment may persuade the directors of a district to revise an EIR. Revision of a project itself, or even

⁹ The Court acknowledges that the parties have cited to a myriad of other cases, and it will not endeavor to summarize them all. The Court has referenced those cases that it has found to be most helpful/instructive based on the facts of the current matter. An absence of a citation to a specific case does not indicate the Court did not consider said case.

abandonment, may follow, not by the use of any authority of the planning commission which is not given by the act, but by reason of thoughtful reconsideration. (*Id.* at 284-85.)

Thus, the language Petitioners quote from *Bozung* indicated that an agency should review and comment upon an EIR prepared by another agency, even if it did not have the power to approve or prohibit the subject project. It described a circumstance in which the parties acknowledge that CEQA was triggered by some sort of approval. Here, Petitioners are arguing a state agency should prepare an EIR in connection with a private party's actions, with no CEQA triggering approval action identified. The circumstance discussed in *Bozung* and that here are not comparable.

The Court is also guided by *Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, another case cited by both Petitioners and DTSC. In *Parchester*, a city supported a Native American tribe's efforts to acquire a proposed casino site, and agreed to make certain municipal services available to the tribe, based on payment terms specified in an agreement between the parties. (*Id.* at 308.) In finding CEQA did not apply, the Court noted the casino endeavor did not constitute a "project" of the city because,

the City has no legal authority over the property upon which the casino will be situated... an agency does not commit itself to a project 'simply by being a proponent or advocate of the project... [further] the City has no legal jurisdiction over the property. Should the City change its mind and decide to 'disapprove' of the project, its decision would not be binding on [the tribe.] (*Id.* at 313)(citations omitted.)

The Court of Appeal also found the agreements between the City and the tribe, including the City's endorsement of the application, were not "projects" within the meaning of CEQA. (*Id.* at 314-320.)

The Court finds *Parchester* and *Bozung* support DTSC's contention that CEQA is implicated by a legal authority over the subject activity that is purported to constitute a "project." Here, Petitioners have not cited to any *legal* authority retained by DTSC to prevent Boeing from undertaking the subject demolition activities such that DTSC's refusal to "approve" the actions would have prevented Boeing from moving forward. Both Boeing and DTSC assert there is no such authority, and emphasize that DTSC never issued a "lease, permit, license, certificate, or other entitlement for use" as required to trigger Public Resources Code section 21065, subdivision (c).

The Court acknowledges that the dealings between Boeing and DTSC use the terms "approve," "ok to proceed," "concur," and even chastisement for some Boeing activities taken without first consulting DTSC. However, these actions appear to have been undertaken in relation to Boeing's efforts to seek input and advice from DTSC on the safest practices for proceeding with its demolition activities in Area IV, rather than pursuant to any legal obligation to gain some sort of entitlement for use from DTSC. The Court also recognizes DTSC's inspection authority, and Petitioners have not presented any legal authority that when DTSC

invokes its inspection authority it is inherently approving a project for purposes of Public Resources Code section 21065, subdivision (c).

The Court also finds there is insufficient evidence to establish that Boeing's structure demolition is part of the overall site remediation.

Petitioners' first cause of action is **DENIED** as to DTSC.

B. Violation of the Administrative Procedure Act

Petitioners' Third Cause of Action alleges that DTSC adopted underground regulations in violation of the Administrative Procedure Act (hereinafter, the "APA"), Gov. Code sections 11340, et seq. Petitioners allege Respondents, "in issuing their approvals of Boeing's demolition and disposal activities" have relied upon Regulatory Guide 1.86, DOE 5400.5, an undated document generated by DPH's Radiologic Health Branch (referred to as "Decon-1), and a 1991 policy memorandum (referred to as "IPM-88-2.) (Pet., ¶ 84.)

Pursuant to Government Code section 11340.5, subdivision (a),

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Regulation is defined as,

every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Pursuant to the APA, an agency must,

give the public notice of its proposed regulatory action; issue a complete text of the proposed regulation with a statement of the reasons for it; give interested parties an opportunity to comment on the proposed regulation; respond in writing to public comments; and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law, which reviews the regulation for consistency with the law, clarity, and necessity. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568.)

The Supreme Court noted that a regulation subject to the APA has two principal identifying characteristics,

First the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure. (*Id.* at 571)(citations omitted.)

Petitioners argue "in explicit contravention of the APA, DTSC and DPH have fashioned a body of underground law... and applied that underground law to their regulation of SSFL." (Memo., pp. 28-29.) Petitioners maintain, "DPH and DTSC have jointly applied the radiological release standards to a clear and definable class of cases: the demolition of radiologically contaminated structures, and disposal of the resulting waste. Every demolition approval issued thus far for buildings at SSFL has been evaluated under these criteria." (*Id.* at 30.)

With regard to DTSC, Petitioners cite to an April 25, 2013 letter from DTSC regarding L-85 in Area IV.¹⁰ (DTSC 7928.) The document presents the findings of DTSC's review of Boeing's documents summarizing the "Final Status Survey of Non-Building Area Remaining Concrete and Asphalt" located at L-85. The letter provides general comments and recommendations, one of which provides that,

[t]he documents indicate that all instrument surface activity measurements and wipe tests were below the detection limit, the level at which there is a 5% probability of incorrectly concluding that no activity is present when it is indeed present... All surface activity measurements met the general surface activity limits for release/clearance of equipment and materials for unrestricted use from former radiologic facilities and were below US NRC Regulatory Guide 1.86, USDOE Order 5400.5 and CDPH guidance DECON-1 and IPM-88-2 action levels. Survey results support these conclusions. (*Id.*)

Petitioners also cite to an email from Boeing to DTSC and DPH dated February 15, 2013 which provides, in pertinent part, "[d]uring last Tuesday's meeting, Jerry Hensley asked about release criteria used in the various surveys conducted at the former Boeing radiological buildings in Area IV. A meeting between DTSC and [DPH] was scheduled... to discuss this subject. It was suggested that Boeing could facilitate and expedite [this] review by identifying sections... where release criteria were specified..." (DPH 5118.) The letter then refers to an attached "Table 1 matrix." (DPH 5122.) Petitioners contend this table, and the excerpts from the release reports demonstrate that the release criteria used were the purported underground regulations.

Petitioners then maintain "both DTSC and DPH have relied upon these standards in the remediation of the Hunters Point Naval Station in San Francisco, where DTSC is the state agency overseeing the remediation of a radiologically-contaminated former naval facility." (Memo., p. 33.) Petitioners then cite to a 2006, "Final Action Memorandum" regarding removal of radiological materials from Hunters Point Shipyard.: (Stip. Exh. 47, p. 10.) The stated purpose

¹⁰ Petitioners assert that the letter is dated May 1, 2013, but the record citation provided is to an April 25, 2013 letter.

of the memorandum is to "document...the U.S. [Navy's] decision to undertake time-critical removal actions...at areas throughout the base that may contain localized radioactive contamination..." (*Id.*)

Petitioners cite to the memorandum's description of radioactive contamination limits, "these limits are based on AEC's *Regulatory Guide 1.86*. Limits for removable surface activity are 20 percent of these values." (*Id.* at 24)(emphasis in original.) The memorandum appears to have been prepared by the Navy. (*Id.* at 2, 5.)¹¹

- With regard to this first prong of the *Tidewater* test, DTSC argues Petitioners have failed to demonstrate that DTSC is applying the four documents (which DTSC refers to in its brief as the "Guidance Documents") to a clear and definable class of cases. DTSC notes that it was the Navy and the USEPA, not DTSC, who selected the radiological release criteria in the 2006 memorandum. DTSC also argues that Petitioners are able to identify only SSFL and Hunters Point as locations where DTSC is purportedly applying the four documents, which does not make it a standard of general application.

Petitioners respond that by calling the four documents "the Guidance Documents," DTSC has admitted it is using them as underground regulations. The Court does not agree with this argument. While it may agree that calling the documents "the Guidance Documents" may be an odd characterization, such a reference in a legal filing alone does not convert the documents into underground regulations absent a finding they are being applied as such, pursuant to the *Tidewater* test.

The Court finds the evidence cited by Petitioners fails to demonstrate that DTSC is using underground regulations to "apply a rule generally" or "declare how a certain class of cases will be decided" as required by *Tidewater*. While Petitioners have provided anecdotal evidence that DTSC has referred to the four documents in reviewing activities with regard to radiological release limits, Petitioners have not identified any evidence that DTSC *requires* the limits described by the four documents, or has *disapproved* action that does not comply with those limits. *Tidewater* directs that an underground regulation is one that directs how a "certain class of cases will be decided." In Petitioners' examples, the four documents (and their standards) are referenced (usually by the private entity, not by DTSC), but Petitioners have not demonstrated that DTSC required compliance with the four documents prior to enforcement of, or compliance with, a law within DTSC's jurisdiction.

Petitioners' third cause of action is **DENIED** as to DTSC.

C. Declaratory and Injunctive relief

In light of the Court's above findings, Petitioners' fourth and fifth causes of action, which are predicated on the same facts, are **DENIED** as to DTSC.

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¹¹ Petitioners also cite to a variety of documents where DTSC reviews Boeing's demolition notification documents. (See DTSC 5810.) The Court has also reviewed these arguments and these documents.

Claims against DPH

A. Violation of CEQA

Again, it is undisputed that no agency has prepared an EIR in connection with the subject demolitions and removals. The sole question before the Court for purposes of this claim is whether Boeing's demolition and removal of the subject SSFL structures constitute a "project" or multiple "projects" within the meaning of CEQA.

- Pursuant to Public Resources Code section 21069, a "responsible agency" is "a public agency, other than the lead agency, which has responsibility for carrying out or approving a project." Petitioners contend DPH is a "Responsible Agency" due to its authority over SSFL as a licensor, and consequently subject to CEQA in its "approval" of Boeing's demolition of the subject structures. Petitioners argue DPH's status as a "responsible agency" arose when it released Boeing structures from the subject Radioactive Materials Licenses (specifically building 4100).

Pursuant to Title 14, California Code of Regulations, section 15352, subdivision (a), "'Approval' means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." Pursuant to subdivision (b), with regard to private projects, "approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project."

To support their argument that DPH approved demolition by way of decommissioning Building 4100, Petitioners refer to the fact that in August 2012, DPH had information as to the status of Boeing-owned buildings in Area IV scheduled for demolition. (DPH 4516.) Then, in November 2012, DPH received a request from Boeing for "release of building 4100 for unrestricted use, and removal of the building from radioactive materials license 0015-19 as an authorized place of use." (DPH 4668.) Petitioners maintain DPH was on notice that release from the license was necessary to enable Boeing to demolish building 4100. Via email to several DPH employees dated January 21, 2013, Boeing provides.

The DTSC has recently given the go-ahead to begin pre-demo work on several Boeing-owned former released radiological facilities in Area IV, including building 4100 which is still awaiting your release. Boeing anticipates completing this pre-demo work and submitting the Demolition Notification Package for DTSC review on March 28.

We therefore respectfully request that your review and release process be expedited to be completed by March 28. (DPH 4823.)

Via internal DPH email, dated January 22, 2013, an employee in the Radioactive Materials Licensing Section provides, "Please work on this request. . . We may [sic] to be to

ensure this project is completed prior to 3/28/13 so that we won't be impeding its demolition process schedule." (DPH 4825.)

Petitioners then reference DPH's other activity at SSFL as being "defined in its contact with DTSC" and assert that DPH intentionally removed any language that "sounded remotely like it was authorizing Boeing to take any specific action" from the contractual memorandum.

A property may be removed from a DPH license, and the license terminated, via decommissioning. Decommission means "to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license." (17 C.C.R. § 30100, subd. (c).) Decommissioning occurs when DPH determines that,

- (1) Radioactive material has been properly disposed;
- (2) Reasonable effort has been made to eliminate radioactive contamination, if present; and
- (3) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use. (17 C.C.R. § 30256, subd. (k).)

DPH argues it has not proposed to carry out or approve a project, because neither the decommissioning of Building 4100, nor the Contractual Memoranda, is an entitlement for use.¹²

With regard to the decommissioning of Building 4100, DPH contends it did not issue to Boeing an entitlement with respect to anything that Boeing might do with the property *after* it was decommissioned. DPH cites to the "Final Status Survey Report for Area IV Building 4100" requesting the decommissioning, and notes that it does not include any plans for the subject demolition. (DPH 4669.) DPH acknowledges that this Report includes a notation as to what will become of "post-demolition debris from 4100" (DPH 4694) but argues this was not a description of the demolition specific enough to constitute DPH approval.

DPH cites to *Bridges v. Mt. San Jacinto Community College Dist.* (2017) 14 Cal.App.5th 104, and *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 187. The Court finds *Bridges* is unavailing as the project at issue was a *public* project, and the public agency acknowledged that CEQA applied to its construction of the facilities at issue. The Court merely determined that the public agency was not required to complete an EIR prior to opening escrow on the subject property. *Concerned McCloud Citizens* also involves a circumstance wherein the public agency's agreement was expressly conditioned on subsequent compliance with CEQA. Consequently, entering into an agreement to take future vague actions was not approval of a project for purposes of CEQA.

The Court has reviewed the cases cited by Petitioners (see, e.g. Reply, fn. 3) and finds they are all factually distinct such that their CEQA analyses are not instructive in this matter.

¹² The Court will not repeat its CEQA recitation herein, and instead directs the parties to its discussion in connection with the CEQA claim against DTSC.

Petitioners' argument is that every time DPH engages in the decommissioning process, it is approving a project that will follow the decommission, so long as it has information as to what the subsequent activity will be (in this case, because DPH was informed that Boeing wished to demolish the structure, the decommissioning process should have been subjected to an additional CEQA analysis.)

By decommissioning Building 4100, DPH did not commit to a definite course of action in regard to a project intended to be carried out by Boeing, and therefore, did not provide an "approval" as defined in Code of Regulations Title 14, section 15352. While Boeing indicated it intended to demolish the subject building, the decommissioning was not conditioned on Boeing following through with this intention. Further, as DPH argues, once a property has been decommissioned, it has been released for "unrestricted use" and DPH no longer has any authority to direct a licensee how to proceed. Petitioners do not argue DPH failed to comply with Code of Regulations Title 17, section 30256, subd. (k) in connection with the decommissioning of Building 4100, so the Court must presume the decommissioning was properly completed.

Petitioners do not cite to any authority vested in DPH to direct the future of building 4100 subsequent to its decommissioning. While Boeing did indicate to DPH that it intended demolition, there is no evidence that the specific details of the demolition were before DPH for purposes of consideration in connection with the decision to decommission, and no evidence that DPH "approved" the demolition itself by engaging in the decommissioning process. The Court therefore finds DPH did not grant an "entitlement for use" pursuant to CEQA in decommissioning Building 4100.

Petitioners do not reply to DPH's argument that the contractual memoranda were not subject to CEQA. The Court agrees with DPH that, pursuant to the contract, DPH merely reviewed and commented on certain documents provided by Boeing to DTSC. Nothing about the contractual memoranda implicates "issuance of a lease, permit, license, certificate, or other entitlement for use."

B. Violation of the Administrative Procedure Act

Petitioners' Third Cause of Action alleges that DPH adopted underground regulations in violation of the Administrative Procedure Act (hereinafter, the "APA"), Gov. Code sections 11340, et seq. Petitioners allege Respondents, "in issuing their approvals of Boeing's demolition and disposal activities" have relied upon Regulatory Guide 1.86, DOE 5400.5, an undated document generated by DPH's Radiologic Health Branch (referred to as "Decon-1), and a 1991 policy memorandum (referred to as "IPM-88-2.) (Pet., ¶ 84.)

The Court will not repeat its discussion of the background of the APA, already stated in its discussion concerning DTSC above. However, the Court will restate the *Tidewater* test wherein regulation subject to the APA has two principal identifying characteristics,

First the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule

must implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure. (14 Cal. 4th at 571)(citations omitted.)

Petitioners argue "in explicit contravention of the APA, DTSC and DPH have fashioned a body of underground law...and applied that underground law to their regulation of SSFL." (Memo., pp. 28-29.) Petitioners maintain, "DPH and DTSC have jointly applied the radiological release standards to a clear and definable class of cases: the demolition of radiologically contaminated structures, and disposal of the resulting waste. Every demolition approval issued thus far for buildings at SSFL has been evaluated under these criteria." (*Id.* at 30.)

With regard to DPH, Petitioners cite to "many" documents describing a "consistent program of enforcement and licensure" relying on the four documents. The first example Petitioners provide is what they deem the "DPH Radioactive Material License Amendments (1999-2013)." (Memo., p. 30.) Petitioners cite to nine SSFL license amendments, and asserts that each of these amendments "reference and rely upon one or more of the same four underground standards." (Stip. Exhs. 1-9.) Petitioners also refer to the February 15, 2013 Boeing email discussed above in connection with the Court's analysis of Petitioners' claims against DTSC.

Petitioners then provide that DPH has "relied upon the general standards throughout California, when DPH was faced with similar licensing and enforcement situations." (Memo., p. 31.) Petitioners then cite to examples from General Atomics, University of California, Berkeley, and Stanford University. (citing various Stip. Exhs., e.g. 21-45.) While the majority of documents are those submitted to DPH from the private entity (with no indication that DPH required or instructed the entity to use any of the four documents in making its calculations), Petitioners also cite to a November 19, 2013 letter from DPH to Stanford University regarding its request to decommission and remove a particular use location from its radioactive materials license. (Stip. Exh. 30, p. 51.) In this letter DPH provides,

The Radiologic Health Branch (RHB) has begun processing your request to decommission...In order to process your request, please respond to the following items... 4) Confirm that your free release criteria are 1000 dpm/100 cm² removable. (*Id.*)

DPH responds that none of the four documents are binding, and that contrary to Petitioners' claims, DPH performs decommissioning on a "case-by-case" basis. DPH contends Petitioners' examples demonstrate that the licensee proposes the release criteria, and that often the licensee chooses to utilize the four documents in doing so. DPH also identifies circumstances when the amendment incorporates release criteria modified from the four documents, such as an October 17, 2003 letter from DPH to Boeing regarding an amendment to radioactive materials license number 0015-19. (Stip. Exh. 8, p. 1.) The "Surface Contamination Guidelines" provides that the limits provided in DOE Order 5400.5 have been modified by "specifying the potential contaminants present in the Rocketdyne facilities, and eliminating those that are not pertinent." (*Id.* at 20.)

With regard to the comment by DPH in the November 19, 2013 letter requesting that Boeing "confirm" its free release criteria were at a certain level, DPH contends the table Stanford provided was not a complete reproduction of Reg. Guide 1.86, and therefore DPH was merely requesting clarification as to the criteria being proposed.

The Court finds the documents Petitioners rely on as evidence that DPH is imposing certain underground regulations on licensees are documents that were submitted to DPH wherein the entity seeking the license amendment referred to Reg. Guide 1.86 limits when discussing release criteria. The Court finds evidence that entities are submitting documentation to DPH in reliance on the four documents is not a violation of the APA. As discussed in *Tidewater*, the APA is concerned with an agency's rule that the agency intends to apply generally. Evidence that private entities are relying on the four documents in discussing release criteria does not meet the first prong of the *Tidewater* test.¹³

The Court finds Petitioners have failed to identify evidence that DPH is applying an underground regulation by way of the four documents to a clear and definable class of cases: the demolition of radiologically contaminated structures, and disposal of the resulting waste. While the Court acknowledges the comment in the November 19, 2013 letter *could* be evidence that DPH is requiring licensees to comply with Reg. Guide 1.86, DPH's explanation that the comment was merely a clarification as to what was being proposed is also possible. Accordingly, the Court finds Petitioners have not proven DPH is applying an underground regulation by way of the four documents.

The third cause of action is **DENIED** as to DPH.

C. Violation of the 2002 Peremptory Writ of Mandate

Petitioners argue that DPH's use of the four documents to perpetuate an underground regulation is also a violation of the Court's order in *Committee to Bridge the Gap v. Bonta* (Case No. 01CS01445) that DPH cannot adopt any numeric clean-up standards for radioactive materials without first complying with CEQA and the APA.

As the Court has already found DPH is not violating the APA and is not using the four documents as an underground regulation, the second cause of action is also **DENIED**.

D. Declaratory and Injunctive relief

In light of the Court's above findings, Petitioners' fourth and fifth causes of action, which are predicated on the same facts, are **DENIED** as to DPH.

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¹³ The Court notes that both DPH and Petitioners (in their reply brief) make arguments that are not relevant to the cause of action for violation of the APA. (For example, Petitioners appear to allege a violation of Regulation 30256, subdivision (k)(2), but there is no cause of action as to a violation of this regulation.) The Court has read and reviewed, but will not comment on these arguments.

IV. CONCLUSION

The petition for writ of mandate and complaint for declaratory and injunctive relief is **DENIED.**

////////////////////////////////////

Counsel for Respondents shall prepare an order incorporating this ruling as an exhibit to the order, and a judgment; Counsel for Petitioners and Counsel for Real Party in Interest shall receive a copy for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit it to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

Certificate of Service by Mailing attached.

CERTIFICATE OF SERVICE BY MAILING

C.C.P. Sec. 1013a(3))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of November 19, 2018 RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.-

Jeffrey P. Reusch, Esq.
Department of Justice
Office of the Attorney General
1300 I Street
P O Box 944255
Sacramento, CA 94244-2550

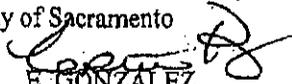
Andrea Sheridan Ordin, Esq.
Beverly Grossman Palmer, Esq.
STRUMWASSER & WOOCHEER LLP
10940 Wilshire Blvd., Suite 2000
Los Angeles, CA 90024

David Zaft, Esq.
Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

Gordon E. Hart, Esq.
PAUL HASTINGS LLP
101 California Street, 48th Floor
San Francisco, CA 94111

Dated: November 19, 2018

Superior Court of California,
County of Sacramento

By: 
E. GONZALEZ,
Deputy Clerk

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **PHYSICIANS FOR SOCIAL RESPONSIBILITY- LOS ANGELES, a non-profit corporation, et al., v. DEPARTMENT OF TOXIC SUBSTANCES CONTROL, et al.,**

No.: **34-2013-80001589**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On December 20, 2018, I served the attached **[PROPOSED] ORDER DENYING PETITIONERS' FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Michael J. Strumwasser, Esq.
Beverly Palmer, Esq.
Strumwasser & Woocher LLP
10940 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90024-3949
Attorneys for Petitioner

Harvey Rosenfield
Pam Pressley
Consumer Watchdog
6330 San Vicente Boulevard, Suite 250
Los Angeles, CA 90048
Attorneys for Petitioner

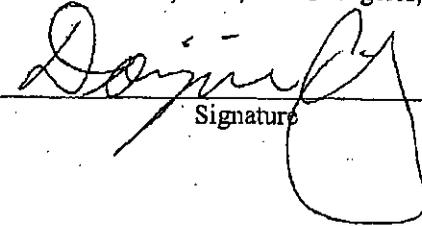
Peter C. Meier, Esq.
Gordon E. Hart, Esq.
Paul Hastings LLP
101 California Street
San Francisco, CA 94111
Real Party in Interest
Attorneys for Real Party in Interest

I also served the attached document via the Attorney General's inter-office mail, addressed as follows:

Jeffrey Reusch
Deputy Attorney General
Office of the Attorney General
1300 I Street, Suite 124
P.O. Box 944255
Sacramento, CA 95814
Attorneys for Respondent
Department of Public Health

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2018, at Los Angeles, California.

Dominique Colding
Declarant


Signature

Docket No.: LA2013950131
Document No.: 63068144

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

Re: *Physicians for Social Responsibility-Los Angeles, et al. v. Department of Toxic Substances Control*, Case No. 34-2013-80001589

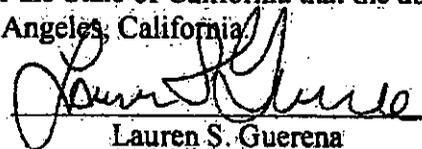
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **January 24, 2019**, I served the foregoing documents described as **NOTICE OF APPEAL** on all appropriate parties in this action, by the method stated as listed on the attached Service List.

If electronic-mail service is indicated, by causing a true copy to be sent via electronic transmission from Strumwasser & Woocher LLP's computer network in Portable Document Format (PDF) to the this date to the e-mail address(es) stated, to the attention of the person(s) named.

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 24, 2019**, at Los Angeles, California.


Lauren S. Guarena

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Service List

Physicians for Social Responsibility-Los Angeles, et al. v. Department of Toxic Substances Control, Case No. 34-2013-80001589

By Email & US Mail

| | |
|--|---|
| <p>Kavita P. Lesser David Zaft California Department of Justice 300 South Spring Street Los Angeles, California 90013 Telephone: (213) 269-6605 Facsimile: (213) 269-6372 Email: Kavita.Lesser@doj.ca.gov David.Zaft@doj.ca.gov</p> <p><i>Attorney for Respondent Department of Toxic Substances Control</i></p> | <p>Peter H. Weiner Peter C. Meier Gordon E. Hart Robert P. Hoffman Paul Hastings 101 California Street 48th Floor San Francisco, California 94111 Telephone: (415) 856-7010 Facsimile: (415) 856-7110 Email: petermeier@paulhastings.com gordonhart@paulhastings.com</p> <p><i>Attorney for Real Party in Interest The Boeing Company</i></p> |
| <p>Tracy L. Winsor Jeffrey P. Reusch Deputy Attorney General California Department of Justice 1300 "I" Street PO Box 944255 Sacramento, California 94244-2550 Telephone: (916) 327-7851 Email: jeffrey.reusch@doj.ca.gov</p> <p><i>Attorney for Respondent Department of Public Health</i></p> | |



Richard Williams <richard.williams@lacity.org>

SUPPORT for item 19-0145 Santa Susana Field Laboratory

Christina Walsh <christina@peoplepolicy.org>

Sun, Mar 17, 2019 at 8:48 PM

To: "Clerk.BudgetandFinanceCommittee@lacity.org" <Clerk.BudgetandFinanceCommittee@lacity.org>

Cc: West Valley Resistance <wvresistance@gmail.com>, Bobbi Rubinstein <bobbi.rubinstein@gmail.com>, Melissa Bumstead <melissabumstead@sbcglobal.net>, "deniseanneduffield@gmail.com" <deniseanneduffield@gmail.com>, janeen pedersen <janeenrae1@icloud.com>, Isabel Frischman <isabelwf@sbcglobal.net>, "mbregsan.2018@gmail.com" <mbregsan.2018@gmail.com>, Lisa Rosenfield Podolsky <lisarosenfield@icloud.com>

Thank you for standing up for children living around Santa Susana Field Laboratory. Attached, please find my substantive comments.

Sincerely,

Christina Walsh,

Environmental Monsters Project

PeoplePolicy.org

West Valley Resistance

[8463 Melba Avenue, West Hills, CA 91304](#), two miles from Santa Susana Field Laboratory.

I am a constituent, and have been working to provide public transparency and cleanup at Santa Susana Field Lab for nearly twenty years.

Sent from [Mail](#) for Windows 10



Motion to City Council--SUPPORT for item 19-0145 from Christina Walsh.pdf

1601K

Motion – LA City Council Budget Committee:

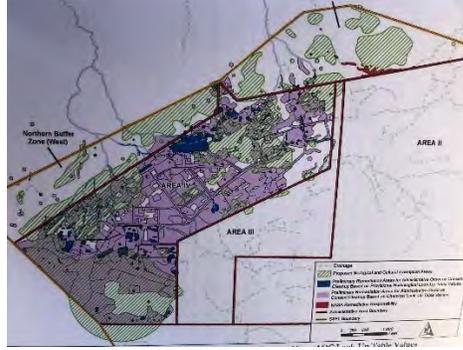
The release of final environmental documents by the California Department of Toxic Substances Control or the federal Department of Energy relative to clean up of the Santa Susana Field Lab is imminent.

It is necessary to authorize the retention of outside counsel to assist the City Attorney to preserve the City Council's position that the site be cleaned consistent with the 2010 Administrative Order on Consent.

I THEREFORE move that the City Attorney be authorized to retain the law firm of Meyers Nave based on a budget not to exceed \$600,000 to engage in all work necessary to prosecute legal action to ensure that the Santa Susana Field Lab site is remediated in a manner consistent prior Council directives.

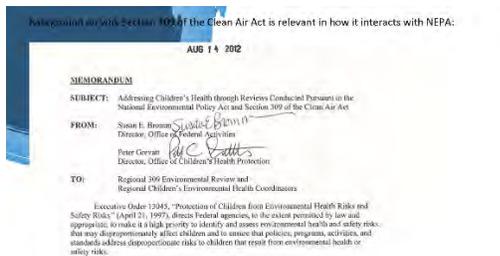
General Comments:

- I truly appreciate and support the motion to retain counsel to assist the City Attorney to preserve the City Council's position that the site be cleaned consistent with the 2010 Administrative Order on Consent (AOC).
- I feel this demonstrates that the City is taking this very seriously, and providing ample resources to be able to engage in all work necessary to prosecute legal action to ensure that the Santa Susana Field Lab is remediated in a manner consistent to City Council's and the State of California's directives. They have been promising to comply ever since the signing of the agreements, which they did voluntarily. Over \$42 million dollars of the ARRA (American Reinvestment and Recovery Act) stimulus package passed in 2009 was used to determine the level of remaining chemical and nuclear impacts at Santa Susana and that study was done with full EPA oversight. I walked every field day with them, as each of them started from my former museum, where the field team gathered. It included members of the public such as myself, as well as independent experts such as Daniel Hirsch, and EPA, DOE, DTSC, and Boeing representatives, contractors, and support staff. The final report produced was an eight-volume DVD set depicting the locations of all the remaining GRA's (Radiation areas found above "background").
 - Despite this data, which is not posted on the cleanup website, the information provided by a multi-agency report issued just days after the Woolsey Fire (which started on Boeing SSFL property), reported that no radiation was found. This is inconsistent with undisputed facts about the site, as well as the \$42 million dollar taxpayer funded study, which found plenty of radiation: (provided here):



- The lavender areas are chemical impacts, blue for radiation, and the green hatched areas are exception areas as stipulated in the AOC Cleanup to background process so that unintentional impacts are avoided within the “cleanup to bright-line approach” when using background as the objective. In addition to cultural exceptions, endangered species were also considered. But the health of children, knowing the clusters of cases surrounding the site, some so rare, there is no protocol for treatment, they failed to follow NEPA’s requirement to protect children.
- DOE has missed every deadline and instead of finishing the cleanup in 2017 as promised, they still haven’t started, and only in 2019—are they announcing that they are not going to comply as originally promised and reaffirmed on a consistent basis over the last nine years.
 - RESULT: Had they done their job, the Woolsey fire would have been just another brush fire. Instead, 80% of a site known to be contaminated, burned again. (Sesnon fire burned 60%) This develops a new migration pathway to a much broader and larger population of Los Angelenos.
 - Penalty assessments based on the 2010 agreement, as described in the agreement would amount to $15,000 \times 3$ (Boeing, DOE, NASA) = \$45,000 per day since June 30, 2017 is roughly 640 days = \$28,800,000 which might help in funding litigative efforts to put added pressure on enforcement of the agreements.
- NEPA The National Environmental Policy Act is intended for the purpose of weighing the potential impacts of the cleanup with the impacts of the problem. Instead, DOE has failed to use all parts of NEPA.
 - For example: Section 309, as well as an executive order on children’s health requires that they consider impacts to children as a priority. Yet, in the NEPA process, despite being aware of 54 childhood cancer cases we have mapped today, there were 13 retinoblastoma cases (children with eye cancer where the eye is removed) in 2007 which were settled to silence those facts.
 - As a federal, Section 106 Consulting Party, I have the full draft versions in paper form as well as having reviewed the final FEIS they recently submitted over the Government shutdown period, where consideration for these children (facts we already know, not potential impacts) were not only ignored, but significant effort to silence, smear, and undermine the credibility of these families was launched by DOE and Boeing and continues today. They also threatened litigation if I were to disclose the final PA Programmatic Agreement and Record of Decision they recently shared with the consulting parties. They even moved webex meetings so people would miss them, and

even kept Bonnie and I on hold throughout the most recent meeting to prevent us from hearing the presentation, or participating in the process, as we are supposed to be able to do based on the NEPA Section 106 process as defined by federal law.



- America's Children and the Environment: <https://www.epa.gov/ace>
- Contaminated lands that expose children: <https://www.epa.gov/sites/production/files/2015-05/documents/enviroements-contaminants-contaminated-lands.pdf>
 - Contaminated Lands
 - Accidents, spills, leaks, and improper disposal and handling of hazardous materials and wastes have resulted in tens of thousands of contaminated sites across the United States. The nature of the contaminants and the hazards they present vary greatly from site to site. These contaminants include industrial solvents, petroleum products, metals, residuals from manufacturing processes, pesticides, and radiological materials, as well as certain naturally occurring substances such as asbestos. Contaminated lands can threaten human health and the environment, in addition to hampering economic growth and the vitality of local communities.
 - Contaminants diffuse more slowly through soil than through air or water, so contaminants are rarely distributed uniformly across a contaminated site. Soils are a concern if children are playing, attending school, or residing on or near to contaminated land. People and pets may track contaminated soils and dusts into homes where infants and toddlers are playing. Some contaminants may harm or penetrate the skin, and by touching or playing in soil children may come into direct contact with them. Children may ingest soils through hand-to-mouth play or by eating without first washing their hands after having touched contaminated soil. Soil dust may be carried on the wind and inhaled into the lungs, where it can be very damaging. The optimal approach to minimizing risks to children from contaminated soils is to prevent these exposures.

With so many children within proximity of superfund sites (SSFL Scored as a Superfund site as well), across the nation, we can no longer accept that moving away from them is the answer. Polluters must be held accountable.

Sincere thanks for supporting and protecting the children and citizens surrounding Santa Susana Field Laboratory.

Sincerely,

Christina Walsh

PeoplePolicy.org, Environmental Monsters Project

8463 Melba Avenue, West Hills, CA 91304 (Two miles from the SSFL site)

8189225123 @cwalshCURO

My acknowledgement letter from USEPA for my work related to the study of SSFL and the need for proper cleanup include an award from Sheila Kuehl for helping to SB990 and for my work on the actual radiation survey and considering appropriate background locations for analysis. Despite being involved for several decades, everything changed a few years ago, and the work to silence and remove knowledgeable members of the public from the process began. Anyone who wanted cleanup was vilified and they used influence over local boards at the community level to sway public understanding of the issues.

cleanuprocketdyne.org/Welcome_files/EPA_recognition_Walsh_cleanuprocketdyne.pdf



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 1, 2011

Ms. Christina Walsh
Founder, cleanuprocketdyne.org
8463 Melba Avenue
West Hills, CA 91304

Dear Christina,

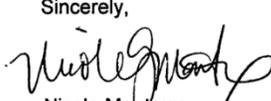
The purpose of this letter is to recognize the specific contributions you and cleanuprocketdyne.org have made to EPA's radiological studies at the Santa Susana Field Lab (SSFL) located in eastern Ventura County, California. SSFL is a 3,000 acre facility with a complex legacy of chemical and radiological contamination.

In particular, we would like to recognize the technical assistance you provided as EPA kicked off two important projects at SSFL, a Radiological Soil Background Study and a Radiological Soil Characterization Assessment. Using your skills with global positioning system equipment, you were able to advise EPA on potential locations miles away from SSFL that were not affected by onsite releases of contamination and therefore suitable for our soil background study. In addition, your skills with Google Maps and Google Earth assisted EPA's contractor build site maps, technical investigation plans and informational posters for public meetings.

Throughout EPA's ongoing radiological soil characterization study, you shared your extensive knowledge of SSFL history and its environs with the EPA technical representatives and interested community members. You have always been open and generous with sharing your impressive collection of site-related documents, site photographs, contacts with former SSFL workers and personal knowledge of site past activities. Your willingness to volunteer your time, share information, and stay involved with EPA's project has helped ensure that EPA's study addresses the needs and interests of the community living near SSFL.

We at EPA sincerely appreciate your invaluable time and assistance. We sincerely hope that you and cleanuprocketdyne.org will continue to stay involved in our important work at SSFL.

Sincerely,


Nicole Moutoux
EPA Project Manager

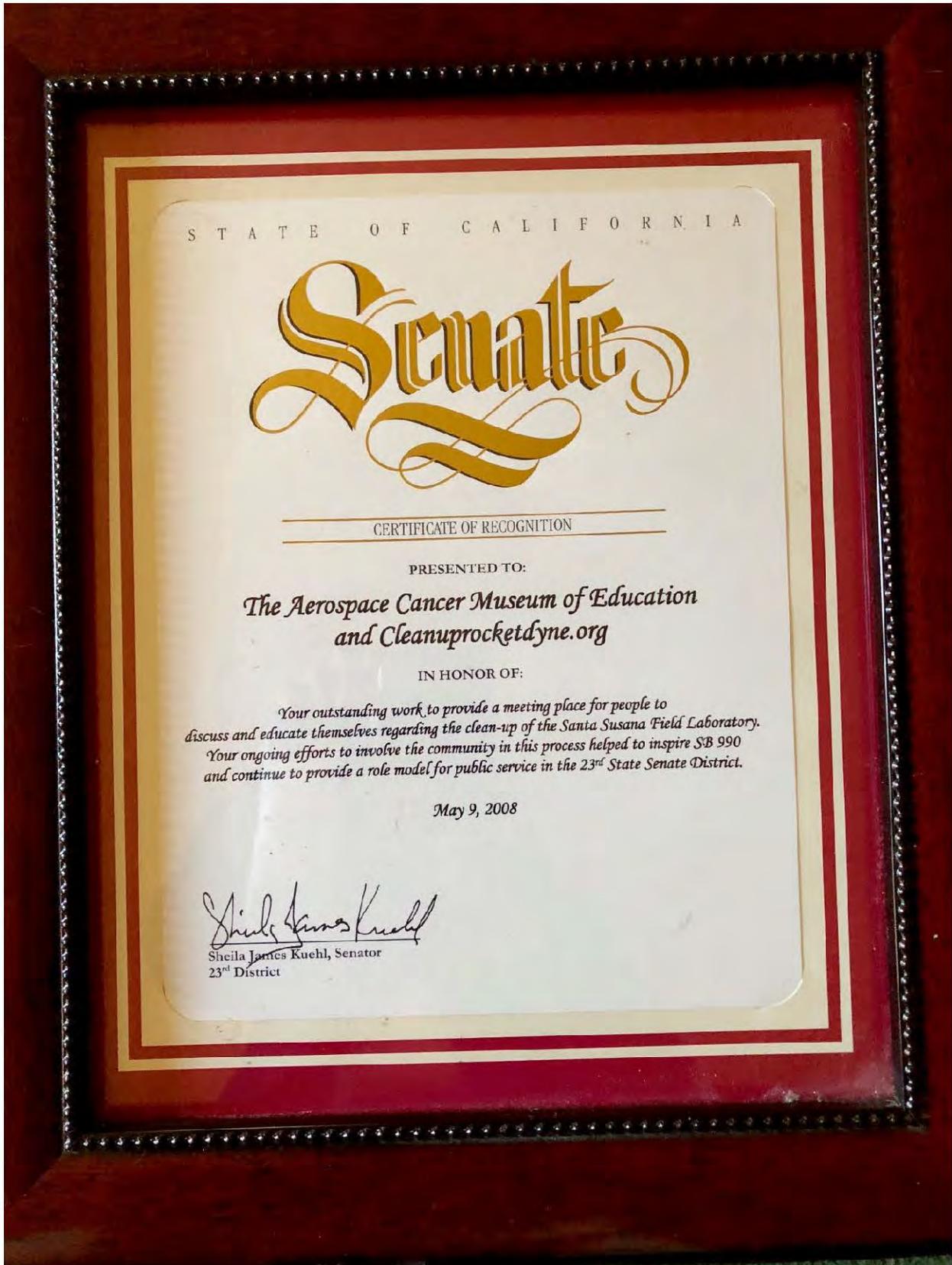
(415) 972-3012


Craig Cooper
EPA Project Manager

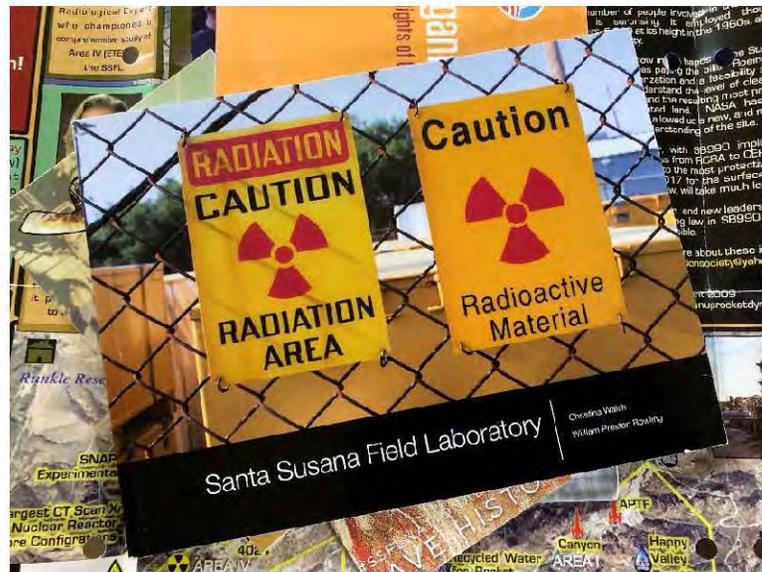
(415) 947-4148


Gregg Dempsey
EPA Senior Science Advisor

(702) 784-8232









Richard Williams <richard.williams@lacity.org>

SUPPORT for item 19-0145

jp@postrealestategroup.com <jp@postrealestategroup.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 8:45 PM

Hello, I am a concerned constituent with a family and two small children, and many friends and neighbors, that are likely affected by the Santa Susana lab contamination. Unfortunately, I'm unable to make it to the City Council meeting tomorrow as its during work hours. Please consider this comment in lieu of my attendance.

I live in the Agoura Hills area and was not made aware of the nuclear reactor meltdowns nor uncleaned contamination before I purchased my home. Many of my friends and neighbors were not aware of this either; even many who have lived in the area for decades, despite the fact that we live 5-6 miles 'as the crow flies' on a map from the site.

The fact that there was more than one partial nuclear reactor meltdown and that it was not disclosed for decades is a complete dereliction of responsibility by the entities involved. What's worse, is that until now, this issue was still not discussed or addressed by the governmental entities responsible for public safety and health.

Thank you to the City Council members for considering funding to hire outside counsel to address this issue. Given the inaction to date, it's clear that appropriate cleanup (and restitution to those impacted), will not happen without pressure from those affected. It's important that the City Council members know that this is a dinner table topic at many tables. Many constituents are upset and want this addressed.

With sincere thanks,

Jacqueline Post Ladha



Richard Williams <richard.williams@lacity.org>

SUPPORT for item 19-0145

Tiffany Ruiz <tiffanybilingualslp@gmail.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 8:18 PM

Please support item 19-0145. Our health and the future of the planet depends on it.

Tiffany Ruiz
Simi Valley

Sent from my iPhone



Richard Williams <richard.williams@lacity.org>

support item # 19-0145

Dorri Raskin <bunnyraskin@gmail.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 7:32 PM

I urge you to support item # 19-0145; It is important to do a full cleanup of the contaminated site called Rocketdyne /SSFL field lab site(Santa Susanna field lab site).My parents and I have been trying to get this very contaminated site to be cleaned up for over 30 years.

It has been contaminated with both radiation and chemicals.

1. People living nearby as well as below this contaminated site are being exposed both to radiation and various dangerous chemicals,toxins causing them to get various cancers. Families living about 5 miles in west hills are exposed, causing rare cancers like leukemia ,retinoblastoma. A child died a couple of months ago.

2. LA City Council has voted to support a complete or full cleanup of SSFL site.The council should continue to support the community for a full cleanup and approve retaining a lawyer for \$600,00.

3. The new CAL EPA director has directed the DTSC to enforce the cleanup with the polluters like DOE and NASA. They need to cleanup to the the agreements that they signed -AOC's(agreement on consent)and comply with the complete cleanup.

4. DOE wants to leave 98% contamination on the site with Trump's blessings. This is unacceptable. There was a nuclear meltdown in 1959,they had 10 nuclear reactors,a hot lab with plutonium,cesium 137, and strontium 90. Very dangerous and harmful radiation that needs to be completely cleanup.

5. The cleanup was supposed to be done by 2017,but the 3 polluters-DOE,NASA, and Boeing keeps dragging their feet.

6. The Wolsey fire caused a lot of problems.We in the community have concerns regarding the spread of both chemicals and radiation.

7. There are over 600,000 people who signed a petition for a full cleanup. It is time that city pressures the polluters to stop dragging their feet and clean up this contaminated site now. Our health is important. Not one more child should be exposed to this contamination. We in the community have been fighting to get SSFL site completely cleaned up for over 30 years.The City needs to fight for us!

sincerely,

Dorri Raskin
18350 Los Alimos St,
Northridge,CA 91326



Richard Williams <richard.williams@lacity.org>

support for item 19-0145 about SSFL

Cindi Gortner <cindigortner@gmail.com>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 7:29 PM

Hello,

I live very close to the contaminated site called the Santa Susan Field Lab and I am a cancer survivor myself. On my street of 20 homes, close to 3/4 of the households have had a least one member get cancer. I fully support the cleanup agreements known at the AOC signed in 2010 which said the DOE and NASA would clean the site by 2017. Not only did they obviously miss the deadline, but the Woosely fire just started on the site and we never know for sure how many people were affected by contaminated smoke. We know for certain that there is still radioactive material there. A few years ago the EPA spent \$40,000,000 studying the site and found 500 soil samples contaminated with radionuclides including Strontium-90, Cesium 137 and Plutonium 239. Please make sure you vote yes to ensure the site is cleaned up as was promised nine years ago. Even if litigation is required, it is the right thing to do. We don't need our families raising their children around the site of nuclear meltdown still after 59 years not cleaned up.

Thank you very much.

Cindi Gortner





Richard Williams <richard.williams@lacity.org>

PSR-LA letter re: 19-0145 SSFL Cleanup - SUPPORT

Denise Duffield <dduffield@psr-la.org>
To: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 6:39 PM

Dear Budget and Finance Committee Clerk,

Attached please find comments and materials in support of item 19-0145 related to the Santa Susana Field Laboratory cleanup. Please distribute to the committee members.

Many thanks,

Denise Duffield

--
Denise Duffield
Associate Director
Physicians for Social Responsibility-Los Angeles
[617 S. Olive Street, Suite 1100](#)
[Los Angeles, CA 90014](#)
213-689-9170 ext. 104
310-339-9676 cell
www.psr-la.org

 **PSR-LA re 19-0145.pdf**
2669K

*The physician and health advocate voice for a world free from nuclear threats
and a safe, healthy environment for all communities.*



Physicians for Social Responsibility
Los Angeles

March 18, 2019

LA City Council Budget and Finance Committee
200 N. Spring Street
Los Angeles, CA 90012

Dear Councilmembers Krekorian, Bonin, Koretz, Blumenfeld, and Price:

Physicians for Social Responsibility-Los Angeles (PSR-LA) urges a yes vote on item 19-0145, which authorizes the City to allocate funds on outside counsel to assist the City Attorney should the Dept. of Energy or the Dept. of Toxic Substances Control break their agreements to fully clean up the Santa Susana Field Laboratory (SSFL). On February 8, the Council approved a motion to direct the City Attorney to sue over this matter. We urge the Budget and Finance Committee to similarly approve today's motion.

PSR-LA works to protect public health from nuclear and environmental threats, and has advocated for a full cleanup of SSFL for over 30 years. If SSFL is not fully cleaned up, nearby communities will continue to be at risk of exposure to SSFL contamination. Federally-funded independent studies indicate increased cancers associated with proximity to the site, and that SSFL contamination migrates over EPA levels of concern.

The City of Los Angeles also has a long history of supporting a full cleanup of SSFL, support that has been critical to cleanup efforts. In 2004, the City joined NRDC and CBG in a lawsuit against the Dept. of Energy (DOE) that successfully prevented DOE from walking away from its cleanup obligations the last time it tried. In 2017, the City passed a resolution to submit a comment letter on DOE's draft Environmental Impact Statement (EIS), and the City submitted detailed critical comments on the EIS and the EIR.

Unfortunately in December 2018, the Trump Administration's DOE released its Final EIS, declaring its intent to violate the cleanup agreement (Administrative Order on Consent, or AOC) that it signed with the state's Dept. of Toxic Substances Control (DTSC) requiring it to fully clean up its area at SSFL. Instead, DOE stated that it wants to leave 98% of SSFL's nuclear and chemical contamination on site, where it will continue to place nearby communities at risk.

Under new leadership from CalEPA Secretary Jared Blumenfeld, DTSC responded in a January 28, 2019 letter to DOE stating that DOE must comply with the AOC cleanup agreement and that it would not renegotiate. (See attached letter.) Secretary Blumenfeld has also spoken out publicly about the extent of the site contamination and impacts on the community. (See attached March 8 *Bloomberg* article "[Energy Department, California Spar Over Nuclear Site Cleanup.](#)")

It is critically important for protecting the health of communities near SSFL that the City of Los Angeles keep its strong commitment to a full SSFL cleanup, including litigation if necessary. DOE has gone to extraordinary lengths to evade cleanup, including secretly funding an astroturf group to oppose and spread misinformation about the cleanup, essentially a secretly DOE-funded to lobby against entities like the City fighting DOE's efforts to breach its cleanup commitments. (See attached March 7 *LA Daily News* article, [Weaker Santa Susana Field Lab cleanup may result from advisory group accepting federal money, critics charge.](#))

The City of Los Angeles cannot allow the Trump Administration to get away with leaving 98% of DOE's nuclear and chemical contamination on site at SSFL. The Woolsey Fire, which started at and burned most of SSFL, demonstrated just some the risks of leaving SSFL contaminated. (See attached February 20 *Bulletin of Atomic Scientists* article, [A failure of governmental candor: The fire at the contaminated Santa Susana Field Laboratory.](#))

The City of Los Angeles has a vital role to play in ensuring that SSFL is fully cleaned up, as promised. We urge a yes vote on item 19-0145.

Sincerely,

A handwritten signature in black ink that reads "Denise Duffield". The signature is written in a cursive, flowing style.

Denise Duffield
Associate Director



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Acting Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Gavin Newsom
Governor

January 28, 2019

Ms. Stephanie Jennings
NEPA Document Manager
U.S. Department of Energy
4100 Guardian Street, Suite 160
Simi Valley, California 93063

DEPARTMENT OF TOXIC SUBSTANCES CONTROL'S COMMENTS ON THE DEPARTMENT OF ENERGY'S FINAL ENVIRONMENTAL IMPACT STATEMENT FOR REMEDIATION OF AREA IV AND THE NORTHERN BUFFER ZONE OF THE SANTA SUSANA FIELD LABORATORY, VENTURA COUNTY, CALIFORNIA

Dear Ms. Jennings:

The Department of Toxic Substances Control (DTSC) is writing in response to the Department of Energy's (DOE) Final Environmental Impact Statement for Remediation of Area IV and the Northern Buffer Zone of the Santa Susana Field Laboratory in Ventura County, California (Final EIS).

In the Final EIS, DOE ignores that its preferred alternative is inconsistent with the Administrative Order on Consent for Remedial Action (AOC) negotiated and executed by DTSC and DOE in 2010. The AOC clearly defines DOE's obligation to cleanup soils in Area IV to background levels, or reporting limits if no background value exists, on a point-by-point basis. DTSC remains fully committed to holding DOE accountable to the requirements of the AOC. DOE's assumption that DTSC would be open to renegotiating the AOC requirements regarding soils cleanup to accommodate DOE's preferred alternative is erroneous.

Notice of the Final EIS in the Federal Register was provided on December 28, 2018, and DOE is providing the public with only 30 calendar days – 21 business days taking into consideration the intervening holidays – to review and comment on the Final EIS. This abbreviated comment period is insufficient given the technical nature and volume of the Final EIS. To allow for meaningful public participation and opportunity for comment, DTSC requests that DOE extend the public comment period on the Final EIS for DTSC and for all interested parties up to and including March 1, 2019.

Ms. Stephanie Jenrings
January 28, 2019
Page 2

If you have any questions regarding DTSC's comments, please contact me at Mohsen.Nazemi@dtsc.ca.gov or (714) 484-5321 or my Southern California Division Chief for the Site Mitigation and Restoration Program, Mark Malinowski, at Mark.Malinowski@dtsc.ca.gov or (916) 255-3607.

Sincerely,



Mohsen Nazemi, M.S., P.E.
Deputy Director
Site Mitigation and Restoration Program

Enclosure

cc: Mr. John Jones
Federal Project Director
DOE ETEC Closure Project
4100 Guardian Street, Ste 160
Simi Valley, California 93063

Jared Blumenfeld, Secretary
California Environmental Protection Agency

Meredith Williams
Acting Director
Department of Toxic Substances Control

Nancy Bothwell, Attorney
Office of Legal Council
Department of Toxic Substances Control

Mark Malinowski
Senior Engineering Geologist
Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control

Energy Department, California Spar Over Nuclear Site Cleanup

 news.bloombergenvironment.com/environment-and-energy/energy-department-california-spar-over-nuclear-site-cleanup



California is battling federal authorities over how to clean up a contaminated former nuclear research site near Simi Valley that was also caught up in the flames of November's Woolsey Fire.

The fire complicated cleanup efforts after burning large portions of the site, scorching nearly 100,000 acres of land, and destroying 1,643 buildings.

The Santa Susana Field Laboratory operated as a nuclear research and rocket test facility on 2,850 acres from 1948 to 2006. Ten nuclear reactors were used on the site for various research products, and a partial meltdown in 1959 was not revealed until 20 years later.

The operations contaminated soil, bedrock, and groundwater with 116 chemicals and 16 radiologicals—including cesium-137 and strontium-90. Cleanup work of some kind has been ongoing since the 1960s.

"It's a complete mess," California Environmental Protection Agency Secretary Jared Blumenfeld said. "The level of toxicity and the history there is just, when you're on-site, it's just depressing.

"Everywhere you look there was flagrant violations, even for what they knew back in the day."

Responsible Parties

The current dispute is related to a 90-acre parcel where Rockwell International's Rocketdyne Division, now owned by Boeing Co., conducted nuclear energy research, according to Energy Department documents.

Boeing owns most of the land now, and is listed along with NASA and the Department of Energy as a party responsible for cleanup. All three signed binding consent orders in 2007 to clean up groundwater contamination. Boeing at the time also signed one related to soil.

Abbott Dutton, a spokeswoman for the California Department of Toxic Substances Control, called Santa Susana one the state's more complex cleanup sites.

The agency early this year plans to finalize an environmental impact report and management plan detailing how the Energy Department and NASA will comply with a 2010 order of consent, she said.

The state says an Energy Department final environmental impact statement released at the end of 2018 exploring cleanup options does not adequately remediate the site in accordance with the 2010 agreements.

During a Feb. 27 joint budget hearing, Blumenfeld, from the California EPA, said the consent documents do not give federal authorities discretion to make changes and California will have to make sure they comply.

"It's going to be a struggle, because the federal government isn't prioritizing these kind of cleanups," Blumenfeld said.

Cleanup Options Dispute

An Energy Department spokesman said its Office of Environmental Management is "eager to begin remediation of the site."

The agency was required to consider reasonable cleanup alternatives, he said in an email. The document in question outlines "the best options for site cleanup and remediation that are most protective of human health and the environment," he said.

Environmental organizations like the Natural Resources Defense Council have also protested the federal plan, saying it "sets the stage for abandoning huge amounts of radioactivity and chemically hazardous material and consigns this portion of Southern California" to never be cleaned up.

The state agreements order that contamination be remediated to background levels, which would mean removing 1.6 million cubic yards of soil. This new analysis proposes cleaning it up to meet open space standards for walking paths and other uses.

That would mean only dealing with 38,200 cubic yards, a small proportion of material compared to the state agreements, said Daniel Hirsch, former director of the Program on Environmental and Nuclear Policy at University of California, Santa Cruz.

Final Plan 'Vastly Worse'

In addition, Hirsch said the final version of the environmental document differs wildly from a draft released in January 2017.

"The draft was pretty bad but the final is vastly worse," he told Bloomberg Environment. Hirsch is also president of Committee to Bridge the Gap, a nonprofit that advises communities on hazardous site cleanups.

The federal agency, as a polluter, also does not have the authority to make cleanup decisions, said Hirsch, whose students uncovered the meltdown in 1979 after finding unreleased Atomic Energy Commission reports of the incident.

A substation on the property reported a failure moments before the Woolsey fire began, Hirsch said, pointing out that that substation was intended to deliver power to nearby communities from the very reactor that had the nuclear meltdown in 1959.

Had the cleanup been completed in 2017 as originally ordered, the brush and grass growing out of contaminated soil may not have burned.

Bill to Monitor Contaminants

"How much contamination was released?" Hirsch asked.

State Sen. Henry Stern (D) has filed a bill [S.B. 633](#) that would require the state Office of Environmental Health Hazard Assessment to create a monitoring plan to collect data on contaminants that could migrate off-site. It has been referred to the rules committee.

Nearly 600,000 people have signed a [Change.org petition](#) asking Gov. Gavin Newsom (D) to push the DTSC to completely clean up the site. It was created by a mother whose child has cancer.

Blumenfeld, who was appointed to the California EPA job in January, has been to the site and met with nearby residents.

"There's a very real and personal face to all of these sites," Blumenfeld said. "We need to be rigorous and disciplined."

Weaker Santa Susana Field Lab cleanup may result from advisory group accepting federal money, critics charge

 [dailynews.com/2019/03/07/weaker-santa-susana-field-lab-cleanup-may-result-from-advisory-group-accepting-federal-money-critics-charge](https://www.dailynews.com/2019/03/07/weaker-santa-susana-field-lab-cleanup-may-result-from-advisory-group-accepting-federal-money-critics-charge)

March 6, 2019

By [Olga Grigoryants](mailto:ogrigoryants@scng.com) | ogrigoryants@scng.com | Los Angeles Daily News

PUBLISHED: March 7, 2019 at 1:00 pm | UPDATED: March 13, 2019 at 8:41 am

A community advisory group has come under fire after sending a letter to Gov. Gavin Newsom last month encouraging a limited cleanup of the contaminated former rocket testing site in the hills overlooking San Fernando and Simi valleys rather than the more extensive cleanup called for by some residents.

The letter has stirred concern among residents who live near the 2,849-acre Santa Susana Field Laboratory and fear the SSFL Community Advisory Group, or CAG, has been promoting the interests of parties responsible for cleanup rather than addressing neighbors' concerns.

It didn't help in the eyes of critics that in 2015 the organization received a grant of \$34,100 from the federal Department of Energy, an agency that would potentially benefit from a minimum level of cleanup at the site.

West Hills resident Bonnie Klea called the move "awful."

"It's the most corrupt thing I have ever seen in my life," she said. "It's terrible."

Some neighbors criticized the CAG members for not only promoting the minimal-impact cleanup but also accepting funds from the Department of Energy.

John Luker, the CAG board member, acknowledged that the group received funding from the federal agency.

"Yes, we did get a grant," he wrote in an email. "It was spent on directors' insurance, and a couple of thousand dollars went to a guy who produced a few videos for us. You can see them on YouTube."

He added that there is a total of over \$28,000 that remains in the bank.

"Are you going to imply that we are corrupt and receiving money to change our positions and be a mouthpiece for the polluter?" Luker wrote. "Because that is not the case. That is what we are being accused of."

Some neighbors took to social media to discuss the group's letter and funding.

"The CAG has supported the polluter's agenda in the name of educating the public about the cleanup," West Hills resident Melissa Bumstead wrote on the Facebook page named Parents against Santa Susana Field Lab Nuclear Disaster. "They sold us out for a meager \$34,000 while claiming they were trying to protect us and downplaying the risks of living near one of America's worst nuclear meltdowns."

Another user wrote that the CAG "is doing a disservice to the community and should be disbanded."

The CAG was launched in 2013 with a mission to seek a balanced cleanup, and protect the

environment and wildlife, according to the group's recent presentation.

In the letter to Gov. Newsom, the CAG wrote that its members, along with the West Hills, Woodland Hills, Canoga Park and Chatsworth neighborhood councils, support a minimally invasive "risk-based cleanup for future open space." They pointed out that the strictest possible cleanup would involve a great amount of soil excavation and transportation of that soil through the surrounding communities, hurting the neighborhoods and damaging the environment.

But residents and physicians say they believe there is a cluster of rare pediatric and adult cancers in the communities surrounding the Simi and San Fernando valleys that is connected to the contaminated Santa Susana Field Laboratory.

Neighbors say a strict cleanup plan is necessary. The plan that the CAG has been promoting, critics say, runs afoul of an agreement signed in 2010 by state regulators, NASA and the Department of Energy that called for a strict remediation plan that would clean the soil beyond existing federal standards.

"We are a way more afraid of radiation than the trucks," Klea of West Hills said, adding that the limited cleanup the CAG is promoting "does nothing for the community and does nothing for the people who live there 24 hours a day, seven days a week."

The Santa Susana Field Laboratory was established in 1947 for rocket engine and nuclear reactor testing in the hills above San Fernando and Simi valleys, far — at the time — from populated areas. In 1957, one of the nation's first commercial nuclear power plants was constructed at the field. Two years later, it became the site of a partial nuclear meltdown.

The Department of Energy released a report in 1989, admitting that a partial meltdown of a sodium reactor took place in 1959 in Area IV. A 1997 study conducted by UCLA found that 4,600 employees were monitored for radiation between 1950 and 1993 and were at risk of dying from cancer.

In 2010, the Department of Energy and NASA signed an agreement promising to clean their portions of the land to the highest environmental standards — even higher than those outlined by the federal EPA.

But in December of last year, the Department of Energy released its preferred cleanup plan, which calls for the demolition of 18 buildings in Area IV and the transportation of waste off-site for disposal.

However, residents and activists said the DOE's cleanup plan would leave the majority of pollutants in the ground while benefiting the parties responsible for the contamination in the form of lower costs.

In 2013, NASA estimated that to clean the Santa Susana field to the highest state standards could cost at least \$200 million. The cost to clean the site to less-stringent levels would range from \$25 million to \$76 million.

Local and county officials have submitted strong public comments pushing for cleanup to the highest state standards.

Back in December, Rep. Brad Sherman, D-Sherman Oaks, criticized the minimal-impact cleanup plan, saying the only lower standard would be "Chernobyl standard," which means "stay out."

State Department of Toxic Substance Control spokesman Russ Edmondson said the CAG was formed after his department received a petition to form an advisory group made up of members of the community a few years ago. He said the agency assisted in forming the group and occasionally participated in its meetings.

However, the state Department of Toxic Substance Control "has no authority to monitor or supervise

the various positions a CAG may take, or how it may obtain funding," Edmondson wrote in an email.

West Hills resident Christina Walsh said the CAG shouldn't have taken funds from parties responsible for the cleanup.

"That's not their role to protect polluters," she said. "Their role is to protect us."

A failure of governmental candor: The fire at the contaminated Santa Susana Field Laboratory

thebulletin.org/2019/02/a-failure-of-governmental-candor-the-fire-at-the-contaminated-santa-susana-field-laboratory

February 20, 2019



The Woolsey Fire began on November 8 at the Santa Susana Field Laboratory (SSFL), located adjacent to Simi Valley, California, and enveloped much of the lab's grounds, eventually burning all the way to Malibu and the Pacific Ocean, impacting nearly 100,000 acres. Because of widespread radioactive and toxic chemical contamination at the Santa Susana site from several nuclear reactor accidents, including a partial meltdown, and tens of thousands of rocket engine tests, the public had reason to be concerned that smoke from the fire carried contamination offsite.

In the wake of the fire, the California Department of Toxic Substances Control (DTSC) and the US Energy Department—both of which have been involved in long delays to the promised cleanup of the Santa Susana site—issued assurances that no radioactive or toxic chemical contamination had been released. At that time, however, the agencies refused to release any actual data or scientific explanation of how hundreds of acres of contaminated vegetation, growing in contaminated soil, could burn without releasing contaminants.

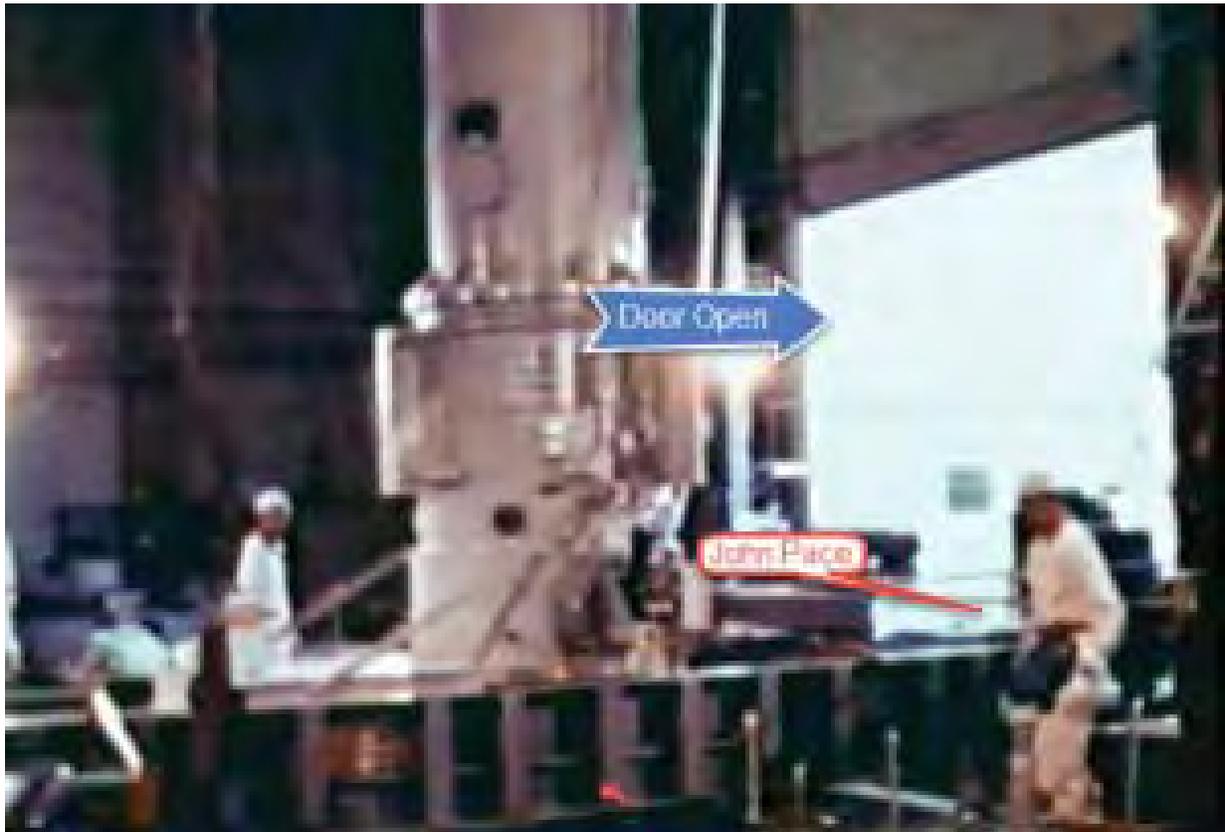
Nearly six weeks after the fire—and after numerous requests from the community, news media, and legislators—the DTSC finally issued an “interim summary” report about the measurements that formed the basis for the claims that no contamination was released by the fire. But that report includes few actual measurements of smoke emitted by the fire, and the data that are in the report raise more concerns than they allay.

A history of poor environmental practices. The Santa Susana Field Laboratory was established in the 1940s as a remote facility for rocket engine and nuclear reactor testing that was considered too dangerous to conduct in populated areas. It is situated in the hills overlooking Simi Valley and the west San Fernando Valley, about 25 miles from downtown Los Angeles. Since the lab was established, the population in the Los Angeles area mushroomed, and now about 500,000 people live within 10 miles of the site.

Over the years, 10 reactors operated at Santa Susana, as well as plutonium and uranium fuel fabrication facilities and a “hot lab” where highly irradiated fuel from around the US nuclear complex was shipped for decladding and examination. Tens of thousands of rocket engine tests were also conducted at the site.

During the lab’s life, numerous reactor accidents occurred, the most famous of which was the 1959 partial meltdown of the Sodium Reactor Experiment. After a power excursion—that is, an undesired and rapid increase in power level—in the reactor core, operators were barely able to shut it down. Although they could not identify the cause of the problem, the reactor was inexplicably started up again and ran for 10 more days, in the face of rising radiation levels and clear indications of fuel damage. When the reactor was finally shut down, a third of the fuel elements were found to have experienced melting.

Like all the reactors at the Santa Susana site, the Sodium Reactor Experiment had no containment structure. During and after the accident, radioactive gases were pumped from the reactor into the atmosphere. Even so, leakage into the reactor room was so severe that the building’s loading doors were opened to vent the contamination outside, according to John Pace, one of the workers at the time.



John Pace, a worker at the Sodium Reactor Experiment, during efforts to recover from a fuel melting incident there. Photo credit: Still from film, US Atomic Energy Commission, "[The Sodium Reactor Experiment, SRE Core Recovery Following Fuel Element Damage](#)," November 1971. (Labels added.)

The Atomic Energy Commission and its contractor, then known as Atomics International, were not forthcoming with the public about what had happened. Five weeks after the accident, a news release was finally issued stating merely that "a parted fuel element" had been observed, that there were no indications of unsafe operating conditions, and that there had been no releases of radioactivity. But in fact the fuel had melted, not simply parted; a third of the fuel elements were affected, not merely one; it was one of the worst nuclear accidents to date; and workers had been intentionally venting radioactivity into the atmosphere for weeks when the news release was issued.

This history—of cutting safety corners and being less than candid about the result—has long plagued not just the Santa Susana lab but the entire nuclear complex managed initially by the Atomic Energy Commission and subsequently by the Energy Department. That history contributed to public mistrust of agency claims of safety during and after the recent fire.

Over the years, at least three other Santa Susana reactors experienced accidents involving radiation releases and/or significant fuel damage.

As was the case throughout the nuclear complex and at many Defense Department sites, Santa Susana environmental practices were extremely poor. Radioactive and chemical wastes were routinely burned in open-air pits; often, barrels of waste were ignited by rifle fire, plumes of toxic smoke then traveling far beyond the site.



Through much of the Santa Susana site's history, toxic waste was regularly burned in open-air pits. Photo credit: California Department of Toxics Substances Control, Santa Susana Field Laboratory, Historical Documents Index, Area I Burn-Pit.

A million gallons of trichlorethylene, a carcinogenic solvent, was used to flush rocket engines after tests and allowed then to percolate into the ground and groundwater. A witches' brew of dozens of other toxic chemicals, including polychlorinated biphenyls (PCBs), dioxins, heavy metals, volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs), polycyclic aromatic hydrocarbons, and perchlorate has contaminated soil, groundwater, and surface water. A \$40 million, multi-year radiation survey by the Environmental Protection Agency found hundreds of Santa Susana locations contaminated with radionuclides, including strontium 90, cesium 137, and plutonium 239.

Because the Santa Susana lab property is located in the hills overlooking populated areas, decades of stormwater runoff and wind have carried contamination offsite. A study led by UCLA's Professor Yoram Cohen and funded by the Agency for Toxic Substances and Disease Registry found contaminants had migrated to offsite populated areas at levels in excess of EPA levels of concern. A second study, funded by the same agency and led by University of Michigan epidemiologist Hal Morgenstern, found a greater than 60 percent increase in the incidence of certain cancers in the offsite population living within two miles of the Santa Susana lab, as compared with people living five miles away. An earlier study by the UCLA School of Public Health found significant elevated death rates for key cancers among the workers, associated with their radiation and toxic chemical exposures.

A history of manipulated measurements. In 1989, the EPA sent a radiation specialist, Gregg Dempsey, to review the radiation-monitoring program run at the Santa Susana site by an Energy Department contractor, Rockwell International/Rocketdyne. (Since then, the Boeing Company acquired these Rocketdyne operations.) What Dempsey found was shocking.

He discovered “that problems exist within this laboratory that cause me to question the validity of some, if not all, of their environmental data.” He found, for example, that Rocketdyne employees involved in radiation monitoring were heating soil samples to a temperature “sufficient to volatilize most man-made radionuclides of concern, including cesium 137 and strontium 90”—in other words, driving off the very radionuclides they should have been measuring. They were doing the same thing with vegetation samples, and in addition, they were washing the vegetation, meaning contaminants were rinsed from the samples before measurements were taken. He subsequently determined that the contractors had for years been filtering water samples before measuring—in other words, removing many of the contaminants from the water sample before checking the sample for them.

“[T]he SSFL sampling, placement of sample locations, and analyses cannot guarantee that past actions have not caused offsite impacts. If the environmental program stays uncorrected, SSFL cannot guarantee that unforeseen [sic] or undetected problems onsite will not impact the offsite environment in the future,” Dempsey reported. “It is also clear to me that Rocketdyne does not have a good ‘handle’ on where radiation has been inadvertently or intentionally dumped onsite.”

The Energy Department subsequently sent in a team that identified a long list of other deficiencies at the site. An Energy Department contractor performed an evaluation; his report found widespread chemical and radioactive contamination.

These revelations severely called into question the decades of official assurances of safety at the Santa Susana site. Community leaders and elected officials pushed for independent measurements, which the Energy Department kept promising to allow but kept resisting.

For decades, the regulators of the Santa Susana Field Laboratory were at best asleep at the switch. The site wouldn’t have been contaminated had the Energy Department, NASA, and Rocketdyne (under successive ownership of North American Aviation, Rockwell International, and now Boeing) operated the facility with care.

The contamination also wouldn’t have occurred had the regulators actually regulated. The Department of Toxic Substances Control (DTSC), long viewed as a classic example of regulatory capture, has been the subject of numerous legislative and media investigations, not just for the Santa Susana fiasco but at many other sites statewide. It has been criticized as viewing the regulated entities, the polluters, as its clients, and the public as its enemy. In short, Santa Susana Field Lab has a history of sloppy environmental practices, failed regulation, widespread contamination, *and* a consistent failure of candor on the part of regulators and the regulated.

Cleanup agreements, made and broken. After decades of foot-dragging and evasion, in 2010 a breakthrough occurred. A courageous Secretary of the California Environmental Protection Agency (CalEPA), Linda Adams, concluded that DTSC, a department of CalEPA, was so thoroughly captured by the parties responsible for Santa Susana contamination that she needed to take control of the cleanup herself.

In response, Energy Secretary Steven Chu and Assistant Secretary Inés Triay proposed to break through the years of impasse by agreeing to clean up radioactivity and toxic chemicals on the Energy Department’s portion of the Santa Susana site to background levels. In other words, with very narrow exceptions, any detectable contamination that the Energy Department had added would be remediated.

Adams then negotiated an identical agreement with NASA (which had taken responsibility for the contamination from rocket testing that it and the Defense Department conducted at Santa Susana). The Energy Department and NASA executed legally-binding agreements with California in December

2010. Boeing, which by now had taken over Rocketdyne and therefore controlled the remaining portions of the Santa Susana site, refused to sign a similar consent order, but the state formally found that it would require a comparable cleanup of the Boeing portion of the site. A deadline for the cleanup of all parts of the Santa Susana Field Laboratory was set: 2017.

The community was overjoyed. Of the thousands of comments submitted on the draft consent orders, all but a handful were strongly supportive. It now seemed as though the decades of contamination would finally be removed.

The following month, a new California governor took office. A new secretary of CalEPA was named, and the Department of Toxic Substances Control was back in charge. The 2017 cleanup deadline came and went; not only was cleanup not completed; as of today, it hasn't even begun.

The Woolsey Fire: False and misleading claims. In the wake of the Woolsey fire, public officials and the news media have spread a variety of untruthful information. First, initial press reports said the fire began "near" the Santa Susana site. Actually, the fire began *at* the site.

A TV news helicopter reporter took footage of the fire as it began (see below).

Rocky Peak Bel Canyon fire as it started. We were on our way to the NewBerry Park fire when I took this.
[@KCBSKCALDesk pic.twitter.com/jfHxbwvIMT](https://twitter.com/KCBSKCALDesk/pic.twitter.com/jfHxbwvIMT)

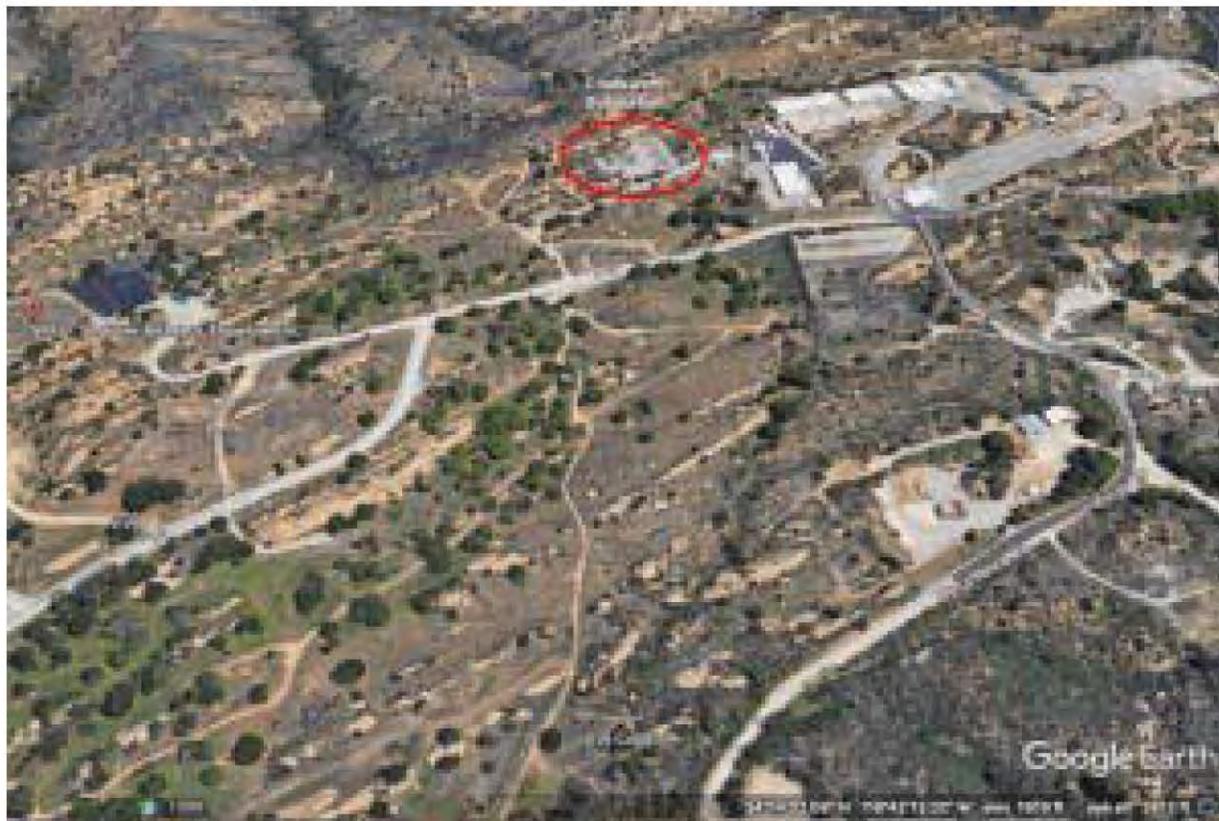
— stu mundel (@Stu_Mundel) [November 9, 2018](#)

Utilizing Google Earth, one was able to locate the spot, in NASA's Area II, very close to Boeing's Area III and DOE's Area IV. The fire appears to have started about 1,000 yards from the site of the partial meltdown of the Sodium Reactor Experiment.



Southern California Edison notified its regulator, the California Public Utilities Commission, that a circuit out of its Chatsworth substation “relayed” two minutes before the fire was reported nearby. (A relay is initiated when a disturbance is detected in the system.) Because Edison did not disclose the substation’s location, the media and public likely assumed it was in the town of Chatsworth, some distance from Santa Susana. The Chatsworth substation is in fact located on the Santa Susana site, indeed very close to where the fire began, and to the Sodium Reactor Experiment. The substation was built in part to serve the nearby reactor.

Photos of the substation are below:





Within a few hours of the start of the Woolsey Fire, and without being able to be on site or take any measurements, the DTSC issued a statement boldly asserting that its scientists had determined the fire had not affected any potentially contaminated portions of the site and thus there was no risk of releases. But it turns out that 80 percent of the Santa Susana site burned in the Woolsey Fire, the Energy Department's project manager for the site, John Jones, was quoted as saying by a local newspaper. The burned areas included large portions that had documented, widespread contamination.

The DTSC has now indirectly conceded that much of the Santa Susana site was in the burn area, including in its December 19 interim summary report the following map.



Similarly, the Energy Department issued a statement on November 13 saying none of its area had burned. However, subsequent satellite photography showed that to be false, that indeed parts of its area had burned, along with much of the rest of the site. This is shown also in the new DTSC map above. The prior statement having been demonstrated to be false, the Energy Department issued a later release (November 21) acknowledging that parts of its area had indeed burned.

In the days after the fire, the DTSC and the Los Angeles County Health Department issued statements that their measurements had found no radioactive or toxic chemical contamination either at Santa Susana or offsite. But they refused to release data backing those claims, or scientific explanation of how hundreds of acres of contaminated vegetation growing in contaminated soil could burn and not release contaminants.



Finally, on December 19, roughly six weeks after the fire and just before Christmas, the DTSC issued an “interim summary report” purporting to provide the missing data. That report actually provides very little data and raises more questions than it answers.

California’s “interim summary” of Data about radioactive and toxic chemical releases from the Woolsey Fire. After numerous requests from the community, news media, and legislators, the state Department of Toxic Substances Control finally issued a report regarding the measurements that formed the basis for their claims that no contamination was released by the fire. The troubling report shows that:

- All DTSC samples were taken days after the fire, making them essentially irrelevant. The issue of concern is whether the smoke from the fire contained contaminants. This fundamental defect is



amply demonstrated by the photo on the cover of the DTSC report, which shows air sampling equipment being set up on burned ground—two days after the fire at the Santa Susana site ended, when no potentially contaminated smoke was being released.

- DTSC took only three air samples, five ash samples, and 23 soil samples from the entire Santa Susana site and surrounding areas. Roughly half of the locations sampled were on the lab site; only 14 sampling locations were offsite. (The ability to detect potential impacts is close to zero with such a small sample size.)
- None of the DTSC samples was tested for radioactivity.
- No measurements were taken for the majority of toxic chemicals known to contaminate the Santa Susana site.
- The measurements of soil and ash samples were not compared to background or to pre-fire levels, which would have helped indicate whether the fire added contamination to those locations. Nor were they compared to the department’s own official cleanup standards for the Santa Susana site. Instead, the department compared the measurements to standards hundreds of times more lax than the state’s own risk-based screening levels. Even so, toxic chemical contamination was found in some samples; in those cases, the state tried to dismiss its own findings.
- Hand-held equipment was used for some minimal radiation and chemical scans, but the equipment did not have the capability to measure contaminants at the levels requiring cleanup. Even so, some direct readings in offsite areas showed radiation at about three times background levels. The department discounted those findings, saying they did not rise above the department’s “action levels”—which are more than 100 times higher than the upper limit of

what EPA deems protective and 10,000 times higher than the EPA's risk goal.

- Most troubling, the Department of Toxic Substances Control—and the other agencies—assert that none of their measurements for radioactivity or toxic chemicals found any contamination whatsoever at Santa Susana site. This is extraordinary. State and federal agencies have long admitted that the site contains widespread contamination; that's the whole reason for the required cleanup. EPA spent \$40 million and several years testing part of the site and found hundreds of locations with elevated radioactivity. Other agencies spent tens of millions of dollars, finding thousands of locations at the Santa Susana Field Laboratory with chemical contamination. For state and federal agencies now to assert they couldn't detect contamination at Santa Susana leads to one of two conclusions, both troubling. Either their equipment was too insensitive to detect contamination that is there, and thus their conclusions are worthless; or the fire drove off all the contamination at Santa Susana into surrounding communities. Clearly, the latter scenario is highly unlikely.

Measurements from the network of air monitors set up at Santa Susana are almost entirely missing from the report. Minimal air monitor data from the time of the fire are included only on the very last page of the 267-page report (most of which is filler). There are at least 16 air monitors in the network. For some reason, the report gives data for only two of them, and only partial data at that. Where are the missing air-monitoring data from the time of the fire and why haven't they been reported? The measurements were initially promised to be released within days of the fire, but months later, still have not. (Weeks after the release of the DTSC report, Boeing provided some minimal radiation data from two of its six air monitors. No chemical data were provided, and no data at all for the other four monitors.)

Because of widespread public distrust of state and federal agencies and the other parties responsible for the pollution at the Santa Susana, a community-initiated study is now underway. Soil and ash samples are being collected from homes to be sent for analysis; results are some months away. It must be recognized that these measurements, taken long after the fire, will have significant limitations as well.

What should happen now. In 2000, the Committee to Bridge the Gap, a nuclear policy nonprofit with which I have long been associated, wrote to then-California Gov. Gray Davis warning of a "dangerous situation, which the state's regulatory agencies do not seem to be addressing—the potential for radioactively and chemically contaminated sites to catch fire, releasing their toxic materials." We particularly called attention to the Santa Susana Field Laboratory, noting that we had asked "DTSC officials whether, in setting cleanup levels for the contamination, they considered the potential for a fire in which contaminants in vegetation and soil are lofted into the air. They said no and asserted that there was no need for such consideration because such a fire occurring was completely 'speculative' and non-credible."

The speculative and non-credible have now happened. A fire burned through most of the Santa Susana Field Laboratory, a site contaminated with radioactivity and toxic chemicals allowed by decades of shoddy environmental controls.

The Department of Toxic Substance Control's current claims continue a pattern of trying to cover the agency's failures. It is perhaps not entirely coincidental that the department issued its report claiming there were no dangerous releases from the fire on the same day that the Energy Department issued its Final Environmental Impact Statement for a cleanup of the Santa Susana site. That final statement broke the legally binding remediation agreement the Energy Department had signed with the state and calls instead to leave 98 percent of the site's contaminated soil not cleaned up. The Woolsey Fire is

history. The solution going forward is to finally get the Santa Susana site fully cleaned up, and to get the agencies responsible for the contamination and the failure to clean it up fundamentally reformed, as well.



Richard Williams <richard.williams@lacity.org>

Item 19-0145 -- SSFL -- CORRECTED

Reynolds, Joel <jreynolds@nrdc.org>

Sun, Mar 17, 2019 at 1:09 PM

To: "Clerk.BudgetandFinanceCommittee@lacity.org" <Clerk.BudgetandFinanceCommittee@lacity.org>

To the Clerk:

Please distribute the CORRECTED attached letter immediately to all members of the committee.

Please delete the version sent earlier this morning.

Thank you for your assistance.

Very truly yours

Joel Reynolds

Western Director

Senior Attorney

Natural Resources Defense Council

[1314 Second Street](#)

[Santa Monica, CA 90401](#)

(310) 434-2300

(310) 434-2399 (fax)



santa susana.nrdc letter.la city council.motion for outside counsel fees.jrr.final.docx
53K



March 17, 2019

To: Clerk.BudgetandFinanceCommittee@lacity.org
Re: Item 19-0145 – Santa Susana Field Lab

To Members of the Budget and Finance Committee of the City Council of the City of Los Angeles:

NRDC applauds the decision by the Los Angeles City Council, without objection, to direct the City Attorney to file suit if either the EIS or EIR for the cleanup of the Santa Susana Field Laboratory is finalized with its current content -- that is, with content inconsistent with the City's long-held position that the site must be fully remediated in compliance with the 2010 cleanup agreements for the site. The City has provided detailed comments on both environmental documents detailing how those documents have been at variance with the longstanding, legally binding agreements and the position of the City in support of full cleanup.

In December, the U.S. Department of Energy issued its Final EIS, proposing, in direct violation of the clean-up agreement, that the overwhelming majority of contamination remain at the site. A Record of Decision by the Trump Administration finalizing that decision would be an unfortunate, unacceptable, and illegal matter.

We strongly support the motion before the Budget and Finance Committee to allocate the necessary funds for outside counsel to assist the City Attorney in the litigation that the City Council has previously directed be undertaken.

Very truly yours,

Joel Reynolds
Senior Attorney
Natural Resources Defense Council
Western Director
1314 Second Street
Santa Monica, CA 90401



Richard Williams <richard.williams@lacity.org>

Fwd: Public Case Access System - Case: Physicians for Social Responsibility-Los Angeles v... - Document Filed Notification

Christine Rowe <crwhnc@gmail.com>
To: Andrew.Choi@lacity.org
Cc: Clerk.BudgetandFinanceCommittee@lacity.org

Sun, Mar 17, 2019 at 2:18 AM

Dear Mr. Choi,

Could you please post this email with the attachments, and my letter to the Mayor et al that is at the bottom, in the Council file - File 18 - 0874 and in Council File 19-0145 which is now (13) for Monday's Budget Committee meeting.

I sent this information to the Council back in December, so ideally someone from their staff would have read parts of the documents.

The Google documents support my letter to the Mayor et al. The City needs to be aware of these documents some of which are legal documents.

Thank you.

Respectfully,

Christine L. Rowe

(818)-704-7693 (after 3:00 p.m. please)

From: **Christine Rowe** <crwhnc@gmail.com>

Date: Mon, Dec 3, 2018 at 4:52 AM

Subject: Fwd: Public Case Access System - Case: Physicians for Social Responsibility-Los Angeles v... - Document Filed Notification

To: Mayor Mayor Eric Garcetti <mayor.garcetti@lacity.org>, Herb Wesson (<councilmember.wesson@lacity.org> <councilmember.wesson@lacity.org>), Controller Galperin <controller.galperin@lacity.org>, Mike Feuer <Mike.Feuer@lacity.org>

Cc: Gil Cedillo, Sr. <councilmember.cedillo@lacity.org>, Councilmember Paul Krekorian <Councilmember.Krekorian@lacity.org>, Councilmember Bob Blumenfield <Councilmember.Blumenfield@lacity.org>, David Ryu (<david.ryu@lacity.org> <david.ryu@lacity.org>), Paul Koretz <Paul.Koretz@lacity.org>, Nury Martinez (<nury.martinez@lacity.org> <nury.martinez@lacity.org>), Marqueece Harris-Dawson (<Councilmember.Harris-Dawson@lacity.org> <Councilmember.Harris-Dawson@lacity.org>), Currren Price (<councilmember.price@lacity.org> <councilmember.price@lacity.org>), Mike Bonin (<mike.bonin@lacity.org> <mike.bonin@lacity.org>), Councilmember Mitchell Englander <Councilmember.Englander@lacity.org>, Mitch O'Farrell (<councilmember.ofarrell@lacity.org> <councilmember.ofarrell@lacity.org>), Jose Huizar (<councilmember.huizar@lacity.org> <councilmember.huizar@lacity.org>), Joe Buscaino (<Councilmember.Buscaino@lacity.org> <councilmember.buscaino@lacity.org>)

Dear Mayor Garcetti, Council President Wesson, Controller Galperin, and City Attorney Feuer, and Honorable Councilmembers,

You will see by the subject heading that I am copied by the Sacramento Superior Court - Public Case Access System on the case listed below.

I am attaching my letter to you regarding this case, your Council File 18 - 0874, and other matters related to DTSC, CDPH, the DOE, and the Santa Susana Field Laboratory in general.

I am attaching my letter to you as a regular attachment. I am attaching numerous supporting documents including the ruling referenced below by the use of GOOGLE documents. Please let me know if you have any difficulty in opening any of these documents.

Please see below and attached.

Respectfully,

Christine L. Rowe
West Hills' resident of 40 years
Former West Hills Neighborhood Council Board member
B.S. in Health Education - CSUN

 [2Writ of Mandate August 6 2013.pdf](#)

 [Answer of CDPH October 8 2013.pdf](#)

 [1764356 RULING SACRAMENTO SUPERIOR COURT PSR-...](#)

 [SACRAMENTO SUPERIOR COURT Civil Case Details PS...](#)

 [Honorable Judge Allen H Sumner June 24 2014 Chr...](#)

 [JUDGE RICHARD SUEYOSHI 201380001589.pdf](#)

 [EPA FACT SHEET SSFL 5_12 307.pdf](#)

 [EPA TO NASA SEPTEMBER 30 2013 enviro-cleanup-ac...](#)

 [SB 990 OPINION.pdf](#)

 [Santa Susana draft EIR_Updated Boeing Stakehold...](#)

From: **Sacramento Superior Court - Public Case Access System** <services@saccourt.ca.gov>

Date: Mon, Nov 19, 2018 at 1:53 PM

Subject: Public Case Access System - Case: Physicians for Social Responsibility-Los Angeles v... - Document Filed Notification

To: <crwhnc@gmail.com>

Hello, Christine Rowe

Case Number: 2013-80001589

Case Title: Physicians for Social Responsibility-Los Angeles v...

ROA Entry 272 : RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

A document associated with the case number and register of action entry above was added to our system on 11/19/2018 1:53:52 PM.

Please do not reply directly to this email. It was sent from an unattended mailbox. For correspondence please [contact the Webmaster](#).

 **Christine L Rowe to Mayor Garcetti et al Council File 18-0874 CRF 12032018.pdf**
1212K

December 3, 2018

Dear Mayor Garcetti, Council President Wesson, City Attorney Feuer, Controller Galperin, and Honorable Councilmembers,

RE: Council File 18-0874

CONSIDERATION OF MOTION (WESSON FOR ENGLANDER – KORETZ) and RESOLUTION relative to the cleanup of the Santa Susana Field Lab site in Ventura, California

AND

SACRAMENTO SUPERIOR COURT CASE 2013 – 80001589: PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non-profit corporation. Case No.: 34-2013-80001589 Petitioners, V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to 100, Real Party in Interest.

INTRODUCTION

In the legal document list which I will attach to my email, there are 273 documents in the case file for the above named case. Who in the City of Los Angeles is reading these documents?

This litigation named above has taken five years and three months with the potential for Appeal – is the City of Los Angeles aware of this action which I believe has delayed the cleanup of the SSFL for five years?

Are the makers of the Motion aware of this legal action against the California Department of Toxic Substance Control (DTSC) and the California Department of Public Health (CDPH) by the above named parties?

Do you (the City of Los Angeles) want to create further litigation that will delay the cleanup longer?

Is the City aware that the Department of Energy (DOE) structures that were threatened by the Woolsey Fire – they were scheduled for demolition back in 2007 – to be down by 2009?

Is the City aware that DTSC stated to DOE when this was a “shovel ready project” when they had Federal Stimulus Package money, that the demolition of those structures could not occur until the DOE completed their EIS because of the ruling by Judge Conti in the City’s litigation against the DOE?

Who, at the City of Los Angeles, read the approximately 5721 page Draft Programmatic Environmental Impact Report (DPEIR) document that was provided by DTSC to the community for comment?

DTSC absolutely considered alternative traffic routes in their DPEIR Appendix J – Transportation Feasibility Analysis: https://www.dtsc.ca.gov/SiteCleanup/Santa_Susana_Field_Lab/upload/Appendix-J_Transportation_Feasibility_Analysis_Reference_Documents-Part1.pdf

In an email to a staff member of one of my elected officials, I wrote this at the time those comments were due:

“As an FYI, in the DTSC Programmatic DEIR, I believe there are 2557 pages in their Appendix C which is divided into four sections. Of that 2557 pages, I submitted, if I counted correctly, 1074 pages. These included two traffic studies, the Power Point by Dr. Thomas Mack to the West Hills Neighborhood Council on Cancers in our Community, 2005 Fire Drainage maps for the SSFL and the area that burned which included from Simi Valley and south to include West Hills and Woodland Hills. I believe the total Adobe page count of this Draft DEIS was 5721 pages. (page counts attached)”.

Is the City of Los Angeles aware of the EPA’s May 2012 Fact sheet on their AREA IV Radiological survey – of these statements by the EPA (please see the attached document in the email):

“So far, EPA has not found any unexpected radioactive contamination. Radiological contamination has primarily been limited to locations in the vicinity of the Sodium Reactor Experiment (SRE), the Radioactive Material Handling Facility (RMHF), and a few other locations, all onsite. Site access is restricted and therefore, the public is not exposed to this contamination.”

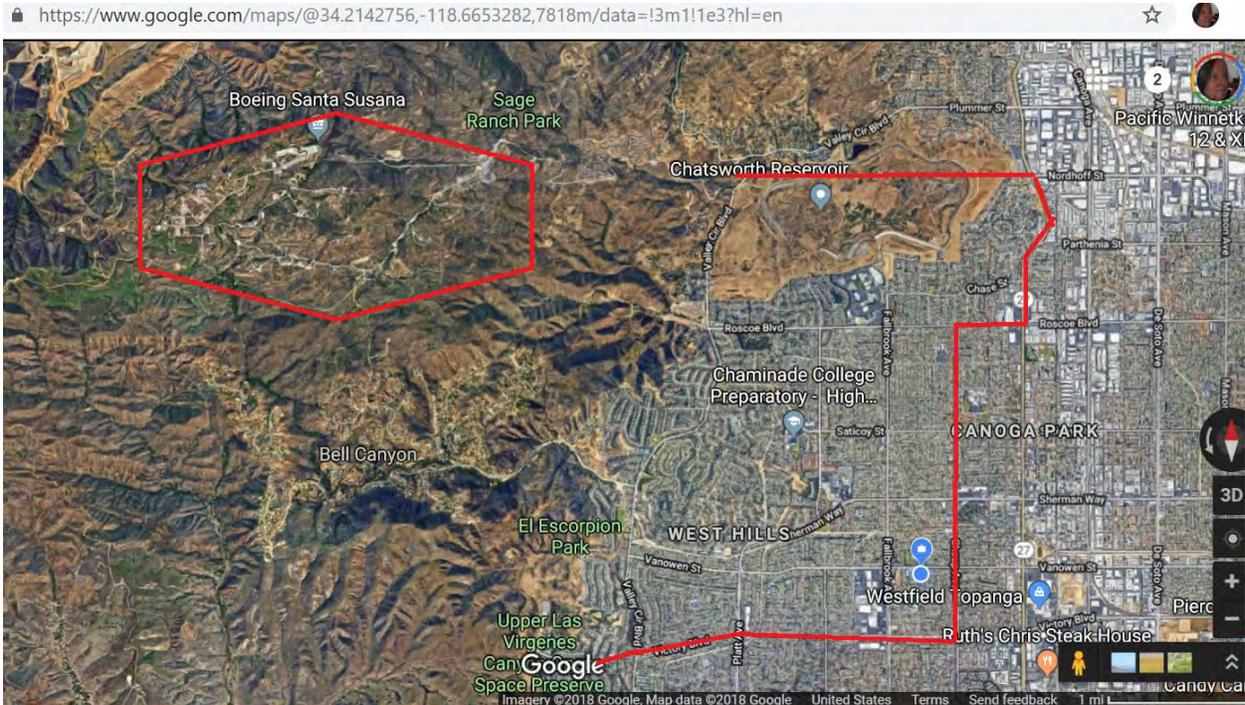
In the DOE Administrative Order on Consent, it references Judge Samuel Conti and the litigation by the City of Los Angeles against the DOE . Did you take the DOE Administrative Order on Consent to Judge Conti when you supported it in 2010?

https://www.etec.energy.gov/Library/Cleanup_and_Characterization/SSFL_DOE_AOC_Final.pdf

“6.2. DOE and DTSC acknowledge that DOE’s obligations under this Order are potentially inconsistent with the court’s May 2, 2007 order in NRDC v. DOE. To that end, DOE and DTSC shall make their best efforts to seek and obtain the support of the plaintiffs in NRDC v. DOE in applying for relief from the terms of that court’s order, so as to allow the work under this Order to be performed. In the event that DOE and DTSC are not successful in obtaining relief from that order so as to allow the work under this Order to be performed, DOE’s obligations under this Order shall be stayed.”

Does the Administrative Order on Consent violate NEPA and CEQA by being a pre-decisional document?

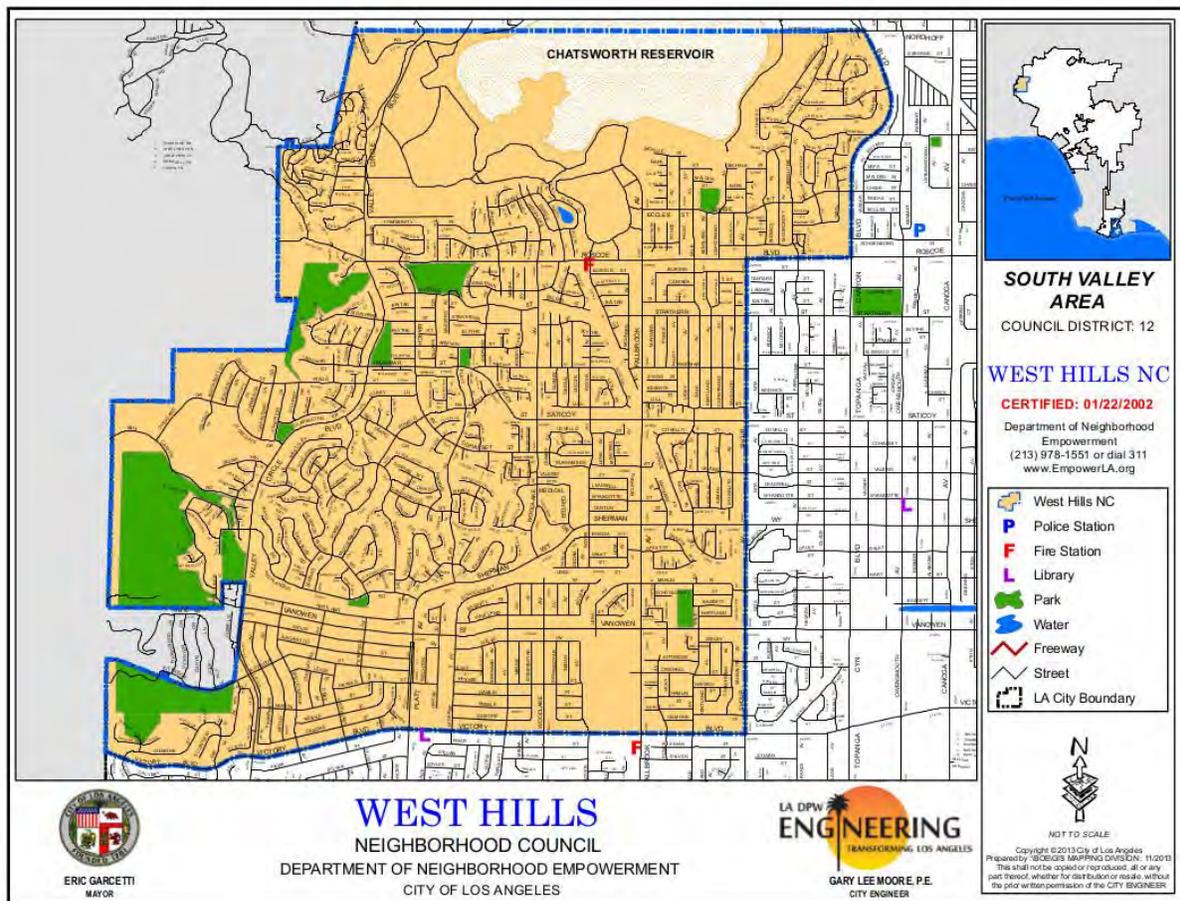
I am writing you today regarding the actions that you are taking (**Council File 18-0874**) regarding the Santa Susana Field Laboratory (SSFL) which has been my passion for the last twelve years. For those of you who do not know me, I am a 40 year resident of West Hills within about 5 miles of the Santa Susana Field Laboratory which is in Ventura County not Ventura, California as it was stated in the Council file.



This map roughly shows the outline of the Santa Susana Field Laboratory to the left in the red hexagon and the community of West Hills to the right. I have shown the Northern, Eastern, and Southern Boundaries of West Hills. The western boundary of West Hills is gerrymandered and is not a straight line. The SSFL site borders on the Los Angeles County boundary due west of the community of West Hills which is the closest community of the City of Los Angeles to this site. On this map you can see the streets west of Valley Circle in West Hills that were evacuated due to the Woolsey Fire. You can also observe Bell Canyon which only has egress via West Hills for a fire such as this one.

I am a former member of the West Hills Neighborhood Council (WHNC), and at the time of my resignation, due to health reasons, I was their Public Health Committee Chair and their Environment Committee Chair.

In that capacity as the WHNC Environment Committee Chair, I authored resolutions on the Santa Susana Field Laboratory cleanup which were approved in some cases by that Advisory body to the City of Los Angeles.



This is the official map of West Hills which more clearly depicts the western boundaries of my community.

Every truck that goes to or leaves the SSFL site has to travel through some part of West Hills. I want to be clear that I believe that the SSFL needs further cleanup, but I believe that it needs to be done in a logical way based on scientific, not speculative, data. It should be done based on actual health risk offsite, and on site for future users.

I have been a SSFL Technical Stakeholder for about eleven years. I have been a member of the California Department of Toxic Substance Control's (DTSC) Public Participation Group (PPG) and a DTSC Technical Stakeholder; I was a member of the Federal Environmental Protection Agency's (EPA) Technical Stakeholder Group (2010 - 2012); I have been a Department of Energy (DOE) Soil Treatability Investigation Study Group (STIG) and I am a DOE Section 106 Consulting Party and Technical Stakeholder; I was a NASA Section 106 Consulting Party and Technical Stakeholder; I have attended Groundwater University with DTSC and the Responsible Parties, and also numerous meetings with the Los Angeles Regional Water Quality Control Board (LARWQCB) staff, and their Boeing Expert Storm Water Panel Staff. I walked AREA IV with the EPA, DOE, DTSC, and Boeing almost monthly for 2 years.

Executive Summary

In reviewing your Motion date stamped September 18, 2018, it appears that the City Council is not aware of other lawsuits which have impacted the cleanup schedule and what may legally be allowed to be cleaned up at the SSFL site.

- 1) My initial reason for writing this letter was to advise you that the judge in the litigation referenced above: **“SACRAMENTO SUPERIOR COURT CASE 2013 – 80001589: PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non- profit corporation. Case No.: 34-2013-80001589 Petitioners,V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to100, Real Party in Interest.”** had made his ruling on this case which was filed in August 2013. That ruling was posted on November 19th, 2018.

I am attaching to my email a copy of the ruling which finds in favor of DTSC and the California Department of Health (CDPH) based on the California Environmental Quality Act (CEQA).

- 2) It is very important to me that you understand that the California Department of Justice (DOJ) who represented the California Department of Health (CDPH) in this litigation made the following statement in their pleadings. This is a screen shot of what they say:

| 14 | STATEMENT OF FACTS |
|----|--|
| 15 | 35. Answering paragraph 35 of the Petition, Respondent DENIES that the Santa Susana |
| 16 | Field Laboratory is a former “nuclear meltdown” site. Respondent ADMITS each and every |
| 17 | other allegation contained therein based on information and belief. |
| 18 | 36. Answering paragraph 36 of the Petition, Respondent ADMITS each and every |
| 19 | allegation contained therein based on information and belief. |
| 20 | 37. Answering paragraph 37 of the Petition, Respondent DENIES that the Sodium |
| 21 | Reactor experimental unit suffered a partial nuclear meltdown. Respondent DENIES each and |
| 22 | every other allegation contained in paragraph 37 based on a lack of sufficient information and |
| 23 | belief. |

The **“STATEMENT OF FACTS”** shown above is a screen shot from the DOJ which states that the **Respondent (DOJ FOR CDPH) DENIES that the Santa Susana Field Laboratory is a former “nuclear meltdown” site. It also states that: “Respondent DENIES that the Sodium Reactor experimental unit suffered a partial nuclear meltdown.”**

3) In your Motion from the Rules, Elections, Intergovernmental Relations Committee dated September 18, 2018, you appear to be unaware of numerous challenges before DTSC. You appear to reference things for example that DTSC has already considered over the past roughly five years including alternative routes and conveyor systems.

4) You appear to not be aware that DTSC has acted as if under a “Gag Order” relative to this litigation which may be why they have not responded to any comments you may have submitted relative to their Draft Environmental Impact Report.

5) I believe that as with DTSC, DOE has not finalized their Final Environmental Impact Statement due to the ongoing litigation between DTSC, CDPH, The Boeing Company and the Plaintiffs – Committee to Bridge the Gap, Physicians for Social Responsibility – Los Angeles, Consumer Watchdog, and the Southern California Federation of Scientists.

6) As a DOE Section 106 Consulting Party, I did receive notice of a document that required written response to the DOE on November 9th. We were given an extension to respond to this document due to the Woolsey Fire.

7) Of particular concern to the West Hills’ community is the fact that the Woolsey Fire started at or near the SSFL site. Cal Fire has not yet determined the fire’s origin. Despite reassurances from numerous agencies including the Los Angeles County Department of Public Health that no radiation was found above local background, and no chemicals were found that would not be found in a normal forest fire, many activists have alarmed my community that the burning at this site is causing harm to my community from the potential release of radionuclides and chemicals from the burning vegetation.

8) Who is protecting us from the misinformation by these activist groups? Why are you, the City of Los Angeles, considering additional litigation when this site cleanup has been held up by ongoing litigation when the City first filed what you call: “National Resources Defense Council v Department of Energy” in your Motion? In reality, that litigation is called “NATURAL RESOURCES DEFENSE COUNCIL, INC., COMMITTEE TO BRIDGE THE GAP, and CITY OF LOS ANGELES, Plaintiffs, v. DEPARTMENT OF ENERGY, SPENCER ABRAHAM, Secretary, Department of Energy, and CAMILE YUAN-SOO HOO, Manager, National Nuclear Security Administration, Oakland Operations Office, Defendants.”

https://www.etec.energy.gov/Library/Cleanup_and_Characterization/EIS/MSJ_ORDER.pdf

9) This is a link to the DOE website’s documents related to their Environmental Impact Statement (EIS).

https://www.etec.energy.gov/Char_Cleanup/EIS.php

10) This required Environmental Impact Statement has been held up by the State Law SB 990 from 2007, and the subsequent lawsuit by The Boeing Company against DTSC which went to the Federal 9th Circuit of Appeal. That ruling by the 9th Circuit Court of Appeal came out September 19, 2014:

https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/66462_11-55903.pdf

This is The Boeing Company's initial pleading against DTSC re: SB 990: https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/64509_BoeingComplaint11-13-2009.pdf

"Attorney for Amici Curiae Southern California Federation of Scientists, Los Angeles Chapter of Physicians for Social Responsibility, Rocketdyne Cleanup Coalition, and Committee to Bridge the Gap"

Most of these parties are the same parties that have sued DTSC and CDPH in 2013.

11) And to repeat from above, in August 2013, "**SACRAMENTO SUPERIOR COURT CASE 2013 – 80001589: PHYSICIANS FOR SOCIAL RESPONSIBILITY -LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non- profit corporation. Case No.: 34-2013-80001589 Petitioners,V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to100, Real Party in Interest**" was filed.

This litigation has tied up the cleanup of the SSFL site for the past five years. Local residents attack DTSC and blame them because the site has not been cleaned up. Again, they (DTSC) behave as if they are "Gagged" – unable to discuss the litigation with the public. Only this week did DTSC officially release the ruling on this litigation via its document upload system which I receive.

https://www.dtsc-ssfl.com/files/lib_physocrespsvdtsc/courtdocuments/68115_Ruling.pdf

12) I want to bring to your attention that the Woodland Hills Warner Center Neighborhood Council and the Canoga Park Neighborhood Council held a Town Hall on the Santa Susana Field Laboratory at Canoga Park High School in October 2014. I facilitated that event between the lead agency DTSC, the LARWQCB, Boeing, NASA, and the DOE participation. We had about 300 attendees including representatives, I believe, of the City of Los Angeles as well as other elected officials. This is the largest turnout I have seen to an event related to the SSFL cleanup in my twelve years of involvement.

In my twelve years of involvement, I have only seen a representative of Council District 12, I believe, one time. I believe that was at a DOE Hearing for its Draft Environmental Impact Statement last year.

13) I will attach to my email the document in the legal file for "**SACRAMENTO SUPERIOR COURT CASE 2013 – 80001589: PHYSICIANS FOR SOCIAL RESPONSIBILITY -LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non- profit corporation. Case No.: 34-2013-80001589 Petitioners,V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to100, Real Party in Interest**" which contains the screen shot on page 3 of the CDPH response.

14) Since I am referenced by Judge Sueyoshi in the ruling, I will attach both letters that I submitted to the file – one to Judge Sueyoshi, and one to Judge Sumner.

This legal file has 273 documents. I originally was able to obtain about the first 100 documents, but then the Court system began to charge for these files, and for me to obtain them all, it would have probably have cost me close to \$1500.00. So I got some of the later files.

I have been to Sacramento for three hearings in this case. I have requested to write to the judges twice. I did not apply for legal Amicus status because I do not have a non-profit, so I could not afford the legal fees. I considered filing "In Pro Per" as an Amicus, but I learned that if I did so, and I failed to appear, I could be sanctioned by the Court. Since I have cancer and multiple autoimmune diseases which actually meet ADA guidelines, I could not put myself into that position. As a result, the judge referenced me in his ruling, but he stated that he could not consider the letters that I sent to him on behalf of my community.

15) Recently, The Boeing Company has filed an Environmental Easement for their portion of the SSFL site. It is my understanding that they intend to clean up to an open space / parkland risk based standard based upon that end use. This language is from a Boeing email sent to people on their email list as involved parties related to the Santa Susana Field Laboratory cleanup. I believe this was from their comments related to DTSC's Draft Environmental Impact Report.

"The EIR must recognize that Boeing's property has been permanently preserved by a conservation easement as undeveloped open space habitat.

- **The future use of Boeing's property is controlled by a conservation easement, not zoning. The conservation easement recorded on April 24, 2017 forever prohibits any residential and agricultural development or uses of Boeing's property. This land may only be used for activities such as hiking and bird watching, wildlife research and education that are consistent with the conservation easement's purpose to preserve the property as natural, open space habitat.**
- **Boeing is legally committed to performing a cleanup that is fully protective of human health and the environment, consistent with the site's future as undeveloped open space habitat. In other words, it will be safe for people using the site, for neighboring communities, and for the wildlife that live there and pass through this vital habitat linkage."**

Conclusion to Executive Summary:

I am asking that you become more informed before considering litigation against any of the agencies involved with the SSFL cleanup. Please read the ruling of the 9th Circuit Court of Appeal.

Information Supporting Executive Summary

The following four pages (to the middle of page eleven) are excerpted from the Ruling below:

https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/66462_11-55903.pdf:

"THE BOEING COMPANY, Plaintiff-Appellee, v. MAZIAR MOVASSAGHI, in his official capacity as the Acting Director of the California Dept. Of Toxic Substances Control; LEONARD ROBINSON, in his official capacity as the Acting Director of the California Dept. Of Toxic Substances Control, Defendants, and

DEBBIE RAPHAEL, in her official capacity as the Acting Director of the California Dept. Of Toxic Substances Control, Defendant-Appellant. – Opinion”

“ANALYSIS The case was decided on summary judgment, so we review de novo.¹¹ I. Standing California does not challenge Boeing’s standing, but some advocacy groups as amici curiae do. Their argument is that Boeing suffers no injury in fact from SB 990 because as a federal contractor, it will be paid for its work and bears no other costs. We disagree. The law prohibits Boeing from transferring its own real property, injury enough. ¹² Even if the federal government does pay for all the cleanup work, the estimated 50,000 year delay in transferability (based on estimated time for cleanup of groundwater to be completed) is indeed an injury in fact to Boeing as landowner. Nor has the federal government agreed to cleanup the entire site at its own expense to SB 990’s standards. California concedes that Boeing will pay the portion of the cleanup expenses not borne by the federal government. Injury in fact is clear.

II. Intergovernmental Immunity Under the Supremacy Clause, “the activities of the Federal Government are free from regulation by any state.”¹³ Accordingly, state laws are invalid if they “regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals.”¹⁴ SB 990 is invalid on both grounds.

- A. Direct Regulation of the U.S. Government SB 990 regulates the Department of Energy’s cleanup activities directly. SB 990 authorizes California’s Department of Toxic Substances Control to “use any legal remedies available” under the State’s hazardous waste laws “to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site.”¹⁵ DOE is a “responsible party” with respect to radioactive contamination. All of the contamination at Santa Susana is the result of federal activity or is indistinguishable from contamination caused by federal activity. In addition, SB 990’s legislative findings state that the Act is necessary in large part because of federal activity at the site and because “DOE declined to follow the 1995 Joint Policy [between EPA and DOE] and chose to instead rely on less protective cleanup standards.”¹⁶**

The federal Department of Energy has accepted responsibility for the cleanup of radioactive contamination, and it is actively conducting the cleanup through its cleanup contractor, Boeing. SB 990 affects nearly all of DOE’s decisions with respect to the cleanup, including the environmental sampling that is required, the cleanup procedures to be used, and the money and time that will be spent. The state law requires an application of more stringent cleanup standards than federal laws and DOE’s cleanup procedures do. Whether state law is better or worse does not affect state authority, just whether the state regulates federal activity.

The federal government’s decision to hire Boeing to perform its cleanup work does not affect the legal analysis. In *Goodyear Atomic Corp. v. Miller*, the Supreme Court held that “a federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly

authorizes such regulation.”¹⁷ In *Gartrell Construction Inc. v. Aubry*, we held that California’s licensing requirements for construction contractors were preempted to the extent that they applied to federal contractors.¹⁸ California argues that Boeing must “stand in the government’s shoes” in order to assert immunity from state regulation. The cases that California cites to are inapposite as they discuss generally applicable state tax laws, which resulted in merely an increased economic burden on federal contractors as well as others. These tax laws did not regulate what the federal contractors had to do or how they did it pursuant to their contracts.

SB 990 directly interferes with the functions of the federal government. It mandates the ways in which Boeing renders services that the federal government hired Boeing to perform. The state law replaces the federal cleanup standards that Boeing has to meet to discharge its contractual obligations to DOE with the standards chosen by the state. It overrides federal decisions as to necessary decontamination measures. Unlike the tax cases, SB 990 regulates not only the federal contractor but the effective terms of federal contract itself.

SB 990 directly interferes with the functions of the federal government. It mandates the ways in which Boeing renders services that the federal government hired Boeing to perform. The state law replaces the federal cleanup standards that Boeing has to meet to discharge its contractual obligations to DOE with the standards chosen by the state. It overrides federal decisions as to necessary decontamination measures. Unlike the tax cases, SB 990 regulates not only the federal contractor but the effective terms of federal contract itself.

Thus, SB990 violates intergovernmental immunity unless Congress has clearly and unambiguously authorized California to exercise authority over the Department of Energy with respect to radioactive materials. “It is well settled that the activities of federal installations are shielded by the Supremacy Clause from direct state regulation unless Congress provides ‘clear and unambiguous’ authorization for such regulation.”¹⁹

There is no clear congressional authorization in the Atomic Energy Act that would allow California to regulate DOE’s cleanup of radioactive materials at Santa Susana. The agreement entered between California and the Atomic Energy Commission in 1962 does not affect the immunity analysis. The 1962 agreement was made pursuant to the 1959 amendment to the Atomic Energy Act that allowed the Atomic Energy Commission to transfer licensing authority over nuclear materials to states, pursuant to individual agreements with individual states.²⁰ Congress sought, among other things, “to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with the use of [nuclear material].”²¹ The Act provides that states “shall have authority to regulate the materials covered by [an] agreement for the protection of the public health and safety from radiation hazards.”²² Under the 1962 agreement, California’s Department of Public Health has licensed Boeing’s commercial nuclear work at Santa Susana.

The 1962 agreement does not grant California any authority to regulate the federal government. The Atomic Energy Commission's regulations implementing the 1959 amendment explicitly state that exemptions from federal licensing authority under the agreement between states and the Commission "do not apply to agencies of the Federal government."²³ So even within "Agreement States," such as California, the federal agencies remain subject to the federal government's exclusive regulatory authority. The 1962 agreement references these regulations, and no language under the agreement indicates that the AEC was ceding authority to regulate federal activities to state agencies. Subsequent administrative developments make this clear.²⁴

Our conclusion is consistent with the history of the Atomic Energy Act and Congress's response to other attempts by states to regulate federal activities. Section 2018 of the Atomic Energy Act provides that nothing in the Act affects state regulatory authority over the "generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission."²⁵ In 1965, Congress added the following to Section 2018: "Provided, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission."²⁶ Congress added this proviso to overrule a Ninth Circuit opinion, *Maun v. United States*, 347 F.2d 970 (9th Cir. 1965), which interpreted the section to allow a municipality to prohibit transmission lines that the Atomic Energy Commission sought to build in order to carry out its own activities.²⁷

The Resource Conservation and Recovery Act ("RCRA")²⁸ does not authorize California to regulate DOE's cleanup of radioactive contamination. RCRA allows states to operate a hazardous waste management plan applicable to federal facilities so long as the state regulates "in the same manner, and to the same extent, as any person is subject to such requirements."²⁹ But RCRA excludes from its coverage radioactive materials regulated under the Atomic Energy Act.³⁰ So RCRA does not apply to the radioactive contamination in this case.

Nor does the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")³¹ save SB 990. Under CERCLA, states may obtain authority to clean up certain hazardous waste sites by obtaining EPA approval and entering into a "cooperative agreement."³² Unlike RCRA, some provisions of CERCLA cover nuclear materials. The definition of "release" includes releases of nuclear materials except in certain situations.³³ EPA includes "radionuclides" in the list of "hazardous substances."³⁴ And CERCLA contains a federal immunity waiver clause with respect to state laws concerning removal and remedial of hazardous substances. However, the waiver does not apply "to the extent a State law would apply any standard or requirement to [federal] facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by [the federal government]."³⁵ SB 990 applies more stringent requirements to Santa Susana than to non-federal facilities because it requires cleanup to a standard suitable for subsistence

farming, rather than for the site's reasonably foreseeable future use. Under the state's generally applicable process, the future use would be determined by considering a number of site-specific factors such as current use, county general plans, and topography. It is undisputed that the subsistence farming has not been so determined as a land use assumption for the Santa Susana site. Therefore, we conclude that SB 990 regulates the federal government directly in violation of the Supremacy Clause.

- B. Discrimination Against the U.S. Government and Its Contractors** SB990 also violates intergovernmental immunity because it discriminates against the federal government and Boeing as a federal contractor. "A state or local law discriminates against the federal government if it treats someone else better than it treats the government."³⁶ California does not dispute that "SB 990 singles out Boeing, DOE, NASA and the [Santa Susana Field Laboratory] site for a substantially more stringent cleanup scheme than that which applies elsewhere in the State." The fact that Santa Susana is especially contaminated does not render the law non-discriminatory because California's generally-applicable environmental laws do not impose the SB990 radioactive cleanup standards at the Santa Susana site. The federal government's decision to hire Boeing to perform the cleanup rather than using federal employees does not affect our immunity analysis on this ground. When the state law is discriminatory, a private entity with which the federal government deals can assert immunity.³⁷ In *Davis v. Michigan Department of Treasury*, a retired federal employee challenged Michigan's taxation of his federal retirement benefits.³⁸ Michigan argued that only the federal government, not private entities or individuals, are immune from state laws.³⁹ The Supreme Court disagreed because the state law at issue discriminated against federal employees by exempting from state taxation retirement benefits paid to state employees, but not those paid to federal employees.⁴⁰ The Supreme Court held that "It is true that intergovernmental tax immunity is based on the need to protect each sovereign's governmental operations from undue interference by the other. But it does not follow that private entities or individuals who are subjected to discriminatory taxation on account of their dealings with a sovereign cannot themselves receive the protection of the constitutional doctrine. Indeed, all precedent is to the contrary. ⁴¹"

Likewise, Boeing cannot be subjected to discriminatory regulations because it contracted with the federal government for the nuclear research and now the cleanup of radioactive contamination. SB 990 specifically targets Santa Susana because of the radioactive pollution created by federal activity on the site and because "DOE declined to follow the 1995 Joint Policy [between EPA and DOE] and chose to instead rely on less protective cleanup standards."⁴² SB 990 applies more stringent cleanup standards than generally applicable state environmental laws. By doing so, SB 990 discriminates against the federal government and against Boeing as a federal contractor. Therefore, it is invalid under the doctrine of intergovernmental immunity.

The 2010 Administrative Orders on Consent from the California Department of Toxic Substances Control that DOE and NASA agreed to do not affect the analysis of SB 990. Both Orders set a radioactive cleanup standard for the soil in certain areas of Santa Susana. They do not set cleanup standards for bedrock or groundwater, and SB 990 does. Any waiver clauses included in the Orders have no effect beyond the term of the Orders.

III. Severability We agree with the district court that the terms of SB 990 are unseverable. California concedes that applying SB 990 only to chemical cleanup is impossible without gutting the Act because the Act sets cleanup standards in part by requiring that “the cumulative risk from radiological and chemical contaminants at the site shall be summed.”⁴³ We decline to construe SB 990 as limited to non-radioactive cleanup because it would “require us to examine and rewrite most of the statute in a vacuum as to how the various provisions were intended to intersect and in a way that would be at odds with the purpose of the statute.”⁴⁴

“The judgment of the district court is AFFIRMED.”

I have not inserted the footnotes that are a part of this ruling – please see the whole document for which I have provided the link.

MY COMMENTS ON THE RULING BY THE 9TH CIRCUIT COURT OF APPEALS

I do not agree that the Administrative Orders on Consent between DTSC and the DOE, and DTSC, and DTSC and NASA are not impacted by this ruling on SB 990. I was at the DTSC meeting where this was discussed. In a presentation by DTSC SSFL Former Project Director Rick Brausch, he stated the purpose of Agreement in Principle which is a part of the Administrative Order on Consent was to comply with SB 990. That was done in this PowerPoint at a DTSC stakeholder meeting.

https://www.dtsc-ssfl.com/files/lib_pub_involve/meeting_agendas/meeting_agendas_etc/64728_AgreementsInPrinciple09-22-10.pdf

**“Agreements in Principle between The State of California and The U.S. Department of Energy and the State of California and The National Aeronautics and Space Administration September 2010” – Slide 1;
“A Path Forward • Resolves disagreements over interpretations and implementation of SB 990 (Kuehl, 2007)” – Slide 2**

“SB 990 • What it says: – Requires cleanup standards for radioactive and chemical contaminants based on “rural residential” land use assumptions • includes the pathways: ingestion of soil, dermal contact with soil, inhalation of dust, ingestion of fruits and vegetables, beef, milk, poultry, eggs, swine, and fish, assumed to be produced on the site. – Clarifies that risk due to both radioactive and chemical contaminants must be added – Requires uses of the State Superfund process” – Slide 12

The bottom line is that SB 990 was found unconstitutional by the 9th Circuit Court of Appeals.

Again, now that DTSC is no longer in litigation, and CDPH is no longer in litigation, I recommend that you contact their legal counsel before you try to tie this site up any further in litigation.

We have recently had the Woolsey Fire burn through 80 percent of this site. We need this land cleaned up to protect storm water runoff which will impact the public health of the communities along the blue line streams – the people who want to play in them or fish in them. More litigation will tie up the site further which will potentially impact the City of Los Angeles NPDES permit as well as The Boeing Company’s NPDES permit. We need to have more sampling done as soon as possible in both the soil and the surface water.

In the end of the day, many people have waited decades to get this site cleaned up. I want this site cleaned up based upon the recommendations of the Federal EPA to NASA for their Draft Environmental Impact Statement: (My summary of their letter to NASA): clean up the radionuclides to “Background” because of the fears of the surrounding community, and clean up the rest of the contamination based upon end use and human health risk. I will attach that EPA letter to NASA.

No one can ever live on this site because of The Boeing Company’s easement.

Four Neighborhood Councils as well as a number of environmental groups have supported a risk-based cleanup to protect our communities. We (some of my former Neighborhood Council colleagues and other NC Board members) do not want the cleanup of the SSFL site to be more harmful to the local residents than leaving the contamination in place. Los Angeles already has the worst air pollution in the Nation in terms of Ozone, and we were number 7 for small particulate matter? The cleanup of this site will add to our “Pollution Burden” – our already poor air quality.

And finally, to put any other routes in, especially a conveyor system, would require Eminent Domain which will mean more litigation. It could mean putting the conveyor system through the Brandeis – Bardin Camp; do you want to put a conveyor through the largest piece of Jewish property outside of Israel to the best of my understanding?

https://www.dtsc-ssfl.com/files/lib_ceqa/sitewideceqadocs/66435_SSFL_Transportation_Meeting_08_06_WATERMARK.pdf - see page 27 for the potential conveyor routes

And this conveyor would require its own CEQA and NEPA analysis – another potential 5 years for that. And then where will you get the funding for this conveyor system?

See the DTSC DPEIR Transportation document for the proposed costs of this system with the rail component: https://www.dtsc.ca.gov/SiteCleanup/Santa_Susana_Field_Lab/upload/Appendix-J_Transportation_Feasibility_Analysis_Reference_Documents-Part1.pdf

Who at the City of Los Angeles is reading the technical and legal documents that I do my best to do?

Who at the City of Los Angeles is attending the meetings that I have over the past twelve years?

I will end with this email that I received from a City of Los Angeles employee many years ago:

“Subject: Re: Santa Susana Field Lab

Date: 12/13/2010 11:08:58 AM Pacific Standard Time

From: wayne.tsuda@lacity.org

To: EcoMom2000@aol.com

Cc: Shahram.Kharaghani@lacity.org, Seth.Carr@lacity.org, Cowens@waterboards.ca.gov, carolyn.lin@lacity.org, sunger@waterboards.ca.gov, ken.husting@lacity.org, Mary.Decker@lacity.org, William.Carter@lacity.org, Irma.Pomposo@lacity.org, Councilmember.Zine@lacity.org, Jan.Perry@lacity.org, Jeff.Catalano@lacity.org, councilmember.smith@lacity.org, mitch.english@lacity.org

“To Whom It May Concern:

I can attest that Ms. Rowe has been a diligent follower of the technical and environmental issues involving the Santa Susana Field Lab (the former Rocketdyne site). Both Carolyn Lin and I, in our former positions with the now defunct Environmental Affairs Department, have conferred with Ms. Rowe many times during the past years. We have appreciated her scientific approach and her keen interest in determining the facts regarding the case.

Wayne Tsuda, Program Manager
Local Enforcement Agency Program
Los Angeles Department of Building and Safety
3550 Wilshire Blvd., 18th Floor

Los Angeles, CA 90010
Email: wayne.tsuda@lacity.org
Office: 213-252-3932”

Please review my attachments. I am very happy to speak to any staff at any Department especially in the City Attorney’s office.

Again, due to my chronic health conditions, I am on a terrible sleep schedule – issues like this cause me tremendous stress, and my physicians state that I am having stress related health symptoms.

Please call me after 3:00 p.m. PST, or send me an email to CRWHNC@gmail.com to set up a time to talk.

Respectfully,

Christine L. Rowe

B.S. in Health Education; graduate level course from CSUN in Environmental Health
Public Health and Environmental Health Advocate – unpaid.

The following documents will be attached to my email using GOOGLE DRIVE due to the number of files and their sizes. **PHYSICIANS FOR SOCIAL RESPONSIBILITY-LOS ANGELES, a nonprofit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non-profit corporation FILED Superior Court Of California, Petitioners, DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100 : VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLAIMTORY RELIEF (Public Resources Code, § 21168.5; Code Civ. Proc, §§ 525,1060,1085,1097) CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") ACTION**

PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation, et al., Petitioners, DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents, THE BOEING COMPANY, a corporation; ROES 1 TO 100, Real Parties in Interest.: ANSWER OF RESPONDENT DEPARTMENT OF PUBLIC HEALTH TO PETITIONERS' VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

DATE/TIME JUDGE NOVEMBER 19,2018 HON. RICHARD K. SUEYOSHI DEPT. NO CLERK 28 E. GONZALEZ PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a nonprofit corporation. Case No.: 34-2013-80001589 Petitioners, V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to 100, Real Party in Interest.: RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP,

a non-profit corporation; and CONSUMER WATCHDOG, a nonprofit corporation. Case No.: 34-2013-80001589 Petitioners, V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to 100, Real Party in Interest. – Civil Case Details

Letter to Judge Allen H Sumner by Christine L Rowe June 24,2014 RE: PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a nonprofit corporation. Case No.: 34-2013-80001589 Petitioners, V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to 100, Real Party in Interest.

Letter to Judge Richard Sueyoshi by Christine L Rowe April 30,2018 RE: PHYSICIANS FOR SOCIAL RESPONSIBILITY - LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a nonprofit corporation. Case No.: 34-2013-80001589 Petitioners, V. DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100, Respondents. THE BOEING COMPANY, a corporation; ROES 1 to 100, Real Party in Interest.

EPA SSFL FACT SHEET – MAY 2012

EPA COMMENTS TO NASA SSFL RE: NASA’S DRAFT ENVIRONMENTAL IMPACT STATEMENT

THE BOEING COMPANY, Plaintiff-Appellee, v. MAZIAR MOVASSAGHI, in his official capacity as the Acting Director of the California Dept. Of Toxic Substances Control; LEONARD ROBINSON, in his official capacity as the Acting Director of the California Dept. Of Toxic Substances Control, Defendants, and DEBBIE RAPHAEL, in her official capacity as the Acting Director of the California Dept. Of Toxic Substances Control, Defendant-Appellant: No. 11-55903 D.C. No. 2:10-cv-04839- JFW-MAN OPINION

1 MICHAEL J. STRUMWASSER (SBN 58413)
BEVERLY GROSSMAN PALMER (SBN 234004)
2 RACHEL A. DEUTSCH (SBN 275826)
STRUMWASSER & WOOCHEER LLP
3 10940 Wilshire Boulevard, Suite 2000
Los Angeles, California 90024
4 Telephone: (310) 576-1233
Facsimile: (310) 319-0156
5 E-mail: mstrumwasser@strumwooch.com

6 HARVEY ROSENFELD (SBN 123082)
PAMELA PRESSLEY (SBN 180362)
7 LAURA ANTONINI (SBN 271658)
CONSUMER WATCHDOG
8 2701 Ocean Park Boulevard, Suite 112
Santa Monica, California 90405
9 Telephone: (310) 392-0522
Facsimile; (310) 392-8874
10 E-mail: pam@consumerwatchdog.org

11 *Attorneys for Physicians for Social
Responsibility-Los Angeles, Southern California Federation of
12 Scientists, Committee to Bridge the Gap, and Consumer Watchdog*

13
14 **SUPERIOR COURT OF CALIFORNIA**

15 **COUNTY OF SACRAMENTO**

Case No.:

16 PHYSICIANS FOR SOCIAL)
RESPONSIBILITY-LOS ANGELES, a non-)
17 profit corporation; SOUTHERN CALIFORNIA)
FEDERATION OF SCIENTISTS, a non-profit)
18 corporation; COMMITTEE TO BRIDGE THE)
GAP, a non-profit corporation; and CONSUMER)
19 WATCHDOG, a non-profit corporation)

20 Petitioners,

v.

21)
22 DEPARTMENT OF TOXIC SUBSTANCES)
CONTROL; DEPARTMENT OF PUBLIC)
HEALTH; and DOES 1 to 100)

23 Respondents.
24

25 THE BOEING COMPANY, a corporation; ROES)
26 1 to 100)

27 Real Party In Interest.
28

FILED
Superior Court Of California,
Sacramento
08/06/2013
amacias
By _____, Deputy
Case Number:
34-2013-80001589

BY FAX

1 INTRODUCTION

2 1. Petitioners and Plaintiffs Physicians for Social Responsibility - Los Angeles, the
3 Southern California Federation of Scientists, the Committee to Bridge the Gap, and Consumer
4 Watchdog (collectively, "Petitioners") bring this action to challenge the authorizations issued by the
5 Respondents and Defendants Department of Toxic Substances Control ("DTSC") and the Department of
6 Public Health ("DPH") (collectively, "Respondents") to Real Party in Interest The Boeing Company
7 ("Boeing") to demolish and dispose of radioactive structures at Area IV of the Santa Susana Field
8 Laboratory ("SSFL"), an area used for decades for the development, fabrication, and disassembly of
9 nuclear reactors, reactor fuel, and other radioactive and highly toxic materials. Area IV is the site of
10 widespread radiological and chemical contamination from a range of sources, including the burning of
11 radioactive and toxic wastes in open pits, reckless disposal practices, at least two nuclear accidents
12 involving serious fuel damage, and, in 1959, a partial reactor meltdown that was concealed from the
13 public for twenty years. As a result, Area IV itself is heavily contaminated, laden with both radioactive
14 and chemical waste products, posing substantial health risks to the public and the natural environment,
15 including contamination of surface and groundwater. The structures on Area IV are likewise
16 contaminated, due in part to the materials handled in these structures and in part due to the widespread
17 radiation throughout Area IV. Pending before Respondents are Boeing's requests for approval of the
18 demolition and disposal of one of the most dangerous structures at the site: the plutonium fuel
19 fabrication building (Building 4055), as well as several other radiological facilities.

20 2. This action challenges the continuing violation of the California Environmental Quality
21 Act ("CEQA") by Respondents because they have entirely failed to perform any of the required
22 environmental review for the demolition of structures at Area IV prior to authorizing their demolition
23 and disposal. Respondents have approved, without environmental review, the demolition and disposal
24 of structures that are, by Boeing's own measurements, radiologically contaminated. Worse,
25 Respondents are expressly approving Boeing's disposal of this radiologically contaminated waste offsite
26 to toxic waste facilities that are neither licensed, nor designed, to accept radiologic material. Many tons
27 of these materials have even been sent to recycling facilities so that these radiologically active materials
28 enter the commercial metal supply

1 3. Respondent DTSC has not only failed to conduct any environmental review pursuant to
2 CEQA prior to authorizing Boeing's demolition activities, nor has it issued a Notice of Exemption or
3 any other document in compliance with CEQA. At the same time, however, while buildings are already
4 being demolished and shipped off to landfills, Respondent DTSC has announced that it will prepare a
5 Program Environmental Impact Report ("EIR") for the remediation of the SSFL site, and has issued a
6 public request for a consultant to prepare the EIR, anticipating completion no earlier than 2015. While
7 DTSC and Boeing are in the process of identifying a consultant to prepare an EIR for the remediation of
8 the site, Respondents are authorizing some of the remedial work that should be reviewed in that very
9 EIR: the demolition and disposal of the radiologically contaminated structures.

10 4. Moreover, in authorizing the offsite disposal of the demolition debris in sites not licensed
11 to receive radioactive waste, DTSC and DPH are relying on a standard never adopted by rulemaking or
12 in compliance with CEQA. There is no existing legally valid health-based risk standard that permits the
13 disposal of *any* level of radioactively contaminated material to a facility that is not licensed to receive
14 radioactive waste. The standards that DPH and DTSC are relying on to state that radiologically
15 contaminated material is acceptable for off-site disposal in municipal landfills or to be recycled were
16 never intended to be used for such purposes. These standards were developed 40 years ago to facilitate
17 the *reuse* of former radiological facilities, *not their demolition and disposal*. The standard reflects
18 merely the capability of 40-year-old detection technology, does not account for contamination present
19 below the surface of material, and was never intended to govern the off-site disposal of contaminated
20 materials in unlicensed facilities.

21 5. In 2000, without environmental review under CEQA, Respondent DPH attempted to
22 promulgate regulations setting forth acceptable levels of radioactivity for license termination, which it
23 subsequently stated it would also use to permit disposal of radiologically contaminated materials in
24 other than licensed radioactive waste sites. This Court overturned these regulations in 2002, requiring
25 the preparation of an EIR prior to adopting the proposed standard or any other release standard. In the
26 more than decade since, no such rulemaking has been undertaken and no EIR has ever been produced.
27 Respondents have not complied with CEQA or the public notice and hearing requirements of the
28 California Administrative Procedures Act ("APA") prior to adopting what amount to underground

1 9. Petitioner and Plaintiff Southern California Scientists (“Scientists”) was organized in the
2 early 1950s as the Los Angeles chapter of the Federation of American Scientists (originally the
3 Federation of Atomic Scientists). The latter was an organization of the former Manhattan Project and
4 other scientists concerned with the nuclear threat. Scientists is an interdisciplinary organization of
5 scientists, engineers, technicians, scholars, and concerned citizens dedicated to providing independent
6 scientific and technical analyses and expertise on issues affecting science, society, and public policy. It
7 has a special focus on matters related to nuclear safety, waste, and contamination. Scientists has been
8 involved in matters related to the SSFL since 1979, when it provided technical assistance related to
9 disclosures of the partial nuclear meltdown that had occurred in 1959 at SSFL. A decade later,
10 Scientists intervened in the relicensing proceeding for the “Hot Lab” at SSFL. Since that time, it has
11 been involved in providing technical assistance to the communities near the site on matters related to
12 SSFL cleanup. Executive Board member Dr. Sheldon C. Plotkin has served for approximately two
13 decades as a community representative on the SSFL Inter-Agency Work Group overseeing the cleanup
14 of the site and on the SSFL Advisory Panel that oversees health studies of the affected workers and
15 neighboring communities.

16 10. Petitioner and Plaintiff Committee to Bridge the Gap (“the Committee”) is a forty-three-
17 year-old organization that focuses on reducing risks from nuclear technology. In 1979 it helped bring to
18 public attention documents about the partial meltdown of a nuclear reactor at SSFL that occurred twenty
19 years earlier. The Committee has been involved in efforts to get effective cleanup at SSFL ever since, in
20 part on behalf of members who reside within five miles of the site. The Committee’s President has
21 served on the SSFL InterAgency Work Group and the SSFL Advisory Panel since their inception.
22 Petitioner and Plaintiff Consumer Watchdog was established in 1985 as a non-profit citizen education
23 and advocacy organization. Consumer Watchdog advocates for the rights of consumers and taxpayers,
24 holds corporations and government officials accountable in the Legislature and the courts, and protects
25 citizens from corporate assault on their rights and pocketbooks. Consumer Watchdog’s advocacy,
26 organizing, and litigation have stopped and changed unfair and illegal practices in the healthcare,
27 insurance, technology, automotive, oil, energy, and telecommunications industries. These efforts have
28 helped consumers recover billions in overcharges and have held companies accountable for breaking

1 promises to their customers. Consumer Watchdog advocates field complaints from consumers
2 nationwide and work with regulators, policymakers, and consumer protection agencies to improve laws
3 and regulations to better protect consumers from deceptive corporate conduct and to protect the public's
4 health and safety. A year ago, Consumer Watchdog launched a project to force environmental
5 regulators to live up to their mission to protect the public from toxic harm. A six-month investigation
6 led to a report called *Golden Wasteland* documenting instances in which state regulators have failed to
7 enforce laws against serial toxic polluters. Consumer Watchdog advocates for enforcing the state's
8 stringent laws on hazardous waste, materials, and substances.

9 11. Respondent and Defendant DTSC is the lead regulatory agency responsible for ensuring
10 that the Boeing Company (Boeing) complies with all Resource Conservation and Recovery Act (RCRA)
11 and response action requirements at the SSFL. In 2007, DTSC issued a consent order to Boeing
12 requiring it to remediate the toxic contamination at the site. DTSC is the agency charged with
13 overseeing and authorizing any demolition activities located in areas where hazardous wastes were
14 managed or releases of hazardous wastes or materials occurred. As part of this authority, DTSC
15 oversees and authorizes the demolition and disposal of each building at the SSFL site.

16 12. Respondent and Defendant Department of Public Health has regulatory authority over
17 most radioactive materials in California pursuant to a 1962 federal Atomic Energy Act delegation to the
18 State of California. The Radiologic Health Branch (RHB) of the Department of Public Health regulates
19 radioactive materials in California pursuant to the California Radiation Control Act. It issues
20 Radioactive Materials Licenses and regulates the licensees. DPH is responsible for approving cleanup
21 plans for radioactive materials licensees such as Boeing, and under its regulations, is not to approve
22 cleanup unless a reasonable effort has been made to "eliminate contamination." DPH is subject to a
23 peremptory writ requiring it to prepare an Environmental Impact Report prior to adopting cleanup
24 standards.

25 13. Respondents and Defendants Does 1 through 100 are or were the agents, employees,
26 contractors, and/or entities acting under the authority of each other respondent or real party in interest,
27 and each performed acts on which this action is based within the cause and scope of such agency and/or
28 employment. Petitioner does not know the true names and capacities, whether individual, corporate, or

1 otherwise, of real parties in interest Does 1 through 100, inclusive, and therefore sues said respondents
2 and defendants under fictitious names. Petitioner will amend its Petition and Complaint to show their
3 true names and capacities when they have been ascertained.

4 14. Real Party in Interest Boeing owns Area IV, the portion of the SSFL where demolition is
5 occurring, and is the entity that is undertaking the demolition and disposal after approval from
6 Respondents. Additionally, Boeing owns the structures that it is demolishing on the site.

7 15. Real Parties in Interest Roes 1 through 100 are or were the agents, employees,
8 contractors, and/or entities acting under the authority of each other respondent or real party in interest,
9 and each performed acts on which this action is based within the cause and scope of such agency and/or
10 employment. Petitioner does not know the true names and capacities, whether individual, corporate, or
11 otherwise, of real parties in interest Roes 1 through 10, inclusive, and therefore sues said real parties in
12 interest under fictitious names. Petitioner will amend its Petition and Complaint to show their true
13 names and capacities when they have been ascertained.

14 **VENUE**

15 16. Venue is proper with this Court as this is an action against a state agency filed in a
16 County in which the Attorney General maintains offices pursuant to Code of Civil Procedure section
17 401.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 17. There have been no formal public proceedings or public notifications regarding DTSC's
20 and DPH's approvals of Boeing's demolition activities. The DTSC posts some information and
21 documents on its website and it is through such information that Petitioners learned of the demolition
22 activities now taking place in Area IV. The information is posted several layers deep in the online
23 library, under a heading regarding "RCRA Facility Investigation -Soils." The DTSC has not solicited
24 public comment on its review of Boeing's proposed demolition activities.

25 18. Nevertheless, Petitioners have attempted to convey to DTSC their legal objections to the
26 DTSC's approval of demolition of radioactively contaminated structures and disposal of radioactively
27 contaminated debris not licensed to receive it. On August 5, 2013, Petitioners submitted to Respondents
28 a letter detailing these objections, attaching a report entitled "Demolition of Radioactive Structures and

1 the Disposal and Recycling of the Debris from the Santa Susana Field Laboratory Nuclear Area and the
2 Role Played By the California Department of Toxic Substances Control and the California Department
3 of Public Health,” prepared by Daniel O. Hirsch, President of Committee to Bridge the Gap, analyzing
4 the various documents submitted by Boeing and approvals by Respondents concerning the structures at
5 Area IV. Although Petitioners had no administrative remedies and therefore no duty to exhaust such
6 remedies, Petitioners submitted the letter and report in good faith to Respondents in an effort to avoid
7 this litigation by providing Respondents with notice of their grave concerns.

8 19. On August 6, 2013, as required by Public Resources Code section 21167.5, Petitioners
9 notified Respondents that Petitioners intended to file suit to enforce the requirements of CEQA. Proof
10 of service of that notification is attached as Exhibit A.

11 20. On August 6, 2013, as required by Public Resources Code section 21167.7, Petitioners
12 informed the Attorney General that they intended to file this action. Proof of service of this letter is
13 attached as Exhibit B.

14 21. Petitioners file with this Verified Petition a notice of Election to Prepare Administrative
15 Record, to the extent that any administrative record exists in an action in which an agency has failed to
16 taken any actions in compliance with CEQA.

17 STATUTORY AND REGULATORY BACKGROUND

18 22. CEQA requires environmental review and analysis prior to the approval of discretionary
19 projects by state agencies. The Legislature has declared that CEQA supports numerous state policies for
20 “the maintenance of a quality environment for the people of this state now and in the future. . . .” (Pub.
21 Resources Code, § 21000, subd. (a).) Moreover, the Legislature has declared that “the interrelationship
22 of policies and practices in the management of natural resources and waste disposal requires systematic
23 and concerted efforts by public and private interests to enhance environmental quality and control
24 environmental pollution.” (*Id.*, subd. (f).) Finally, “[i]t is the intent of the Legislature that all agencies
25 of the state government which regulate activities of private individuals, corporations, and public
26 agencies which are found to affect the quality of the environment, shall regulate such activities so that
27 major consideration is given to preventing environmental damage, while providing a decent home and
28

1 satisfying living environment for every Californian.” (*Id.*, subd. (g).) Long-term protection of the
2 environment is a fundamental criterion of CEQA. (Pub. Resources Code, § 21001, subd. (g).)

3 23. The basic purposes of CEQA are to inform governmental decision makers and the public
4 about the potential, significant environmental effects of proposed activities, identify ways that
5 environmental damage can be avoided or significantly reduced, prevent such damage by the imposition
6 of mitigation measures or the adoption of alternative activities that avoid such damage, and disclosure to
7 the public of the reasons for approving an activity with significant, unmitigable environmental effect.
8 (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15002(a).)

9 24. CEQA defines “project” as any activity which may cause either a direct physical change
10 or a reasonably foreseeable indirect change in the environment, and which involves the issuance by one
11 or more public agencies of a lease, permit, license, certificate, or other entitlement for use. (Pub.
12 Resources Code, § 21065.) CEQA applies to all discretionary projects proposed to be carried out or
13 approved by public agencies. (Pub. Resources Code, § 20180.)

14 25. CEQA applies when a public agency proposes to “approve” a project. (Pub. Resources
15 Code, § 21080, subd. (a).) The term “approval” refers to a public agency decision that commits the
16 agency to a definite course of action in regard to a project. (Cal. Code Regs., tit. 14, § 15352(a).)
17 CEQA applies to “discretionary projects.” (Pub. Resources Code, § 21080, subd. (a); Cal. Code Regs.,
18 tit. 14, § 15357.) Projects with elements both discretionary and ministerial must be treated as
19 discretionary. (Cal. Code Regs., tit. 14, § 15268(d).)

20 26. Agencies may not undertake actions that could have a significant adverse effect on the
21 environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA.
22 (Cal. Code Regs., tit. 14, § 15004(b)(2). The “lead agency,” which is the public agency which has the
23 principal responsibility for carrying out the project, is responsible for determining, in consultation with
24 other relevant state agencies, whether an environmental impact report, a negative declaration, or a
25 mitigated negative declaration will be prepared for a project. (Pub. Resources Code, §§ 21067; 21080.1,
26 subd. (a); 21080.3, subd. (a).)

27 27. The CEQA Guidelines, codified in title 14 of the California Code of Regulations, set
28 forth the procedure that a lead agency must follow when it commences consideration of a project. If an

1 agency determines that a discretionary activity may result in a reasonably foreseeable direct or indirect
2 physical change to the environment, it must begin CEQA review by considering whether a project is
3 exempt pursuant to a categorical or statutory exemption. (Cal. Code Regs., tit. 14, § 15061.) If an
4 agency determines that a project is exempt, it must file a Notice of Exemption setting forth for the
5 public the basis of a claimed exemption. (Cal. Code Regs., tit. 14, § 15062.) If a project is not found to
6 be exempt, the agency may prepare an Initial Study to determine if the project may have a significant
7 effect on the environment. (Cal. Code Regs., tit. 14, § 15063.) If there is substantial evidence that *any*
8 aspect of a project may cause a significant effect on the environment, the agency must prepare an EIR
9 analyzing the potential impacts, individually and cumulatively, of the project on the environment.

10 28. A number of state and federal laws govern the use, remediation, and disposal of low-
11 level radioactive waste. Not one of these laws permits the disposal of such waste in anything other than
12 a facility licensed by the state or federal government to receive low-level radioactive waste.
13 The Nuclear Regulatory Commission (NRC) regulates aspects of the use and disposal of radioactive
14 materials, except where a state has, by agreement, committed to assume such responsibility. (42 USC
15 § 2021.) California agreed to accept responsibility for the regulation of radioactive materials in the state
16 in 1962. (27 Fed. Reg. 3864, Health & Saf. Code, § 115230 *et seq.*) . Where a state has accepted this
17 responsibility, it generally must regulate the use and disposal of such materials to at least as stringent a
18 degree as the NRC requires, but it may impose more stringent standards. In other words, the NRC
19 standards serve as a floor for the clean-up of radioactive materials. (NRC Directive 5.9, “Adequacy and
20 Compatibility of Agreement State Programs.”)

21 29. California’s laws prohibit the disposal of low-level radioactive waste at any facility other
22 than a facility specifically licensed to receive such materials. State law defines low-level radioactive
23 waste as all regulated radioactive material that not is not high-level radioactive waste or subject to other
24 exceptions not applicable here; there is no floor, beneath which radioactive material is not subject to
25 regulation as a low-level radioactive waste. (Health & Safety Code, § 115255, subd. l; see also Health
26 & Safety Code, § 114985, subd. (m) [defining low-level radioactive waste as all radioactive waste not
27 classified as high-level radioactive waste].) By regulation, the Department of Health Services (now
28 known as DPH) expressly adopted 10 CFR 61.3 governing the disposal of low-level radioactive waste.

1 (See Cal. Code Regs., tit. 17, § 30470.) The Legislature has enacted statutes that set forth the
2 requirements for a facility to receive a license to accept low-level radioactive waste, which include a
3 prohibition on shallow land burial, required use of multiple engineered barriers capable of isolating the
4 waste for at least 500 years, and a capability for visual inspection or remote monitoring of the waste to
5 detect leakage. (Health & Safety Code, § 115261.)

6 30. Similarly, the NRC does not permit the disposal of radiologically contaminated materials
7 at a facility that is not licensed to receive low-level radioactive waste. (10 CFR 61.3.) In the late 1980s
8 and early 1990s, the NRC published “policy statements” attempting to establish what was called “Below
9 Regulatory Concern” standards setting a level of contamination below which materials could be
10 disposed in non-licensed facilities. (See, e.g., 55 Fed. Reg. 27522.) Shortly thereafter, in the Energy
11 Policy Act of 1992, Congress expressly overturned the NRC’s actions and stated that NRC’s policy
12 statements were to have no further effect after the enactment of the Act. (Pub.L. No. 102-486 (Oct. 24,
13 1992) 106 Stat 2776, § 2901.) This legislation also expressly affirmed that the states have the ability to
14 regulate any radioactive waste that the NRC might deregulate. (See 42 U.S.C. § 2023, subd. (a).) NRC
15 has not since attempted to adopt any BRC regulation that would deregulate specified levels of low-level
16 radioactive waste and permit their disposal in any facility other than one specifically licensed to receive
17 such waste.

18 31. In 2000 the DPH, then known as the Department of Health Services, attempted to adopt a
19 standard of the NRC applying to termination of licenses as a regulatory standard for clean-up and
20 license termination. Although the notice of proposed rulemaking did not state this, the agency
21 subsequently disclosed that it intended to use this standard to determine when radiologically
22 contaminated materials could be disposed in non-LLRW licensed facilities. The Department of Health
23 Services did not prepare an EIR in support of its regulation but rather relied upon an exemption for
24 CEQA for purportedly environmentally protective regulations.

25 32. This regulation and its CEQA exemption were challenged in the Superior Court of
26 Sacramento County by Petitioners the Committee to Bridge the Gap, Physicians for Social
27 Responsibility, Los Angeles Chapter, and Southern California Federation of Scientists. In 2002, the
28 Honorable Gail Ohanesian overturned the regulations for failure to comply with CEQA and the APA,

1 issuing a writ of mandate prohibiting DPH from adopting its regulations or any similar clean-up
2 standards without first preparing an EIR. DPH has not since promulgated any clearance standards, nor
3 has it prepared an EIR for any such standards.

4 33. Moreover, in response to the court's ruling, then-Governor Gray Davis issued Executive
5 Order D-62-02, which prohibits the disposal of *any* waste from decommissioned facilities,
6 radiologically contaminated or not, in any Class III landfills (municipal waste landfills). That Executive
7 Order remains in effect, so the disposal of *any* materials from a decommissioned facility at a Class III
8 landfill is contrary to law.

9 34. DPH and its predecessor agency have in the past repeatedly stated that low-level
10 radioactive waste may not be disposed in California's Class I hazardous waste landfills. In September
11 2011, DPH informed officials tasked with remediating the McClellan Air Force Base that its plan to ship
12 radium 226 contaminated waste from McClellan to the DTSC-permitted Class I Buttonwillow facility
13 for disposal was illegal under California law, because that facility is not licensed to receive low-level
14 radioactive waste. The Department of Health Services similarly wrote to the operators of the
15 Buttonwillow facility that attempts to dispose low-level radioactive materials from out of state at
16 Buttonwillow in 1999 were not permissible under California law.

17 STATEMENT OF FACTS

18 Background Regarding the Santa Susana Field Laboratory and Area IV

19 35. The Santa Susana Field Laboratory (SSFL) is a former nuclear meltdown site located in
20 the Simi Hills of Ventura County, about 30 miles from downtown Los Angeles, in Southern California.
21 Beginning in the 1940s, the company North American Aviation developed the area to engineer and test
22 rocket engines, and in the 1950s its Atomics International division developed Area IV of the site for
23 nuclear development and testing. The site is divided generally into four areas, denominated Areas I
24 through IV. The nuclear work took place in the 290-acre Area IV, sometimes referred to as the Nuclear
25 Development Field Laboratory.

26 36. At its peak, Area IV was the site of ten nuclear reactors, seven criticality test facilities,
27 the "Hot Laboratory," the "Nuclear Materials Development Facility," the plutonium fuel fabrication
28 facility and various test and nuclear material storage areas. The Hot Laboratory suffered a number of

1 fires involving radioactive materials and at least four of the ten nuclear reactors suffered accidents.
2 Rocketdyne also used large volumes of chemicals within Area IV. For example, Rocketdyne used
3 trichloroethylene ("TCE") and other chemicals in connection with work on the nuclear reactors. This
4 work resulted in accidental spills and releases of radioactive and chemical contaminants within Area IV.

5 37. In 1959, the SSFL experienced the most significant of these accidents when a Sodium
6 Reactor experimental unit located in Area IV suffered a partial nuclear meltdown. The reactor, like all
7 those at SSFL, had no containment structures, and radioactivity was intentionally vented into the
8 atmosphere for weeks. Decades of nuclear experiments and unsafe practices such as the onsite open-air
9 burning of nuclear waste also contributed to the widespread radioactive contamination throughout Area
10 IV.

11 38. Radioactive contamination found by EPA at the site includes cesium-137, strontium-90,
12 plutonium-238, plutonium-239/240, americium-241, curium-243/244, tritium, and europium-152 and -
13 154. According to EPA, human exposure to these radioactive substances at the site can cause cancer,
14 leukemia, and genetic effects. In fact, a 1997 study by UCLA researchers found that workers at the site
15 had significantly higher incidences of dying from cancer of the blood, lungs, and lymph system. Other
16 studies have pointed to the conclusion that frequencies of various cancers increase with proximity to
17 SSFL.

18 39. The site's operations closed permanently in the 1990s due to community efforts and a
19 DOE investigation revealing the site's extensive chemical and radiological contamination. In 1996, the
20 Boeing Company acquired Rocketdyne, the then-owner, including all of the contaminated SSFL Area
21 IV.

22 40. When SSFL was established, it was chosen as a remote field laboratory for work too
23 dangerous to perform in more populated areas. Today, over half a million people live within 10 miles of
24 the facility. Nearby communities include Simi Valley, Chatsworth, Canoga Park, Moorpark, Bell
25 Canyon, Thousand Oaks, Agoura Hills, and Calabasas. The site is also directly bordered by a park, the
26 Sage Ranch facility managed by the Santa Monica Mountains Conservancy; and by a youth camp.

27 41. In 2012, EPA released a soil study. The study revealed that radioactive contamination
28 still pervades the site, with concentrations as much as a thousand times background levels. EPA's 2012

1 study of soils in Area IV found extensive radiological contamination pervading Area IV, including the
2 areas around the various structures. Of 3,750 samples taken, 500 were found to have radioactivity
3 above background.

4 **DTSC and DPH Approval Of Boeing's Actions In Area IV**

5 42. On March 28, 2000, DTSC announced that it had entered into a Memorandum of
6 Understanding (MOU) for the preparation of a draft Environmental Impact Report (EIR) to identify the
7 significant environmental impacts which must be considered by DTSC prior to approving a hazardous
8 waste remediation (cleanup) for the SSFL site. The MOU established that work on the EIR would begin
9 later that year and the final document completed by the end of 2002. DTSC did not prepare the EIR.

10 43. On September 10, 2012, DTSC again announced that it had entered into a Memorandum
11 of Understanding with Boeing. In this MOU, the parties agreed that Boeing would enter into a contract
12 with a consultant to advise DTSC on whether an EIR is required for subsequent future cleanup actions at
13 the SSFL, and if so, whether the EIR should be a program level EIR, a single project-level EIR,
14 individual project-level EIRs, or some combination of these options.

15 44. DTSC also announced the recommendation that DTSC develop a single EIR that would
16 address all levels of the cleanup for SSFL contamination at a program level, and would include project
17 specific information for components of the remediation program that are refined enough to support a
18 project-specific level of analysis and approval.

19 45. In July 2013 DTSC issued a Request for Qualifications for a contractor to perform a
20 Program EIR for cleanup of the full SSFL site. It has estimated the Program EIR will not be complete
21 before 2015.

22 46. DTSC has yet to begin preparing any CEQA document for the site cleanup.

23 47. On or about April 2010, DTSC approved Standard Operating Procedures for Building
24 Demolition Debris Characterization and Management (hereafter "2010 SOP"). According to DTSC this
25 document 1) formalized screening and management procedures to assure that building demolitions will
26 not result in the removal and uncontrolled release of potentially contaminated debris from the facility; 2)
27 required limits on the scope of demolitions to assure that proposed activities will not adversely affect the
28 ongoing site investigation and remediation, and 3) ensured that the review, approval, documentation,

1 and administrative record of proposed building demolitions at a minimum meet federal Resources
2 Conservation and Recovery Act (RCRA) and state Hazardous Waste Control Law requirements.

3 48. The SOPs were publically noticed and comment was solicited. According to the public
4 notice for announcing the 2010 SOPs and soliciting comment, “[t]he SOP is not applicable to building
5 demolitions at SSFL in areas where known radiological contaminant releases are documented or
6 suspected (such as Area IV). *Demolition in these areas is not planned.*” (Emphasis added, parenthetical
7 in original.)

8 49. On April 19, 2013, Boeing submitted for DTSC approval a revision of the 2010 SOP
9 (hereinafter “2013 SOP”) to specifically apply to Boeing-owned former radiological buildings in Area
10 IV. DTSC did not notify the public or solicit public comment on its proposed adoption of the 2013 SOP
11 or assess the potential environmental impacts of its approval pursuant to CEQA. DTSC posted the
12 document in its online document repository regarding SSFL. The April 2013 SOP states that it applies
13 to radiological buildings at Area IV, specifically identifying the following six structures:

- 14 a. Building 4005, Uranium Carbide Manufacturing Facility (remaining slab only)
- 15 b. Building 4009, OMR/SGR Facility
- 16 c. Building 4011 (low bay), Instrument Calibration Laboratory
- 17 d. Building 4055 (including 4155), Nuclear Materials Development Facility
- 18 e. Building 4093 (including 4074, 4083, 4453, 4523), L-85 (AE-6) Research
19 Reactor (remaining slab and west wall)
- 20 f. Building 4100, Fast Critical Experiment Laboratory/ Advanced Epithermal
21 Thorium Reactor

22 50. The amendments submitted in April 2013 reflect that Boeing and DTSC had been
23 making significant decisions regarding demolition and disposal of debris from Area IV without *any*
24 public notice and comment. In fact, the document shows that the SOPs had been revised by Boeing in
25 November 2012 at DTSC’s request to include the non-radiologic buildings in Area IV, but these
26 revisions were never posted to the document library until they were posted along with the April 2013
27 revisions. The public did not have any means to become aware that Boeing and DTSC were
28 contemplating the systematic demolition of all extant Boeing-owned Area IV structures at that time.

1 51. Moreover, the April 2013 SOP reveals that critical information concerning the manner in
2 which DTSC would evaluate the demolitions and approve of the disposal of debris was determined in
3 private consultations and not subject to any public review or even disclosure. For instance, the April
4 2013 SOP governing demolition of radiologic buildings in Area IV states that Boeing would provide to
5 DTSC and DPH “a summary of release criteria used for all former radiological buildings. This is
6 designed to facilitate expedited review of release documentation by CDPH.” In a footnote, the April
7 2013 SOP indicates that “Release Criteria for Boeing Radiological Buildings in Area IV” were emailed
8 from Boeing to DTSC on February 15, 2013. This email was not made available to the public on the
9 SSFL document library. Similarly, the April 2013 SOP provides that DTSC informed Boeing via email
10 on February 13, 2013, that “DTSC concurs that Class I landfill disposal of former radiological building
11 contents is acceptable, and agrees that this method of disposal does not merit additional radiological
12 screening.” Again, this email was not posted in the on-line document library and the only manner in
13 which the public could learn of DTSC’s concurrence in this approach is by footnote in the April 2013
14 SOP, on the 26th page of a 28 page document.

15 52. The April 2013 SOP demonstrates that Respondents exercise discretion over Boeing’s
16 demolition and disposal activities at Area IV in manner that would permit Respondents to address the
17 potentially significant environmental impacts of demolition and disposal of the radiological buildings.
18 The cover letter to the April 2013 SOP indicates that the document was prepared at DTSC’s request.
19 DTSC apparently approved the manner of disposal for all waste from the Area IV radiological
20 structures. The April 2013 SOP states that “if features of radiological interest” are found, DTSC may
21 require “additional evaluation before disposal.” The April 2013 SOP also states that DTSC has required
22 Boeing to conduct post-demolition radiological surveys of inaccessible materials, and requires Boeing to
23 halt work if radiation exceeding the unspecified “release criteria” is identified.

24 53. Petitioners have attempted, by means of the information made available on DTSC’s
25 SSFL on-line document library, to ascertain the status of all non-radiologic and radiologic Boeing-
26 owned structures in Area IV. As of the date this complaint was filed, from the information made
27 publically available, Boeing has submitted to DTSC requests to approve the demolition and disposal of
28 four radiologic structures: L-85, Building 4005, Building 4011 low bay, and, most recently, Building

1 4055, the plutonium facility. As far as the documents made available to the public indicate, on July 22,
2 2013, Respondents approved the remaining demolition and off-site disposal of the L-85 debris. There is
3 no indication in the document library that Respondents have yet finalized review and or approval of the
4 requests to demolish Building 4005 4055, or 4011 low bay. DTSC's July 2013 Monthly Status Report
5 for the SSFL site, released on August 5, 2013, states that its reviews of Boeing's request to demolish
6 Buildings 4055, 4005, and 4011 will be complete in late July or early August 2013.

7 54. According to DTSC's online SSFL document library, the demolition of the six non-
8 radiologic structures in Area IV has been approved by Respondents and demolition and disposal of these
9 structures is underway and may have been completed. Petitioners have extensively reviewed Boeing's
10 submittals and Respondent's approvals for all Area IV structures, as well as publically available
11 shipping manifests and other information regarding the disposal of demolition debris. Based upon this
12 review, Petitioners conclude that Respondents have permitted Boeing to demolish Area IV structures
13 and dispose of radiologically-contaminated debris in facilities that are not licensed under state law to
14 receive such debris. Even structures that Boeing has denominated "non-radiological" have, by Boeing's
15 own measurements, contained debris with level of radiologic activity that exceeds background levels.
16 Under California law, all such waste must be disposed of in a facility specifically licensed to receive
17 low-level radioactive waste. Respondents have approved Boeing's disposal of waste in non-licensed
18 facilities under the premise that the radioactivity levels of debris do not exceed "release standards"
19 under DPH documents DECON-1 and IPM-88-2 and US NRC Regulatory Guidance 1.86 ("Reg. Guide
20 1.86"); however those standards have nothing to do with the permissibility of *disposing* waste from
21 released sites. And Boeing's own data reveals that even facilities in which debris with activity levels
22 *exceeding* these levels have been disposed in facilities not licensed to receive low-level radioactive
23 waste.

24 55. Specifically, in the non-radiological buildings already demolished and disposed of, 17
25 samples exceed even Boeing's own clearance levels (the DECON-1, IPM-88-2, and Reg. Guide 1.86
26 levels). DTSC and DPH did not require Boeing to dispose of the materials exceeding this standard in
27 licensed LLRW facilities, in spite of statements that materials exceeding the "release standards" would
28 be disposed only in properly licensed facilities.

1 56. The samples for the non-radiological structures also contained 14 instances of detection
2 of radiation activity above background exceeding Boeing's "Minimum Detectible Activity Level"
3 ("MDA"). The MDA is the lowest level of radiation that must be detected in order to conclude that
4 there is less than a five percent chance of a false negative, or a failure to detect radiation where it is
5 actually present. Boeing sets its MDA well above background, and well above DECON-1/IPM-88-
6 2/Reg. Guide 1.86 levels, meaning that Boeing's own sampling efforts may well miss radiation above
7 background. The MDA does not mean that detections of radioactivity below the MDA level are
8 inaccurate. It simply means that Boeing is not conducting its surveys in manner that is designed to
9 actually detect the presence of radiation at or above background levels. Boeing sets its MDA at very
10 high levels because its sampling times are only one minute. Longer sampling times are required in
11 order to accurately measure radioactive disintegrations because radioactive materials do not degrade in a
12 regular, linear fashion, but rather do so at random intervals, which can easily be missed if sampling time
13 is too short.

14 57. The samples for the non-radiological structures also contained 254 instances of radiation
15 above the background levels established by Boeing's. . Moreover, Boeing's background levels are
16 notably higher than background levels measured by US EPA for the same materials and vary
17 significantly day by day, calling the very measurements against which radiation levels are assessed into
18 suspicion. Indeed, in their reviews of Boeing's request for approval of the disposal of the remaining L-
19 85 debris, Respondent DPH and the US EPA both noted that the background radioactivity level Boeing
20 reported exceeded the radioactivity in the majority of samples.

21 58. The samples for the non-radiological structures also contained 62 instances with readings
22 of radioactive higher than Boeing's critical level, or Lc. Boeing's own submissions state that readings
23 that exceed the critical level are considered to be above background.

24 59. In the prior surveys of Building 4055, the plutonium building conducted for EPA by a
25 contractor, TetraTek, 87 samples were in excess of the critical level. Respondents are presently
26 reviewing and may imminently approve Boeing's request to demolish and dispose of this structure.

27 60. Boeing's radiological surveys do not identify the specific isotopes generating radiologic
28 activity, a critical concern. A sample with a level of gross radiation that Boeing may consider

1 “background” may be contaminated with a non-natural isotope, such as Cesium-137 or Strontium-90,
2 both of which can easily penetrate to human muscle or bone, respectively. Materials contaminated with
3 these isotopes could be contaminated, i.e., above “background” levels because these isotopes do not
4 occur in nature, and thus should be disposed of in a licensed LLRW facility.

5 **FIRST CAUSE OF ACTION**
6 **Violation of California Environmental Quality Act**
7 **(Public Resources Code § 21168.5)**

8 61. Petitioners incorporate by reference all the allegations contained in the previous
9 paragraphs as though fully set forth herein.

10 62. CEQA defines projects as any activity which may cause either a direct physical change
11 or a reasonably foreseeable indirect change in the environment, and which involves the issuance of a
12 lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub.
13 Resources Code, § 21065.) CEQA applies to all discretionary projects proposed to be carried out or
14 approved by public agencies. (Pub. Resources Code, § 20180.)

15 63. CEQA applies when a public agency proposes to “approve” a project. (Pub. Resources
16 Code, § 21080, subd. (a).) The term “approval” refers to a public agency decision that commits the
17 agency to a definite course of action in regard to a project. (Cal. Code Regs., tit.14, § 15352(a).)

18 64. Agencies may not undertake actions that could have a significant adverse effect on the
19 environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA.
20 (Cal. Code Regs., tit. 14, § 15004(b)(2).) CEQA also requires that an agency consider the cumulative
21 effects of its actions. Where “individual projects are, or a phased project is, to be undertaken and where
22 the total undertaking comprises a project with significant environmental effect,” the agency must
23 prepare an EIR addressing the scope of the entire project, including “comment upon the cumulative
24 effect.” (Cal. Code Regs., tit. 14, § 15165.)

25 65. There has been no review of the demolition and disposal of Area IV structures under
26 CEQA. Respondents have not issued any Notice of Exemption or Notice of Decision regarding the
27 demolition and disposal of Area IV structures.

28 66. The demolition and disposal of the Area IV structures may have a significant
environmental effect. These structures are, by Boeing’s own measurements, contaminated with

1 radiation above background. Moreover, these measurements account only for surficial contamination,
2 and do not measure volumetric contamination contained *within* the building materials. Volumetric
3 contamination that was not measured by or accounted for by Boeing may be released during demolition.
4 Even worse, as discussed *supra*, Boeing's measurements are conducted using a detection level that is
5 not designed to reliably measure contamination above background levels or even Boeing's release
6 levels, so the measurements submitted by Boeing to Respondents cannot demonstrate that the material is
7 uncontaminated or even that it is not contaminated above the release limits being used. Nonetheless,
8 some of the measurements are so high that they clearly show contamination and at levels exceeding
9 even the limits used. The demolition may expose workers, nearby residents, park users, and children
10 attending the adjacent camp to radiation released when radioactively-contaminated dust and soil reaches
11 air or water.

12 67. The disposal of demolition debris likewise may have significant environmental effects.
13 The Legislature has made specific findings regarding the potential environmental and safety hazards of
14 improper disposal of low-level radioactive waste. In 2002, the Legislature enacted Assembly Bill 2114,
15 which set standards for licenses for facilities where low-level radioactive waste is permitted to be
16 disposed. The Legislature specifically found that, "[b]ecause of the need to protect public health and the
17 environment, it is appropriate for the state to (1) prohibit shallow land burial of low-level radioactive
18 waste because of the potential for the migration of radioactive waste beyond the site and to groundwater,
19 and (2) require that a facility be designed and constructed to permanently isolate the radioactive waste to
20 protect public health and the environment." (Stats. 2002, ch. 513, sec. 2 (b).) Moreover, the Legislature
21 explained its intent "to establish standards for the disposal of low-level radioactive waste to permanently
22 isolate low-level radioactive waste, with the goal of protecting public health and the environment."
23 (Stats. 2002, ch. 513, sec. 2 (g).) The Legislature adopted specific requirements for facilities in which
24 low-level radioactive waste is to be disposed, including multiple engineered barriers lasting at least 500
25 years, monitoring for the release of radioactive materials, and prohibiting shallow land burial. (Health
26 & Saf. Code, § 115261, subd. (b).) The Legislature has, by imposing these requirements for all facilities
27 in which low-level radioactive waste may be disposed, established that the improper disposal of such
28 waste risks harm to the environment and to the public.

1 68. Respondents have already approved Boeing's disposal of debris containing materials that
2 Boeing's own surveys showed contained radioactive materials with levels above background.
3 Respondents have not required Boeing to dispose of these materials at licensed low-level radioactive
4 waste facilities. The facilities that Respondents have authorized Boeing to utilize for disposal of the
5 debris from Area IV structures that contain materials with radiation above naturally occurring levels are
6 in fact not licensed by DPH for the disposal of low-level radioactive waste and satisfy none of the
7 protective requirements that the AB 2114 mandates for such facilities. The lack of appropriate licenses
8 and the lack of required protective measures at these facilities means that Respondents' approvals risk
9 causing the harm to the environment and public health that the Legislature sought to avoid in enacting
10 AB 2114.

11 69. Because Respondents exercise their discretion in evaluating and approving Boeing's
12 requests to demolish and dispose of the radiologic structures in Area IV, and because the demolition and
13 disposal of these radiologic structures may have significant environmental effect, review under CEQA is
14 required. By failing to complete CEQA review before approving Boeing's demolition and disposal
15 activities, Respondents have not proceeded in a manner required by law and have abused their
16 discretion. (Pub. Resources Code, § 21168.5.)

17 70. Under Public Resources Code section 21167, subdivision (a), an action alleging that a
18 public agency "is carrying out or has approved a project that may have a significant effect on the
19 environment without having determined whether the project may have a significant effect on the
20 environment shall be commenced within 180 days from the date of the public agency's decision to carry
21 out or approve the project, or, if a project is undertaken without a formal decision by the public agency,
22 within 180 days from the date of commencement of the project."

23 71. This action is timely filed within 180 days of the date that Petitioners were first aware
24 that DTSC intended to authorize Boeing to demolish the radiological structures on Area IV, which was
25 when Boeing submitted to DTSC the April 2013 SOP specifically addressing Area IV radiological
26 structures. Until that time, DTSC's only public comment on Area IV structures indicated that the then-
27 current SOPs would not permit demolition of the Area IV structures. Prior to April 2013, no prior
28

1 amendments to the SOP were made publically available indicating that Respondents would approve the
2 demolition of Area IV structures.

3 **SECOND CAUSE OF ACTION**

4 **Violation of Prior Writ of Mandate**
5 **(Code of Civil Procedure § 1097)**

6 (By all Petitioners and Plaintiffs against Respondent and Defendant DPH)

7 72. Petitioners incorporate by reference all the allegations contained in the previous
8 paragraphs as though fully set forth herein.

9 73. In 2001, the Department of Health Services, the predecessor agency to Respondent and
10 Defendant DPH, adopted regulations purporting to set standards for the clean-up of radiologically
11 contaminated nuclear sites and the termination of licenses for nuclear sites. Although the public notice
12 of the regulation did not state it, the Department of Health Services also took the position that the
13 regulations would apply to permit the shipment of radioactive waste to unlicensed sites so long as the
14 aggregate dose did not exceed a specified standard, a direct contradiction to the existing legal
15 requirements regarding disposal of radioactive materials.

16 74. In promulgating the regulations, the Department of Health Services relied upon an
17 exemption from CEQA and did not perform any environmental review of regulations or their possible
18 environmental effects either at or near clean-up sites or disposal sites.

19 75. Petitioners and Plaintiffs Committee to Bridge the Gap, Southern California Federation
20 of Scientists, and Physicians for Social Responsibility, Los Angeles Chapter filed suit in Sacramento
21 Superior Court, challenging the Department of Health Service's adoption of the regulations for failure to
22 comply with the Administrative Procedures Act and for violations of CEQA. (*Committee to Bridge the*
23 *Gap et al v. Bonta*, Sacramento Superior Court Case No. 01CS01445.)

24 76. Superior Court Judge Gail Ohanesian heard argument on the Motion for Issuance of
25 Peremptory Writ of Mandate in April 2002, and issued a Ruling on Submitted Matter finding that the
26 Department of Health Services violated both the APA and CEQA. As to CEQA, the Ruling stated that
27 the challenging parties "have shown that there is a reasonable possibility that the adoption of the subject
28 regulation will have a significant adverse environmental effect." Accordingly, reliance on an exemption
was inappropriate and environmental review was required.

1 to this chapter.” (Gov. Code, § 11340.5, subd. (a).) Government Code section 11340.600, in turn,
2 broadly defines a “regulation” as a “rule, regulation, order, or standard of general application or the
3 amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state
4 agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its
5 procedure.” (*Id.* at § 11340.600; see also *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14
6 Cal.4th 557, 571 [describing regulation definition as “very broad[.]”].)

7 83. Courts apply the following two-part test set forth by the California Supreme Court in
8 *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, to determine whether an agency
9 rule that was not adopted pursuant to the APA amounts to an underground regulation: “First the agency
10 must intend its rule to apply generally, rather than to a specific case[, and s]econd, the rule must
11 ‘implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern
12 [the agency’s] procedure.’” (*Tidewater*, 14 Cal.4th at p. 571 [quoting Gov. Code, § 11342, subd. (g)].)
13 If the rule constitutes a “regulation,” and there is no express statutory exemption excusing the agency
14 from complying with the APA’s strict procedural requirements, then the underground regulation is
15 invalid and cannot be enforced. (14 Cal.4th at p. 576.)

16 84. In issuing their approvals of Boeing’s demolition and disposal activities, Respondents
17 and Defendants rely upon several specifically identified standards of general application. These include
18 Regulatory Guide 1.86, adopted in 1974 by the federal Atomic Energy Commission (later renamed the
19 Nuclear Regulatory Commission); DOE 5400.5, a policy document that has since been rescinded by the
20 Department of Energy; an undated document generated by DPH’s Radiologic Health Branch titled
21 “Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use”
22 (“Decon-1”); and a 1991 “policy memorandum” from the same source denominated IPM-88-2.

23 85. None of the standards were adopted by Respondents and Defendants pursuant the APA’s
24 strict public notice and other requirements.

25 86. The standards were intended by Respondents and Defendants and are, on their face,
26 intended to apply generally rather than to a specific case.

27 87. Respondents and Defendants have utilized, and enforced these standards in their review
28 of Boeing’s requests for approval to demolish structures at Area IV and to dispose of the resultant debris

1 in off-site locations, and the reliance upon these standards has affected policy, practice, or procedure
2 within the agencies.

3 88. Regulatory Guide 1.86, DOE 5400.5, Decon-1, and IPM-88-2 constitute an underground
4 regulation in that each applies generally, and each is being applied to implement, interpret, and make
5 specific the law enforced or administered by Respondents and Defendants, or govern the procedure of
6 Respondents and Defendants.

7 89. There is no express statutory exemption excusing Respondents and Defendants from
8 complying with the APA's strict procedural requirements with respect to these standards.

9 90. A writ of mandate may be issued under Code of Civil Procedure section 1085 "to compel
10 the performance of an act which the law specifically enjoins, as a duty resulting from an office."

11 91. If not otherwise directed by this Court's issuance of the requested writ of mandate,
12 Respondents and Defendants will continue to violate their clear, present, and ministerial duty to comply
13 with the APA by continuing to utilize, enforce, or attempt to enforce Regulatory Guide 1.86, DOE
14 5400.5; Decon-1 and IPM-88-2, which constitute illegal underground regulations. Issuance of the
15 requested writ of mandate is therefore necessary to prevent Respondents and Defendants from
16 continuing to violate California law and to ensure that the Respondents and Defendants do not use
17 standards that have been adopted without public review and which are not even intended for the
18 purposes for which Respondents and Defendants are utilizing them.

19 92. Petitioners and Plaintiffs have a beneficial interest in the issuance of a writ of mandate,
20 apart from the public at large, in that the organizations each advocates for safe and appropriate
21 remediation and disposal of radioactive waste, as detailed in paragraphs @@@, above, and as
22 specifically incorporated by reference herein. In particular, Petitioners Physicians for Social
23 Responsibility – Los Angeles; Southern California Federation of Scientists, and Committee to Bridge
24 the Gap have for over 20 years been involved in discussions, review, and litigation concerning the SSFL
25 site and Area IV, in particular. Petitioner Consumer Watchdog has been enforcing laws designed to
26 protect consumers and the general public since its inception, and has, over the past year, been actively
27 campaigning against lax state agency enforcement of environmental laws. Collectively, Petitioners
28 advocate for sound governmental decisionmaking and compliance with important state environmental

1 and consumer protection laws specifically enacted to provide the citizens of California with a high
2 quality environment and consumer products free from harmful materials.

3 93. Petitioners and Plaintiffs have no plain, speedy, and adequate remedy in the ordinary
4 course of law, in that no damages or other legal remedy could compensate them or their members for the
5 harm that could result from the use of improperly promulgated and inapplicable standards for the
6 evaluation of Boeing's demolition and disposal of Area IV structures.

7 **FOURTH CAUSE OF ACTION**

8 (Declaratory Relief)
9 (Code Civ. Proc., §1060)

10 94. Petitioners incorporate by reference all the allegations contained in the preceding
11 paragraphs as though fully set forth herein.

12 95. A dispute has arisen between Petitioners and Respondents, in that Petitioners believe and
13 contend, for the reasons set forth above, that Respondents' actions as set forth above were unlawful and
14 invalid. Petitioners are informed and believe, and on that basis contend, that Respondents contend in all
15 respects to the contrary.

16 96. In particular, Petitioners contend that the approval of demolition and disposal of the Area
17 IV radioactive structures is a "project," under CEQA; that Respondents exercise discretion in approving
18 Boeing's demolition and disposal; and that such demolition and disposal of the former radiological
19 structures may have a significant effect on the environment. Petitioners are informed and believe, and
20 on that basis contend, that Respondents do not consider their actions in approving Boeing's demolition
21 and disposal to be a "project" subject to CEQA review.

22 97. Petitioners also contend that Respondents are improperly utilizing standards of general
23 applicability that have not been adopted pursuant to the Administrative Procedures Act. Petitioners are
24 informed and believe, and on that basis contend, that Respondents believe that reliance upon these
25 standards is appropriate.

26 98. Petitioners also contend that Respondent DPH is not compliant with the 2002 Writ of
27 Mandate requiring it to prepare an EIR under CEQA prior to adopting any standards governing clean up
28 of radioactively contaminated sites and structures. Petitioners are informed and believe, and on that
basis contend, that Respondent DPH believes that its actions are in compliance with the 2002 Writ of

1 Mandate.

2 99. A judicial declaration as to the legality of Respondents' actions, as set forth above, is
3 therefore necessary and appropriate to determine the respective rights and duties of the parties.

4 **FIFTH CAUSE OF ACTION**

5 (Injunctive Relief)
6 (Code Civ. Proc., § 525)

7 100. Petitioners incorporate all the allegations set forth in the preceding paragraphs as though
8 fully set forth herein.

9 101. Respondents' actions in approving Boeing's demolition and disposal of Area IV
10 structures, and reliance on improper standards to evaluate those demolition and disposal activities, has
11 caused and threatens to cause Petitioners irreparable and substantial harm.

12 102. Petitioners have no plain, speedy, and adequate remedy at law, in that unless
13 Respondents are enjoined by this Court to comply with CEQA, the 2002 Writ of Mandate, and the APA,
14 Respondents will continue to approve Boeing's requests to demolish and dispose of the debris from
15 radiologic structures in Area IV. No amount of monetary damages or other legal remedy can adequately
16 compensate Petitioners for the irreparable harm that Petitioners, their members, the residents nearby the
17 SSFL site and the sites in which radioactive materials have been improperly disposed, and the general
18 public who consume products made from recycled materials into which radiologically active materials
19 have been incorporated, have suffered and will suffer from the violations of law described herein.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioners pray for relief as follows:

22 1. That this Court issue alternative and peremptory writs of mandate, commanding
23 Respondents:

- 24 a. To immediately cease review and approval of Real Party in Interest Boeing's
25 request for approval of demolition of Boeing-owned radiologic structures in Area
26 IV of the Santa Susana Field Laboratory;
- 27 b. To order Real Party in Interest Boeing to immediately cease all demolition and
28 disposal activity presently ongoing in Area IV of the Santa Susana Field
Laboratory, and not to commence any further such activity;

- 1 c. To rescind all prior approvals for the demolition of radiologic structures in Area
2 IV of the Santa Susana Field Laboratory and prohibiting any person acting in
3 concert, consultation, or cooperation with Respondents from relying upon,
4 enjoying any benefit from, or otherwise acting based upon the authorizations
5 issued to demolish and/or dispose of any radiological structures in Area IV of the
6 Santa Susana Field Laboratory;
- 7 d. To comply with the mandates of the California Environmental Quality Act,
8 Public Resources Code section 21000 *et seq.* with regard to any further actions
9 directed to the Santa Susana Field Laboratory;
- 10 e. To rescind and cease reliance upon US NRC Regulatory Guide 1.86; DOE
11 5400.5; DECON-1; and IPM-88-2 to set standards for clean up and disposal of
12 demolition debris unless and until the standards contained in any or all of those
13 provisions are adopted pursuant to a properly noticed rulemaking consistent with
14 the APA (Government Code, § 11340 *et seq.*), and prepare an EIR as required by
15 the 2002 Writ of Mandate in *Committee to Bridge the Gap et al v. Bonta*,
16 Sacramento Superior Court Case No. 01CS01445.

17 2. This this Court issue a temporary restraining order, preliminary injunction, and
18 permanent injunction ordering Respondents as follows:

- 19 a. Ordering Respondents to immediately cease review and approval of Real Party in
20 Interest Boeing's request for approval of demolition of Boeing-owned radiologic
21 structures in Area IV of the Santa Susana Field Laboratory;
- 22 b. Order Real Party in Interest Boeing to immediately cease all demolition and
23 disposal activity presently ongoing in Area IV of the Santa Susana Field
24 Laboratory, and not to commence any further such activity;
- 25 c. Ordering Respondents to rescind all prior approvals for the demolition of
26 radiologic structures in Area IV of the Santa Susana Field Laboratory and
27 prohibiting any person acting in concert, consultation, or cooperation with
28 Respondents from relying upon, enjoying any benefit from, or otherwise acting

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based upon the authorizations issued to demolish and/or dispose of any radiological structures in Area IV of the Santa Susana Field Laboratory;

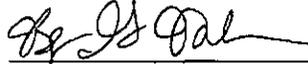
- d. Ordering Respondents to comply with the mandates of the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* with regard to any further actions directed to the Santa Susana Field Laboratory;
- e. Ordering Respondents to rescind and cease reliance upon US NRC Regulatory Guide 1.86; DOE 5400.5; DECON-1; and IPM-88-2 to set standards for clean up and disposal of demolition debris unless and until the standards contained in any or all of those provisions are adopted pursuant to a properly noticed rulemaking consistent with the APA (Government Code, § 11340 *et seq.*), and prepare an EIR as required by the 2002 Writ of Mandate in *Committee to Bridge the Gap et al v. Bonta*, Sacramento Superior Court Case No. 01CS01445.

- 3. That this Court award Petitioners attorneys' fees and costs.
- 4. That this Court grant Petitioner such other, different, or further relief as the Court may deem just and proper.

Dated: August 6, 2013

STRUMWASSER & WOOCHEER LLP
Michael J. Strumwasser
Beverly Grossman Palmer
Rachel A. Deutsch

CONSUMER WATCHDOG
Harvey Rosenfield
Pamela Pressley
Laura Antonini

By: 
Beverly Grossman Palmer

Attorneys for Physicians for Social Responsibility-Los Angeles, Southern California Federation of Scientists, Committee to Bridge the Gap, and Consumer Watchdog

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VERIFICATION

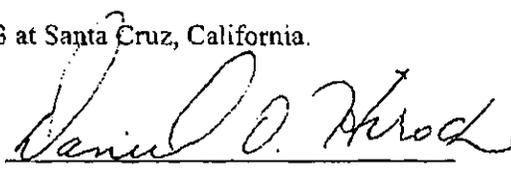
I, Daniel O. Hirsch declare:

I am President of Committee to Bridge the Gap. I am authorized to make this verification for Petitioner Committee to Bridge the Gap.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof. Said contents are known to me to be true except those matters alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of August, 2013 at Santa Cruz, California.



Daniel O. Hirsch

EXHIBIT A

STRUMWASSER & WOOCHELLP

ATTORNEYS AT LAW

10940 WILSHIRE BOULEVARD, SUITE 2000
LOS ANGELES, CALIFORNIA 90024

TELEPHONE: (310) 576-1233
FACSIMILE: (310) 319-0156
WWW.STRUMWOCH.COM

FREDRIC D. WOOCHELL
MICHAEL J. STRUMWASSER
GREGORY G. LUKE †‡
BRYCE A. GEE
BEVERLY GROSSMAN PALMER
RACHEL A. DEUTSCH
PATRICIA T. PEI

†Also admitted to practice in New York
‡Also admitted to practice in Massachusetts

August 6, 2013

Via Facsimile and U.S. Mail

Debbie Raphael, Director
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814
Fax: 916-324-3158

Dr. Ron Chapman, Director
Department of Public Health
1615 Capitol Avenue, Suite 720
Sacramento, CA 95814
Fax: 916-558-1762

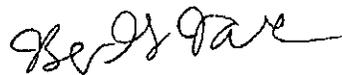
Re: Notice of Commencement of CEQA Action

Dear Ms. Raphael and Dr. Chapman:

Please take notice, under section 21167.5 of the Public Resources Code, that Petitioners and Plaintiffs Physicians for Social Responsibility- Los Angeles, Southern California Federation of Scientists, Committee to Bridge the Gap, and Consumer Watchdog intend to file a lawsuit under the provisions of the California Environmental Quality Act (CEQA) against the Department of Toxic Substances Control and the Department of Public Health (collectively, "the Departments"). The lawsuit will challenge the Departments' failure to comply with the requirements of CEQA, Public Resources Code section 21000 *et seq.*, in connection with the Departments' review and approval of the on-going demolition and disposal of radiological structures in Area IV of the Santa Susana Field Laboratory site.

Should you have any questions about this notice, do not hesitate to contact me at 310-576-1233 or bpalmer@strumwooch.com.

Sincerely,



Beverly Grossman Palmer

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

Re: *Physicians for Social Responsibility-Los Angeles, et al. v. Department of Toxic Substances Control*, Case No. _____

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **August 6, 2013**, I served the foregoing document(s) described as **Letter (Notice re filing of CEQA action with attached copy of the Petition, and Notice to Respondents of intent to file CEQA action)** on the California Attorney General, as listed below, by the method stated:

Debbie Raphael, Director
Department of Toxic Substance Control
1001 I Street
Sacramento, CA 95814
Fax: (916) 324-3158

Dr. Ron Chapman, Director
Department of Public Health
1615 Capitol Avenue, Suite 720
Sacramento, CA 95814
Fax: (916) 558-1762

If fax service is indicated, by facsimile transmission this date to the fax number stated, to the attention of the person named, pursuant to Code of Civil Procedure section 1013(f).

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

If overnight service is indicated, by placing this date for collection by sending true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure, section 1013(d). I am readily familiar with this firm's practice of collecting and processing correspondence. Under that practice, it would be deposited with an overnight service in Los Angeles County on that same day with an active account number shown for payment, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 6, 2013**, at Los Angeles, California.

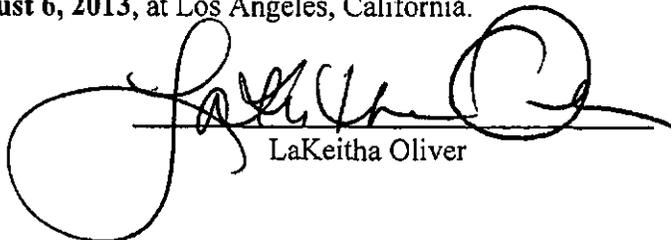

LaKeitha Oliver

EXHIBIT B

STRUMWASSER & WOOCHELLP

ATTORNEYS AT LAW

10940 WILSHIRE BOULEVARD, SUITE 2000
LOS ANGELES, CALIFORNIA 90024

FREDRIC D. WOOCHELL
MICHAEL J. STRUMWASSER
GREGORY G. LUKE †‡
BRYCE A. GEE
BEVERLY GROSSMAN PALMER
RACHEL A. DEUTSCH
PATRICIA T. PEI

TELEPHONE: (310) 576-1233
FACSIMILE: (310) 319-0156
WWW.STRUMWOOCHELL.COM

†Also admitted to practice in New York
‡Also admitted to practice in Massachusetts

August 6, 2013

Via U. S. Mail

Office of the Attorney General
1300 I Street
Sacramento, California 95814

Re: Notice of Commencement of CEQA Action

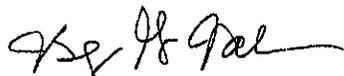
Dear Attorney General:

Pursuant to Public Resources Code section 21167.7 and Code of Civil Procedure section 388, Plaintiffs and Petitioners Physicians for Social Responsibility -Los Angeles, Southern California Federation of Scientists, Committee to Bridge the Gap, and Consumer Watchdog hereby gives notice that on August 6, 2013, a petition for writ of mandate and complaint will be filed against Defendants and Respondents Department of Toxic Substances Control ("DTSC"), and Department of Public Health ("DPH") in Sacramento Superior Court. The action challenges Defendants' authorization of the Boeing Company's plans to demolish structures located in Area IV of the Santa Susana Field Laboratory and to dispose of the resulting debris. The development, fabrication and disassembly of nuclear reactors, nuclear fuel, and other radioactive materials has resulted in significant radiological contamination of Area IV. Petitioner's action will contend that, notwithstanding the clear environmental harm associated with releasing and dispersing this contamination, Defendants have failed to comply with any of the procedural and substantive requirements of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* ("CEQA"). Petitioner will likewise argue that Defendants have unlawfully approved Boeing's plans to dispose of the contaminated materials at facilities that are not licensed to receive radioactive waste. Finally, the action will contend that DTSC and DPH have adopted an underground regulation in violation of the Administrative Procedure Act, Government Code section 11340.5 ("APA"), by approving the Boeing Company's demolition and waste disposal plans on the basis of radioactive release standards never adopted through noticed rulemaking. A copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief is attached to this notice. In addition, I include a copy of the notice of intent to commence action upon Defendants and Respondents DTSC and DPH, and the proof of service of the notice.

Office of the Attorney General
August 6, 2013
Page 2

Should you have any questions about this notice, do not hesitate to contact me at 310-576-1233
or bpalmer@strumwooch.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Beverly Grossman Palmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Beverly Grossman Palmer

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

Re: *Physicians for Social Responsibility-Los Angeles, et al. v. Department of Toxic Substances Control*, Case No. _____

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **August 6, 2013**, I served the foregoing document(s) described as **Letter (Notice re filing of CEQA action with attached copy of the Petition, and Notice to Respondents of intent to file CEQA action)** on the California Attorney General, as listed below, by the method stated:

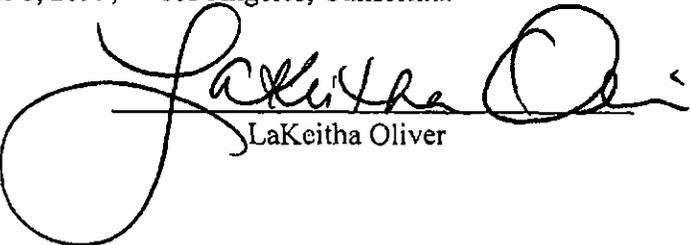
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

If fax service is indicated, by facsimile transmission this date to the fax number stated, to the attention of the person named, pursuant to Code of Civil Procedure section 1013(f).

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

If overnight service is indicated, by placing this date for collection by sending true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure, section 1013(d). I am readily familiar with this firm's practice of collecting and processing correspondence. Under that practice, it would be deposited with an overnight service in Los Angeles County on that same day with an active account number shown for payment, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 6, 2013**, at Los Angeles, California.


LaKeitha Oliver

FILED
ENDORSED

13 OCT -8 PM 2:57

LEGAL PROCESS #6

1 KAMALA D. HARRIS
Attorney General of California
2 TRACY L. WINSOR
Supervising Deputy Attorney General
3 JEFFREY P. REUSCH
Deputy Attorney General
4 State Bar No. 210080
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-7851
Fax: (916) 327-2319
7 E-mail: Jeffrey.Reusch@doj.ca.gov
Attorneys for Respondent Department of Public
8 Health

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12
13 **PHYSICIANS FOR SOCIAL
RESPONSIBILITY - LOS ANGELES, a
14 non-profit corporation, et al.,**

15 Petitioners,

16 v.

17 **DEPARTMENT OF TOXIC
18 SUBSTANCES CONTROL;
DEPARTMENT OF PUBLIC HEALTH;
19 and DOES 1 to 100,**

20 Respondents,

21
22 **THE BOEING COMPANY, a corporation;
23 ROES 1 TO 100,**

24 Real Parties in Interest.
25
26
27
28

Case No. 34-2013-80001589

**ANSWER OF RESPONDENT
DEPARTMENT OF PUBLIC HEALTH
TO PETITIONERS' VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Dept: 42
Judge: The Honorable Allen H. Sumner
Trial Date: TBA
Action Filed: August 6, 2013

ORIGINAL

1 For its Answer to the Verified Petition for Writ of Mandate and Complaint for Injunctive
2 and Declaratory Relief (the Petition), respondent Department of Public Health (Respondent)
3 states and alleges as follows:

4 INTRODUCTION

5 1. Answering paragraph 1 of the Petition, Respondent ADMITS that radioactive
6 materials were historically used at various sites within Area IV of the Santa Susana Field
7 Laboratory, and that use resulted in varying levels of radiological contamination. Respondent
8 DENIES each and every other allegation contained in paragraph 1

9 2. Answering paragraph 2 of the Petition, Respondent DENIES each and every
10 allegation contained therein.

11 3. Answering paragraph 3 of the Petition, Respondent ADMITS, on information and
12 belief, that DTSC has not conducted CEQA review of Boeing's demolition activities, that DTSC
13 has announced that it will prepare an EIR related to the SSFL site, and that DTSC has issued a
14 public request for a consultant to prepare the EIR. Respondent DENIES that Respondents are
15 authorizing demolition and disposal of radiologically contaminated structures, or any other work
16 that should be reviewed in an EIR. Respondent DENIES each and every other allegation
17 contained in paragraph 3 based on a lack of sufficient information and belief.

18 4. Answering paragraph 4 of the Petition, Respondent DENIES each and every
19 allegation contained therein.

20 5. Answering paragraph 5 of the Petition, Respondent ADMITS that, in 2000, without
21 CEQA review, Respondent promulgated regulations setting forth acceptable levels of
22 radioactivity for license termination, and that the Sacramento County Superior Court ordered
23 those regulations rescinded in 2002, requiring the preparation of an EIR prior to any future re-
24 adoption of the radiological criteria for license termination set forth in 10 C.F.R. §§ 20.1401 –
25 1406, or any similar provisions relating to the establishment of clean-up standards for license
26 termination. Respondent ADMITS that, since 2002, Respondent has not readopted those criteria,
27 or any similar provisions relating to the establishment of clean-up standards for license
28

1 termination, and that Respondent has not prepared an EIR relating to any such criteria.

2 Respondent DENIES each and every other allegation contained in paragraph 5.

3 6. Paragraph 6 of the Petition is a statement of petitioners' requests of this court, which
4 does not require a response.

5 7. Answering paragraph 7 of the Petition, Respondent DENIES each and every
6 allegation contained therein.

7 **PARTIES**

8 8. Answering paragraph 8 of the Petition, Respondent DENIES each and every
9 allegation contained therein based on a lack of sufficient information and belief.

10 9. Answering paragraph 9 of the Petition, Respondent DENIES each and every
11 allegation contained therein based on a lack of sufficient information and belief.

12 10. Answering paragraph 10 of the Petition, Respondent DENIES each and every
13 allegation contained therein based on a lack of sufficient information and belief.

14 11. Answering paragraph 11 of the Petition, Respondent DENIES each and every
15 allegation contained therein based on a lack of sufficient information and belief.

16 12. Answering paragraph 12 of the Petition, Respondent ADMITS that Respondent has
17 regulatory authority over certain radioactive materials in California, that the RHB regulates
18 certain radioactive materials in California pursuant to applicable provisions of the California
19 Health and Safety Code and Title 17 of the California Code of Regulations, that the RHB issues
20 radioactive material licenses and regulates the licensees to the extent provided in the licenses, and
21 that DPH does not terminate radioactive material licenses without determining, among other
22 things, that reasonable effort has been made to eliminate residual radioactive contamination, if
23 present. Respondent DENIES each and every other allegation contained in paragraph 12.

24 13. Answering paragraph 13 of the Petition, Respondent DENIES each and every
25 allegation contained therein based on a lack of sufficient information and belief.

26 14. Answering paragraph 14 of the Petition, Respondent DENIES that Respondents are
27 approving, or have approved, Boeing's demolition and disposal. On information and belief,
28 Respondent ADMITS each and every other allegation contained in paragraph 14.

1 25. Paragraph 25 of the Petition contains only legal conclusions that do not require a
2 response.

3 26. Paragraph 26 of the Petition contains only legal conclusions that do not require a
4 response.

5 27. Paragraph 27 of the Petition contains only legal conclusions that do not require a
6 response.

7 28. Paragraph 28 of the Petition contains only legal conclusions that do not require a
8 response.

9 29. Paragraph 29 of the Petition contains only legal conclusions that do not require a
10 response.

11 30. Paragraph 30 of the Petition contains only legal conclusions that do not require a
12 response.

13 31. Answering paragraph 31 of the Petition, Respondent ADMITS that, in 2000,
14 Respondent, then known as the Department of Health Services, attempted to adopt a standard of
15 the NRC applying to termination of licenses as a regulatory standard for license termination.
16 Respondent ADMITS that it did not prepare an EIR in support of its regulation, but rather relied
17 upon a CEQA exemption for environmentally protective regulations. Respondent DENIES each
18 and every other allegation contained in paragraph 31.

19 32. Answering paragraph 31 of the Petition, Respondent ADMITS that petitioners
20 challenged the regulation and its CEQA exemption. Respondent ADMITS that, in 2002, the
21 Honorable Gail Ohanesian overturned the regulation, ruling that Respondent failed to comply
22 with CEQA and the APA, and issued a writ of mandate prohibiting Respondent from readopting
23 the radiological criteria for license termination set forth in 10 C.F.R. §§ 20.1401 – 1406, or any
24 similar provisions relating to the establishment of clean-up standards for license termination,
25 without first preparing an EIR. Respondent ADMITS that Respondent has not since readopted
26 the radiological criteria for license termination set forth in 10 C.F.R. §§ 20.1401 – 1406, or any
27 similar provisions relating to the establishment of clean-up standards for license termination, and
28 that Respondent has not prepared an EIR for any such criteria. Respondent does not know what

1 petitioners mean by “promulgated any clearance standards.” Respondent DENIES each and
2 every other allegation contained in paragraph 32.

3 33. Answering paragraph 33 of the Petition, Respondent ADMITS that then-Governor
4 Gray Davis issued Executive Order D-62-02. Respondent DENIES that Executive Order D-62-02
5 prohibits the disposal of any waste from decommissioned facilities in any Class III landfills. The
6 remaining allegations of paragraph 33 are legal conclusions that do not require a response.

7 34. Answering paragraph 34 of the Petition, Respondent ADMITS that it has repeatedly
8 stated that low-level radioactive waste may not be disposed of in California’s Class I hazardous
9 waste landfills, that it informed officials tasked with remediating McClellan Air Force Base that
10 radium-226 contaminated waste removed during the decommissioning process could not be
11 disposed of at the Buttonwillow facility, and that it had informed the Buttonwillow facility’s
12 operators in 1999 that the disposal of out-of-state low-level radioactive waste was not permitted.
13 Respondent DENIES each and every other allegation contained in Paragraph 34.

14 STATEMENT OF FACTS

15 35. Answering paragraph 35 of the Petition, Respondent DENIES that the Santa Susana
16 Field Laboratory is a former “nuclear meltdown” site. Respondent ADMITS each and every
17 other allegation contained therein based on information and belief.

18 36. Answering paragraph 36 of the Petition, Respondent ADMITS each and every
19 allegation contained therein based on information and belief.

20 37. Answering paragraph 37 of the Petition, Respondent DENIES that the Sodium
21 Reactor experimental unit suffered a partial nuclear meltdown. Respondent DENIES each and
22 every other allegation contained in paragraph 37 based on a lack of sufficient information and
23 belief.

24 38. Answering paragraph 38 of the Petition, Respondent ADMITS that radioactive
25 contamination found by EPA at the site includes cesium-137, strontium-90, plutonium-238,
26 plutonium 239/240, americium-241, tritium, and europium-152 and 154. Respondent DENIES
27 each and every other allegation in paragraph 38 based on a lack of sufficient information and
28 belief.

1 39. Answering paragraph 39 of the Petition, Respondent ADMITS, based on information
2 and belief, that, in 1996, the Boeing Company acquired Rocketdyne, the then-owner, including all
3 of SSFL Area IV. Respondent DENIES each and every other allegation contained in paragraph
4 39 based on a lack of sufficient information and belief.

5 40. Answering paragraph 40 of the Petition, Respondent ADMITS each and every
6 allegation contained therein based on information and belief.

7 41. Answering paragraph 41 of the Petition, Respondent DENIES each and every
8 allegation contained therein based on a lack of sufficient information and belief.

9 42. Answering paragraph 42 of the Petition, Respondent ADMITS that DTSC entered
10 into an MOU for the preparation of a draft EIR relating to the SSFL site. On information and
11 belief, Respondent ADMITS that DTSC has not yet prepared the EIR. Respondent DENIES each
12 and every other allegation contained in paragraph 42 based on a lack of sufficient information and
13 belief.

14 43. Answering paragraph 43 of the Petition, Respondent DENIES each and every
15 allegation contained therein based on a lack of sufficient information and belief.

16 44. Answering paragraph 44 of the Petition, Respondent DENIES each and every
17 allegation contained therein based on a lack of sufficient information and belief.

18 45. Answering paragraph 45 of the Petition, Respondent DENIES each and every
19 allegation contained therein based on a lack of sufficient information and belief.

20 46. Answering paragraph 46 of the Petition, Respondent DENIES each and every
21 allegation contained therein based on a lack of sufficient information and belief.

22 47. Answering paragraph 47 of the Petition, Respondent DENIES each and every
23 allegation contained therein based on a lack of sufficient information and belief.

24 48. Answering paragraph 48 of the Petition, Respondent DENIES each and every
25 allegation contained therein based on a lack of sufficient information and belief.

26 49. Answering paragraph 49 of the Petition, Respondent ADMITS, on information and
27 belief, that, on April 19, 2013, Boeing submitted to DTSC an amendment to the 2010 SOP to
28

1 specifically apply to Boeing-owned former radiological buildings in Area IV, and that the
2 amendment specifically identified:

- 3 • Building 4005, Uranium Carbide Manufacturing Facility (remaining slab only; above
4 ground structure demolished in 1996)
- 5 • Building 4009, OMR/SGR Facility
- 6 • Building 4011 (low bay), Instrument Calibration Laboratory (non-radiological high
7 bay demolished following requirements of SOP Amendment 1)
- 8 • Building 4055 (including 4155), Nuclear Materials Development Facility
- 9 • Building 4093 (including 4074, 4083, 4453, 4523), L-85 (AE-6) Research Reactor
10 (remaining slab and west wall; other above ground structure demolished in 1995)
- 11 • Building 4100, Fast Critical Experiment laboratory / Advanced Epithermal Thorium
12 Reactor.

13 Respondent DENIES each and every other allegation contained in paragraph 49 based on a lack
14 of sufficient information and belief.

15 50. Answering paragraph 50 of the Petition, Respondent DENIES each and every
16 allegation contained therein based on a lack of sufficient information and belief.

17 51. Answering paragraph 51 of the Petition, Respondent ADMITS that the April 2013
18 amendment to the SOP includes the statement: "Boeing commits to the following, . . . Provide
19 DTSC and CDPH with a summary of release criteria used for all former radiological buildings.
20 This is designed to facilitate expedited review of release documentation by CDPH." Respondent
21 DENIES each and every other allegation contained in paragraph 51 based on a lack of sufficient
22 information and belief.

23 52. Answering paragraph 52 of the Petition, Respondent DENIES that Respondent
24 exercises or exercised discretion over Boeing's demolition and disposal activities at Area IV, and
25 DENIES that the April 2013 SOP demonstrates such exercise of discretion. Respondent DENIES
26 each and every other allegation contained in paragraph 52 based on a lack of sufficient
27 information and belief.
28

1 53. Answering paragraph 53 of the Petition, Respondent DENIES that Respondent
2 approved the remaining demolition and off-site disposal of the L-85 debris. Respondent DENIES
3 that Respondent is or was engaged in approval, or review for approval, of requests to demolish
4 Building 4005, 4055, or 4011 low bay. Respondent DENIES each and every other allegation
5 contained in paragraph 53 based on a lack of sufficient information and belief.

6 54. Answering paragraph 54 of the Petition, Respondent DENIES that Respondent has
7 approved the demolition of any non-radiologic structures, or any other structures, in Area IV.
8 Respondent DENIES that Respondent has permitted Boeing to demolish Area IV structures and
9 dispose of radiologically contaminated debris in facilities that are not licensed under state law to
10 receive such debris. Respondent DENIES that Respondent has approved Boeing's disposal of
11 waste. Respondent DENIES that all waste with levels of radiologic activity that exceed
12 background levels must be disposed of in a facility specifically licensed to receive low-level
13 radioactive waste. Respondent DENIES that DECON-1, IPM-88-2, and Reg. Guide 1.86 have
14 nothing to do with the permissibility of disposing of waste from released sites. Respondent
15 DENIES each and every other allegation contained in paragraph 54 based on a lack of sufficient
16 information and belief.

17 55. Answering paragraph 55 of the Petition, Respondent ADMITS that Respondent did
18 not require Boeing to dispose of the materials in licensed LLRW facilities. Respondent DENIES
19 each and every other allegation contained in paragraph 55 based on a lack of sufficient
20 information and belief.

21 56. Answering paragraph 56 of the Petition, Respondent DENIES each and every
22 allegation contained therein based on a lack of sufficient information and belief.

23 57. Answering paragraph 57 of the Petition, Respondent DENIES that Respondent noted
24 that the background radioactivity level Boeing reported, of the remaining L-85 debris, exceeded
25 the radioactivity in the majority of samples. Respondent DENIES each and every other allegation
26 contained in paragraph 57 based on a lack of sufficient information and belief.

27 58. Answering paragraph 58 of the Petition, Respondent DENIES each and every
28 allegation contained therein based of a lack of sufficient information and belief.

1 environmental effects. The remainder of paragraph 67 contains only legal conclusions that do not
2 require a response.

3 68. Answering paragraph 68 of the Petition, Respondent DENIES that Respondent has
4 approved Boeing's disposal of debris, and that Respondent has authorized Boeing to utilize
5 facilities for disposal of debris from Area IV structures. Respondent DENIES each and every
6 other allegation contained in paragraph 68 based on a lack of sufficient information and belief.

7 69. Answering paragraph 69 of the Petition, Respondent DENIES, based on information
8 and belief, that the demolition and disposal of radiologic structures may have significant
9 environmental effect. Respondent DENIES each and every other allegation contained in
10 paragraph 69.

11 70. Paragraph 70 of the Petition contains only legal conclusions that do not require a
12 response.

13 71. Answering paragraph 71 of the Petition, Respondent DENIES that Respondent has
14 approved, or will approve, the demolition of Area IV structures. Respondent DENIES each and
15 every other allegation contained in paragraph 71 based on a lack of sufficient information and
16 belief.

17 **SECOND CAUSE OF ACTION**

18 72. Answering paragraph 72 of the Petition, Respondent incorporates by reference each
19 and every allegation, admission and denial contained in paragraphs 1 through 71 herein.

20 73. Answering paragraph 73 of the Petition, Respondent ADMITS that, in 2000, the
21 Department of Health Services, the predecessor agency to Respondent, adopted regulations which
22 set dose-based standards for the termination of radioactive material licenses and the
23 decommissioning of licensed sites. Respondent DENIES each and every other allegation
24 contained in paragraph 73.

25 74. Answering paragraph 74 of the Petition, Respondent ADMITS each and every
26 allegation contained therein.

27 75. Answering paragraph 75 of the Petition, Respondent ADMITS each and every
28 allegation contained therein.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

| | | | |
|--|---------------------------------|--|--------------------|
| DATE/TIME | NOVEMBER 19, 2018 | DEPT. NO | 28 |
| JUDGE | HON. RICHARD K. SUEYOSHI | CLERK | E. GONZALEZ |
| <p>PHYSICIANS FOR SOCIAL RESPONSIBILITY – LOS ANGELES, a non-profit corporation; SOUTHERN CALIFORNIA FEDERATION OF SCIENTISTS, a non-profit corporation; COMMITTEE TO BRIDGE THE GAP, a non-profit corporation; and CONSUMER WATCHDOG, a non-profit corporation,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>DEPARTMENT OF TOXIC SUBSTANCES CONTROL; DEPARTMENT OF PUBLIC HEALTH; and DOES 1 to 100,</p> <p style="text-align: center;">Respondents.</p> <p>THE BOEING COMPANY, a corporation; ROES 1 to 100,</p> <p style="text-align: center;">Real Party in Interest.</p> | | <p>Case No.: 34-2013-80001589</p> | |
| Nature of Proceedings: | | RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF | |

The petition for writ of mandate and complaint for injunctive and declaratory relief came before the Court for oral argument on November 9, 2018. Prior to the hearing, the Court issued an order to appear, with questions it wished the parties to discuss as part of their oral presentations. Upon hearing oral argument, the Court took the matter under submission. Having considered the briefs and arguments pertaining to each motion, the Court now rules as set forth herein.

I. FACTUAL BACKGROUND

The Santa Susana Field Laboratory (hereinafter, "SSFL") is a former research facility situated on approximately 2,850 acres in southeastern Ventura County. (*Boeing Co. v.*

Mavoassaghi (9th Cir. 2014) 768 F.3d 832, 834.)¹ Beginning shortly after World War II, the federal government made and tested rockets, nuclear reactors, and various nuclear applications for war and peace at SSFL. (*Id.*) When built, the site was remote from developed communities, however, as of 2014 approximately 150,000 people lived within five miles of the site, and half a million people lived within ten miles. (*Id.*)

All of the nuclear and rocket research at SSFL has ended. (*Id.* at 835.) The federal Department of Energy (hereinafter, “DOE”) ended its nuclear research there in the 1980s, and in 1996 decided to close its research center and remove many of its facilities. (*Id.*) The Air Force’s and NASA’s rocket research ended in 2006. (*Id.*) Operations at the site now consist of efforts to clean it up. (*Id.*)

There are multiple and substantial environmental impacts at the site. The soil and groundwater is contaminated with solvents, heavy metals, and other toxins. (*Id.* at 835.) Portions of the site are also impacted by radioactive contamination. (*Id.* at 836.)

A 290-acre area of the SSFL is known as Area IV. Historically, ten small nuclear research reactors were operated in Area IV to support the United States space program and for commercial applications. (DTSC 5891.)² This lawsuit concerns the demolition and disposal of the following six structures: Building 4005 (uranium carbide manufacturing facility, slab remaining only: above ground structure demolished in 1996), Building 4009 (OMR/SGR facility), Building 4011 (low bay), Building 4055 (nuclear materials development facility), Building 4093 (also called L-85, a research reactor with remaining slab and west wall, other above-ground structure demolished in 1995), and Building 4100 (fast critical experiment laboratory/advanced epithermal thorium reactor.) (DTSC 7647.)

Respondent Department of Toxic Substances Control (hereinafter, “DTSC”) is the lead regulatory agency for the environmental soil and groundwater cleanup activities at SSFL pursuant to the Hazardous Waste Control Law (hereinafter “HWCL”) and the Hazardous Substance Account Act (hereinafter, “HSAA”). (Health & Saf. Code §§ 25100 *et seq.*, 25300 *et seq.*)³ These are the state law counterparts to the two federal laws that regulate hazardous wastes and hazardous waste cleanups, the Resource Conservation and Recovery Act (hereinafter, “RCRA”), and the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter, “CERCLA”). (42 U.S.C. §§ 6901 *et seq.*, 9601 *et seq.*)

Respondent Department of Public Health (hereinafter, “DPH”) has authority as to radioactive materials that generally falls into three categories pursuant to two laws, the Radiation Control Law (§§ 114960-115273) and the Containment Law (§§ 114705-114835.) The three categories are: 1) radioactive materials licensing; 2) surveillance and control of radioactive materials, and 3) precluding the disposal of a particular category of radioactive material known

¹ Petitioners as well as Respondents cite to this case to provide general factual background concerning the SSFL site.

² The parties have submitted three “records” for the Court’s review. The parties refer to these as the “DTSC” record, the “DPH” record, and the “Stipulated Exhibits.” The Court will refer to the documents in accordance with these designations. For purposes of the general factual background and history of this matter, the Court will refer primarily to the DTSC record. The Court will refer to the DPH record or the stipulated exhibits when necessary, and when evaluating the specific relevant claims in the “Discussion” section herein.

³ All further statutory references are to the Health and Safety Code unless otherwise so indicated.

as “low level radioactive waste” at any facility not specifically licensed to receive it. SSFL has a DPH license for radioactive materials. (DPH 1.)

As part of ongoing cleanup and remediation efforts, in 2004, Boeing, NASA, and DOE jointly submitted to DTSC an RCRA Facility Investigation Report providing a description of a soil investigation completed at SSFL as well as the sampling data. (See DTSC 1189.) In 2007, DTSC entered into a Consent Order for Corrective Action for SSFL with Boeing, DOE, and NASA (hereinafter, the “2007 Consent Order”). (DTSC 1184-1257; DTSC 1223.) The 2007 Consent Order directs the signatories to prepare and submit, among other things, a plan for remediation of chemically contaminated soils, take certain interim measures including assessing available data, and prepare a Corrective Measures Study. The 2007 Consent Order acknowledges that the implementation of the final remedy for the contaminated soil and groundwater at SSFL is subject to environmental review pursuant to the California Environmental Quality Act (hereinafter, “CEQA”). (DTSC 1206.)

Also in 2007, the California legislature attempted to shift the regulatory authority over radioactive contamination (which authority belonged to the federal government) at SSFL to DTSC by passage of SB 990. (Health & Saf. Code § 25359.20.) In *Boeing v. Movassaghi*, the Ninth Circuit found SB 990 unconstitutional as violating the Supremacy Clause. (*Movassaghi*, 768 F.3d at 840-42.)

In 2010, DOE and DTSC entered into an Administrative Order on Consent (hereinafter, the “2010 AOC”). (DTSC 2101.) This AOC applies to Area IV and the Northern Buffer Zone of SSFL. The purpose of the order is to “define and make more specific DOE’s obligations with respect to only the cleanup of soils at the Site.” (DTSC 2102.) “Soils” is defined as “saturated and unsaturated soil, sediment, and weather bedrock, debris, structures, and other anthropogenic materials.” (DTSC 2105.) However, “[a]ll provisions of the 2007 Order applicable to NASA and Boeing are not affected by the provisions of [the 2010 AOC] in any way.” (DTSC 2102.)

Separate from DTSC’s cleanup program, over the years Boeing undertook a building decommissioning and demolition program at SSFL. (See DTSC 2069.) Pursuant to California law, “decommission” means “to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.” (Cal. Code Regs., tit. 17, 30100, subd. (c).)

In 2012, Boeing amended its 2010 “Standard Operating Procedures: Boeing Demolition Debris Characterization and Management” (hereinafter, the “2012 SOP”). (DTSC 5898.) The 2010 SOP describes Boeing’s efforts to demolish obsolete structures at SSFL. The 2010 SOP provides that it does not “include any soil removal action that might otherwise be considered site remediation.” (DTSC 7827.)

The 2012 SOP “describes the process for demolishing non-radiological Boeing-owned buildings at SSFL. As part of that process, Boeing performs pre-demo radiological surveys and prepares a radiation survey and waste certification report...” (*Id.*) The 2012 SOP indicates that it was “approved by” DTSC. It further provides that “Boeing acknowledges the heightened interest in Area IV operations, and has coordinated with DTSC in planning demolition of Boeing-owned

buildings in Area IV. As a result of that coordination, DTSC has requested that the SOP be amended to specifically address application of the SOP to Area IV.” (*Id.*) Accordingly, in 2012 and 2013, Boeing demolished the non-radiological structures and disposed of their debris. (DTSC 7809.)

During this time, DTSC entered into a contract with DPH, and an inter-governmental agreement with US EPA, to provide reviews of release survey documents for each of Boeing’s six former radiological buildings. (DPH 6269-6276.) The scope of work provides,

DTSC seeks [DPH] expertise on assessing the adequacy and completeness of the previous radiological surveys and release decisions, which were generated between 1980 and 1999...DTSC also seeks comment on the adequacy of post-decommissioning surveys conducted by the United States Environmental Protection Agency in 2002 and expertise and involvement in evaluating soils and building materials disposition. In the event that additional pre-demolition radiological surveys are recommended, DTSC seeks [DPH] support in reviewing the results and conclusions from such new surveys. (DPH 6272.)

In April 2013, DTSC requested Boeing revise the SOP with amendments to apply to Boeing-owned former radiological buildings in Area IV. (DTSC 7824.) In a cover letter to DTSC, Dave Dassler, Boeing Program Director of Santa Susana Site Closure comments that the amendments “address DTSC and Boeing comments during several conversations between DTSC, Boeing staff and representatives from DOE in recent months. Based on this level of involvement we are confident this procedure is acceptable to DTSC.” (*Id.*) The SOP amendment itself provides,

Boeing acknowledges the heightened interest in released former radiological buildings in Area IV, and has coordinated with DTSC and [DPH] in planning demolition of these buildings. As a result of that coordination, DTSC has requested that the SOP be amended to specifically address application of the SOP to former radiological buildings [sic] Area IV. (DTSC 7848.)

The SOPs are not signed, including either by DPH or DTSC.

In May 2013, DTSC notified Boeing via letter as to the results of its “Review of Notification Package for Planned Removal of Concrete and Asphalt at Former L-85 Area (Area IV...)” (DTSC 7921.) The letter provides, “the proposed demolition and removal of the Buildings...from the site should not disturb chemically-impacted soil or other impacted surficial media currently under investigation by the SSFL Remedial Investigation program.” (DTSC 7922.) The letter concludes,

“DTSC will plan to be onsite during key phases of the demolition process to assure that the proposed activities and waste management procedures are implemented...DTSC will also observe additional radiological screening as recommended...Onsite demolition oversight may include a review of relevant

demolition documentation, including pre-demolition activities such as building abatement.” (DTSC 7925.)

Between May 2 and May 7, 2013, Boeing removed the remaining asphalt, concrete, and wall at the L-85 site. (DTSC 7937.) During July and August 2013, Boeing prepared and submitted demolition notification packages for four of the remaining former radiological buildings.

Petitioners filed suit on August 6, 2013. Petitioners have alleged a cause of action against DTSC for violation of CEQA, a cause of action for unlawful underground rulemaking, and a cause of action for declaratory relief as to the allegations made in connection with the two prior causes of action.⁴ Against DPH, Petitioners have alleged a cause of action for violation of CEQA, a cause of action for “violation of prior writ of mandate,” a cause of action for unlawful underground rulemaking, and a cause of action for declaratory relief as to the prior allegations.

The Court, via the Honorable Alan Sumner, granted Petitioners’ motion for preliminary injunction on December 11, 2013. The Court found that based “on the record to date” Petitioners were reasonably likely to prevail on their CEQA claim against DTSC, but not against DPH. The Court also concluded Petitioners were not reasonably likely to prevail on their APA claim. The Court also stressed “the preliminary nature of this motion.” The Court then enjoined DTSC from approving Boeing’s demolition and disposal activities without DTSC complying with CEQA.⁵

II. STANDARD OF REVIEW

Whether or not an activity is a “project” for purposes of CEQA is a question of law to be decided by the Court. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131.)

III. DISCUSSION

Preliminary Issues

A. Letter from Christine L. Rowe

On May 1, 2018, the Court received a letter apparently sent from a Christine L. Rowe, with a number of documents attached, regarding the Court’s ruling in this matter. This letter is not copied to any counsel or party in this matter nor does it otherwise indicate proof of service on the parties. Even if it had, the sender is not a party to this case, and has not filed for and obtained an order permitting it to file an *amicus curiae* brief in this matter. While the Court generally does not and cannot prevent members of the public from sending correspondence to the courthouse or from filing certain documents in pending cases, it is an entirely separate issue whether such materials can be properly considered by the Court. The Court is not permitted to consider improper ex parte communications, like this letter, which are intended to affect the Court’s

⁴ Petitioners also have a cause of action for “injunctive relief,” which is not actually a separate cause of action but instead, a request for relief.

⁵ Boeing subsequently filed a motion for summary judgment, which the Court, via the Honorable Alan Sumner, denied.

consideration of the merits of this case without notice to the parties and without following proper procedure to allow such submission. Under the law, the Court cannot consider and has not considered the letter in ruling on this matter.

B. Evidentiary objections

Petitioners have provided a section of their brief concerning alleged harms that have resulted from the “reliance upon underground regulations.” In this section, Petitioners acknowledge that entitlement to the requested writ does not require demonstration of harm. The Court agrees, and finds the discussion provided in this section is irrelevant to the issues currently before the Court. Accordingly, the Court has not considered this part of Petitioners’ brief, any opposition to these arguments presented by Respondents, or any arguments made in reply with regard to these arguments in ruling on this matter.

Given the Court’s ruling herein, the Court declines to rule on the objections to evidence.

C. Request for judicial notice

In connection with their initial reply brief, Petitioners filed a request for judicial notice as to four documents. The Court notes it is improper for a party to seek to introduce new evidence in connection with a reply. The Court also finds that exhibits 1-3 are not relevant, and exhibit 4 is not appropriate for judicial notice. The request for judicial notice is **DENIED**.

Claims against DTSC

A. Violation of CEQA

It is undisputed that no agency has prepared an EIR in connection with the subject demolitions and removals. The sole question before the Court for purposes of this claim is whether Boeing’s demolition and removal of the subject SSFL structures constitute a “project” (or multiple “projects”) within the meaning of CEQA.

The Court notes that what is *not* before it for purposes of the instant claim is the propriety of the proposed or anticipated demolitions, and the Court cannot and does not make any determination as to the environmental impacts of the subject activities as the record does not contain an EIR for it to review.

A project is defined by Public Resources Code section 21065 as, an activity which may cause direct or indirect physical change in the environment and which is an activity carried out by a public agency, an activity approved by a public agency, or an activity funded by a public agency. In considering what activity constitutes a project, the Court is to consider “the whole of an action” that may directly or ultimately physically change the environment and includes the overall activity that is being approved. (14 Cal. Code of Regs. §15378.) If a state agency is considering approval of a project that is subject to CEQA, then it must prepare an Environmental Impact Report (“EIR”) if the project “may have a significant effect on the environment.” (Pub. Res. Code § 21100).

Here, Petitioners contend Boeing's activities constitute a project because DTSC *approved* the demolition and disposal.⁶ Pursuant to Public Resources Code section 21065, subdivision (c)⁷ a project is "an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." To support the argument that DTSC issued a "lease, permit, license, certificate, or other entitlement for use", Petitioners cite to a myriad of communications between DTSC and Boeing, which the Court will attempt to summarize herein.

Petitioners contend that DTSC has been "approving" Boeing's structure demolitions for years, even in areas outside of Area IV. Petitioners cite to 2008 email communications, including a June 2008 email between DTSC employees that states,

we notified Boeing that we wished to inspect ALL buildings prior to demolition and observe building demolitions... We asked for a schedule of building demos... Boeing is to provide us with a building inspection protocol this week for our review and approval with an updated Building demolition schedule. We are requiring advance notice for all building demos. We plan to inspect each building prior to demolition and we plan to be present to observed [sic] building demolitions. A similar request was made to NASA... (DTSC 1287.)

An August 11, 2009 DTSC internal email provides, "DTSC sent an email to Boeing requesting they provide information on the planned building demolitions...DTSC never provided approval for the building demolitions." (DTSC 1456.) Other internal emails cited by Petitioners discuss the demolition activities in the same manner, with reference to requesting documentation from Boeing and making certain determinations prior to approving or "allowing" structure removal. (See DTSC 1639.)

In 2009, DTSC sent communications to Boeing expressing concerns about the demolition activities and the SOPs, stating that they "may not result in DTSC being advised and involved in those demolition activities that require DTSC's oversight or approval." (DTSC 1520.) Boeing then undertook to revise the SOP, and DTSC internal emails discussing this revision provide, for example,

The intent of the revised SOP is to assure there is a review process to identify – before demolition – that materials or media that have been impacted by chemical releases in areas proposed for building demolition are properly managed and disposed, and removal does not by-pass DTSC's approval obligation, CEQA assessment, and notification to the community. (DTSC 1661.)

⁶ There are no arguments that the actions are being carried out by DTSC or funded by DTSC, so the Court will not discuss those aspects of section 21065.

⁷ For the first time on reply, Petitioners argue section 21065, subdivision (a) also applies to their claims. It is generally improper for a party to introduce evidence for the first time on reply. (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794 FN3; *Landis v. Pinkertons* (2004) 122 Cal.App.4th 985, 993.) Accordingly, the Court will not consider this argument.

The Court notes this same email chain includes a question as to “[w]hat is the facility allowed to remove before it becomes an interim ‘cleanup activity’ and trigger CEQA.” (*Id.*)

DTSC then requested Boeing make changes to the SOP, after which DTSC initiated a 30-day comment period “to provide the community an opportunity to review and comment on the SOP prior to DTSC’s final review and approval.” (DTSC 1721.)

In June 2012, Boeing notified DTSC that it was going to demolish certain structures in Area IV. DTSC notified Boeing that it was “reviewing radiological characterization issues” for the structures and could not “concur with pre-demolition activities...that involve the removal or disturbance of any site features” until it concluded that review. (DTSC 2924.) Then, in September 2012, DTSC emailed Boeing that it had concluded its review and,

concur that pre-demolition radiological screening procedures meet or exceed regulatory and industry standards and that surface activity limits meet regulatory standards. Both the procedures and limits provide adequate assurance that fixed and removable radiological contaminants are not present in the pre-demolition materials. (DTSC 2969.)

The letter concludes,

we are still reviewing the radiological screening criteria and standards for the full Area IV non-radiological building demolitions, and we plan to provide Boeing with our final comments and recommendations by early October 2012. (DTSC 2970.)

Via letter in October 2012, DTSC indicated that it had reviewed Boeing’s notification of planned demolition for Area IV (building 4015) pursuant to the “requirements of a February 11, 2010 DTSC letter to Boeing, which allows DTSC thirty days to review and comment on Boeing’s proposals for SSFL Building and structure demolitions.” (DTSC 5805.) The letter then provides DTSC’s “comments” on the planned demolition, including a finding that the activities “should not disturb chemically-impacted soil or other impacted surficial media currently under investigation by the SSFL Remedial Investigation (RI) program.” (DTSC 5806.)

In December 2012, Boeing sought to begin demolition of the six structures at issue in this litigation. Boeing noted via email to DTSC that they were wondering when to “expect to receive an ok to proceed with pre-demolition and waste characterization sampling for the former radiological buildings (Boeing) in Area IV.” (DTSC 6540.) The email requests that Boeing “be allowed to proceed” with the pre-demolition effort in advance of an “ok to proceed with demolition.” (*Id.*)

In February 2013, an internal DTSC email indicates it received two Boeing proposals for demolition in Area IV. (DTSC 7039.) The email notes this is the “first former radiological site proposed under our oversight program with Boeing.” (*Id.*) Boeing’s second amendment to its SOP was submitted in March 2013, and in April 2013 Boeing indicated that it had “accepted

DTSC's comments" and attached a final version. (DTSC 7645.) The SOP indicates that it was "approved by [DTSC]." (DTSC 7647.) The Court notes the SOP also indicates Boeing has "coordinated with DTSC and [DPH] in planning demolition" of the buildings, in light of the "heightened interest in released former radiological buildings in Area IV." (*Id.*)

In May 2013, DTSC provided that it had reviewed Boeing's L-85 "Removal Package" and requested that Boeing submit certain debris for additional radiological screening. (DTSC 7921-22.)

Petitioners assert that these documents demonstrate that the Area IV radiologic demolition is a "project" on its own, and subject to CEQA requirements. Petitioners also argue the Area IV radiologic demolition is "part of the overall site remediation project for which the agency has acknowledged that an EIR is required." (MPA, pp. 24-25.)⁸

DTSC argues the subject structure demolitions are not a "project" because they do not require DTSC's prior authorization. DTSC argues Boeing is *already authorized* to demolish the subject buildings, and does not need DTSC to issue a "lease, permit, license, certificate, or other entitlement for use." DTSC contends,

Petitioners have not identified anything in the [record] that is even arguably a lease, permit, license, certificate, or other entitlement for use issued by DTSC to Boeing that authorized the demolitions. This is because no such document exists...Nor do [the documents cited] identify a statute vesting DTSC with the power to authorize or not authorize Boeing to undertake its demolitions. Nor do [the documents cited] purport to grant Boeing a legal entitlement... (Oppo., p. 27.)

DTSC maintains its actions in connection with Boeing's proposed demolition activities are in accordance with efforts to gather information and observe private activities that could impact the SSFL site investigation and cleanup. DTSC argues these efforts are part of its responsibilities under the HWCL and the HSAA, but are not the equivalent of the issuance of a permit, license, certificate, or other entitlement for use.

Pursuant to section 25185, DTSC has the authority to conduct inspections in any environment where hazardous wastes are stored, handled, processed, disposed of, or being treated. DTSC can also carry out any sampling activities necessary, inspect and copy records, and photograph waste. (*Id.*) (See also § 58009.) DTSC maintains it was exercising its broad investigative authority when it requested that Boeing amend its SOP, commented on its demolition packages, and observed the demolitions themselves. DTSC cites to sections in its letters where it analyzes whether the proposed demolition would "disturb chemically-impacted soil or other impacted surficial media currently under investigation by the SSFL Remedial Investigation program" (DTSC 7922.)

⁸ The Court notes that it will not include a discussion of the 2010 AOC between DOE and DTSC, despite Petitioner's insistence that it is relevant. Boeing is not a party to the 2010 AOC, and it acknowledges the fact that DOE does not control the Boeing-owned structures.

DTSC then asserts, without citation to any legal authority, that “[h]ad DTSC determined that a demolition might compromise the site investigation, the HWCL and the HSAA authorize DTSC to issue an enforcement order enjoining the demolition.” DTSC states that Petitioners have not alleged a cause of action in this matter for abuse of discretion as to DTSC’s enforcement authority over Boeing, and accordingly, not only does the decision regarding an enforcement action *not* trigger CEQA, but Petitioners also do not state a claim as to the enforcement authority itself.

The parties argue as to the application of *Bozung v. Local Area Formation Comm.* (1975) 13 Cal.3d. 263.⁹ In *Bozung*, taxpayers sought to establish that CEQA required a Local Agency Formation Commission to prepare an EIR prior to approving a city’s annexation of property intended for future development. (*Id.* at 267.) The LAFCO acknowledged that it had approved the annexation, but contended it was bound by the Knox-Nisbet legislation, which governed LAFCOs specifically. (*Id.* at 273-74.) The Court determined the annexation clearly involved an “entitlement for use” that the city could choose to use, or not use should it choose not to go forward with the annexation. (*Id.* at 279.)

DTSC argues *Bozung* demonstrates that CEQA involves a statutorily required approval, versus here, where Boeing was not required to obtain any sort of approval from DTSC prior to engaging in its demolition activities. Petitioners argue DTSC is incorrect, and cite to the following language, “even complete impotence to approve or disapprove contemplated actions of a local agency does not make the consideration of an EIR by a regional agency an idle act.” (*Id.* at 284.) Petitioners contend this language demonstrates that even if DTSC cannot stop the demolition project, its “analysis of the environmental impacts of demolition...are critical to ensure that the public and the environment will not be adversely impacted by the activity.” (Reply, p. 14.)

The Court does not find the passage cited by Petitioners to be persuasive in this matter. The language contemplates a regional agency which is approving a local agency’s actions. Further, *Bozung* goes on to indicate that this quote is directing that a regional agency should *review an EIR that has been prepared by a local agency*:

[A] threshold question before the appellate court was whether the plaintiffs should have challenged the adequacy of the EIR by administrative mandamus directed to the county planning commission. The plaintiffs asserted that an injunction against the water district was the proper remedy, because the planning commission had no authority to veto the project. [citation] The court agreed with plaintiff’s basic position, and rejected the defendant’s contention that the court’s decision would make the district’s filing of an EIR with the planning commission an idle act: “We do not accept this conclusion...[The] planning agency by criticism and by adverse comment may persuade the directors of a district to revise an EIR. Revision of a project itself, or even

⁹ The Court acknowledges that the parties have cited to a myriad of other cases, and it will not endeavor to summarize them all. The Court has referenced those cases that it has found to be most helpful/instructive based on the facts of the current matter. An absence of a citation to a specific case does not indicate the Court did not consider said case.

abandonment, may follow, not by the use of any authority of the planning commission which is not given by the act, but by reason of thoughtful reconsideration. (*Id.* at 284-85.)

Thus, the language Petitioners quote from *Bozung* indicated that an agency should review and comment upon an EIR prepared by another agency, even if it did not have the power to approve or prohibit the subject project. It described a circumstance in which the parties acknowledge that CEQA was triggered by some sort of approval. Here, Petitioners are arguing a state agency should prepare an EIR in connection with a private party's actions, with no CEQA triggering approval action identified. The circumstance discussed in *Bozung* and that here are not comparable.

The Court is also guided by *Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, another case cited by both Petitioners and DTSC. In *Parchester*, a city supported a Native American tribe's efforts to acquire a proposed casino site, and agreed to make certain municipal services available to the tribe, based on payment terms specified in an agreement between the parties. (*Id.* at 308.) In finding CEQA did not apply, the Court noted the casino endeavor did not constitute a "project" of the city because,

the City has no legal authority over the property upon which the casino will be situated...an agency does not commit itself to a project 'simply by being a proponent or advocate of the project...[further] the City has no legal jurisdiction over the property. Should the City change its mind and decide to 'disapprove' of the project, its decision would not be binding on [the tribe.] (*Id.* at 313)(citations omitted.)

The Court of Appeal also found the agreements between the City and the tribe, including the City's endorsement of the application, were not "projects" within the meaning of CEQA. (*Id.* at 314-320.)

The Court finds *Parchester* and *Bozung* support DTSC's contention that CEQA is implicated by a legal authority over the subject activity that is purported to constitute a "project." Here, Petitioners have not cited to any *legal* authority retained by DTSC to prevent Boeing from undertaking the subject demolition activities such that DTSC's refusal to "approve" the actions would have prevented Boeing from moving forward. Both Boeing and DTSC assert there is no such authority, and emphasize that DTSC never issued a "lease, permit, license, certificate, or other entitlement for use" as required to trigger Public Resources Code section 21065, subdivision (c).

The Court acknowledges that the dealings between Boeing and DTSC use the terms "approve," "ok to proceed," "concur," and even chastisement for some Boeing activities taken without first consulting DTSC. However, these actions appear to have been undertaken in relation to Boeing's efforts to seek input and advice from DTSC on the safest practices for proceeding with its demolition activities in Area IV, rather than pursuant to any legal obligation to gain some sort of entitlement for use from DTSC. The Court also recognizes DTSC's inspection authority, and Petitioners have not presented any legal authority that when DTSC

invokes its inspection authority it is inherently approving a project for purposes of Public Resources Code section 21065, subdivision (c).

The Court also finds there is insufficient evidence to establish that Boeing's structure demolition is part of the overall site remediation.

Petitioners' first cause of action is **DENIED** as to DTSC.

B. Violation of the Administrative Procedure Act

Petitioners' Third Cause of Action alleges that DTSC adopted underground regulations in violation of the Administrative Procedure Act (hereinafter, the "APA"), Gov. Code sections 11340, et seq. Petitioners allege Respondents, "in issuing their approvals of Boeing's demolition and disposal activities" have relied upon Regulatory Guide 1.86, DOE 5400.5, an undated document generated by DPH's Radiologic Health Branch (referred to as "Decon-1), and a 1991 policy memorandum (referred to as "IPM-88-2.) (Pet., ¶ 84.)

Pursuant to Government Code section 11340.5, subdivision (a),

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Regulation is defined as,

every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Pursuant to the APA, an agency must,

give the public notice of its proposed regulatory action; issue a complete text of the proposed regulation with a statement of the reasons for it; give interested parties an opportunity to comment on the proposed regulation; respond in writing to public comments; and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law, which reviews the regulation for consistency with the law, clarity, and necessity. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568.)

The Supreme Court noted that a regulation subject to the APA has two principal identifying characteristics,

First the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure. (*Id.* at 571)(citations omitted.)

Petitioners argue “in explicit contravention of the APA, DTSC and DPH have fashioned a body of underground law...and applied that underground law to their regulation of SSFL.” (Memo., pp. 28-29.) Petitioners maintain, “DPH and DTSC have jointly applied the radiological release standards to a clear and definable class of cases: the demolition of radiologically contaminated structures, and disposal of the resulting waste. Every demolition approval issued thus far for buildings at SSFL has been evaluated under these criteria.” (*Id.* at 30.)

With regard to DTSC, Petitioners cite to an April 25, 2013 letter from DTSC regarding L-85 in Area IV.¹⁰ (DTSC 7928.) The document presents the findings of DTSC’s review of Boeing’s documents summarizing the “Final Status Survey of Non-Building Area Remaining Concrete and Asphalt” located at L-85. The letter provides general comments and recommendations, one of which provides that,

[t]he documents indicate that all instrument surface activity measurements and wipe tests were below the detection limit, the level at which there is a 5% probability of incorrectly concluding that no activity is present when it is indeed present...All surface activity measurements met the general surface activity limits for release/clearance of equipment and materials for unrestricted use from former radiologic facilities and were below US NRC Regulatory Guide 1.86, USDOE Order 5400.5 and CDPH guidance DECON-1 and IPM-88-2 action levels. Survey results support these conclusions. (*Id.*)

Petitioners also cite to an email from Boeing to DTSC and DPH dated February 15, 2013 which provides, in pertinent part, “[d]uring last Tuesday’s meeting, Jerry Hensley asked about release criteria used in the various surveys conducted at the former Boeing radiological buildings in Area IV. A meeting between DTSC and [DPH] was scheduled...to discuss this subject. It was suggested that Boeing could facilitate and expedite [this] review by identifying sections...where release criteria were specified...” (DPH 5118.) The letter then refers to an attached “Table 1 matrix.” (DPH 5122.) Petitioners contend this table, and the excerpts from the release reports demonstrate that the release criteria used were the purported underground regulations.

Petitioners then maintain “both DTSC and DPH have relied upon these standards in the remediation of the Hunters Point Naval Station in San Francisco, where DTSC is the state agency overseeing the remediation of a radiologically-contaminated former naval facility.” (Memo., p. 33.) Petitioners then cite to a 2006, “Final Action Memorandum” regarding removal of radiological materials from Hunters Point Shipyard.: (Stip. Exh. 47, p. 10.) The stated purpose

¹⁰ Petitioners assert that the letter is dated May 1, 2013, but the record citation provided is to an April 25, 2013 letter.

of the memorandum is to “document...the U.S. [Navy’s] decision to undertake time-critical removal actions...at areas throughout the base that may contain localized radioactive contamination...” (*Id.*)

Petitioners cite to the memorandum’s description of radioactive contamination limits, “these limits are based on AEC’s *Regulatory Guide 1.86*. Limits for removable surface activity are 20 percent of these values.” (*Id.* at 24)(emphasis in original.) The memorandum appears to have been prepared by the Navy. (*Id.* at 2, 5.)¹¹

With regard to this first prong of the *Tidewater* test, DTSC argues Petitioners have failed to demonstrate that DTSC is applying the four documents (which DTSC refers to in its brief as the “Guidance Documents”) to a clear and definable class of cases. DTSC notes that it was the Navy and the USEPA, not DTSC, who selected the radiological release criteria in the 2006 memorandum. DTSC also argues that Petitioners are able to identify only SSFL and Hunters Point as locations where DTSC is purportedly applying the four documents, which does not make it a standard of general application.

Petitioners respond that by calling the four documents “the Guidance Documents,” DTSC has admitted it is using them as underground regulations. The Court does not agree with this argument. While it may agree that calling the documents “the Guidance Documents” may be an odd characterization, such a reference in a legal filing alone does not convert the documents into underground regulations absent a finding they are being applied as such, pursuant to the *Tidewater* test.

The Court finds the evidence cited by Petitioners fails to demonstrate that DTSC is using underground regulations to “apply a rule generally” or “declare how a certain class of cases will be decided” as required by *Tidewater*. While Petitioners have provided anecdotal evidence that DTSC has referred to the four documents in reviewing activities with regard to radiological release limits, Petitioners have not identified any evidence that DTSC *requires* the limits described by the four documents, or has *disapproved* action that does not comply with those limits. *Tidewater* directs that an underground regulation is one that directs how a “certain class of cases will be decided.” In Petitioners’ examples, the four documents (and their standards) are referenced (usually by the private entity, not by DTSC), but Petitioners have not demonstrated that DTSC required compliance with the four documents prior to enforcement of, or compliance with, a law within DTSC’s jurisdiction.

Petitioners’ third cause of action is **DENIED** as to DTSC.

C. Declaratory and Injunctive relief

In light of the Court’s above findings, Petitioners’ fourth and fifth causes of action, which are predicated on the same facts, are **DENIED** as to DTSC.

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¹¹ Petitioners also cite to a variety of documents wherein DTSC reviews Boeing’s demolition notification documents. (See DTSC 5810.) The Court has also reviewed these arguments and these documents.

Claims against DPH

A. Violation of CEQA

Again, it is undisputed that no agency has prepared an EIR in connection with the subject demolitions and removals. The sole question before the Court for purposes of this claim is whether Boeing's demolition and removal of the subject SSFL structures constitute a "project" or multiple "projects" within the meaning of CEQA.

Pursuant to Public Resources Code section 21069, a "responsible agency" is "a public agency, other than the lead agency, which has responsibility for carrying out or approving a project." Petitioners contend DPH is a "Responsible Agency" due to its authority over SSFL as a licensor, and consequently subject to CEQA in its "approval" of Boeing's demolition of the subject structures. Petitioners argue DPH's status as a "responsible agency" arose when it released Boeing structures from the subject Radioactive Materials Licenses (specifically building 4100).

Pursuant to Title 14, California Code of Regulations, section 15352, subdivision (a), "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." Pursuant to subdivision (b), with regard to private projects, "approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project."

To support their argument that DPH approved demolition by way of decommissioning Building 4100, Petitioners refer to the fact that in August 2012, DPH had information as to the status of Boeing-owned buildings in Area IV scheduled for demolition. (DPH 4516.) Then, in November 2012, DPH received a request from Boeing for "release of building 4100 for unrestricted use, and removal of the building from radioactive materials license 0015-19 as an authorized place of use." (DPH 4668.) Petitioners maintain DPH was on notice that release from the license was necessary to enable Boeing to demolish building 4100. Via email to several DPH employees dated January 21, 2013, Boeing provides.

The DTSC has recently given the go-ahead to begin pre-demo work on several Boeing-owned former released radiological facilities in Area IV, including building 4100 which is still awaiting your release. Boeing anticipates completing this pre-demo work and submitting the Demolition Notification Package for DTSC review on March 28.

We therefore respectfully request that your review and release process be expedited to be completed by March 28. (DPH 4823.)

Via internal DPH email, dated January 22, 2013, an employee in the Radioactive Materials Licensing Section provides, "Please work on this request... We may [sic] to be to

ensure this project is completed prior to 3/28/13 so that we won't be impeding its demolition process schedule." (DPH 4825.)

Petitioners then reference DPH's other activity at SSFL as being "defined in its contact with DTSC" and assert that DPH intentionally removed any language that "sounded remotely like it was authorizing Boeing to take any specific action" from the contractual memorandum.

A property may be removed from a DPH license, and the license terminated, via decommissioning. Decommission means "to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license." (17 C.C.R. § 30100, subd. (c).) Decommissioning occurs when DPH determines that,

- (1) Radioactive material has been properly disposed;
- (2) Reasonable effort has been made to eliminate radioactive contamination, if present; and
- (3) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use. (17 C.C.R. § 30256, subd. (k).)

DPH argues it has not proposed to carry out or approve a project, because neither the decommissioning of Building 4100, nor the Contractual Memoranda, is an entitlement for use.¹²

With regard to the decommissioning of Building 4100, DPH contends it did not issue to Boeing an entitlement with respect to anything that Boeing might do with the property *after* it was decommissioned. DPH cites to the "Final Status Survey Report for Area IV Building 4100" requesting the decommissioning, and notes that it does not include any plans for the subject demolition. (DPH 4669.) DPH acknowledges that this Report includes a notation as to what will become of "post-demolition debris from 4100" (DPH 4694) but argues this was not a description of the demolition specific enough to constitute DPH approval.

DPH cites to *Bridges v. Mt. San Jacinto Community College Dist.* (2017) 14 Cal.App.5th 104, and *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 187. The Court finds *Bridges* is unavailing as the project at issue was a *public* project, and the public agency acknowledged that CEQA applied to its construction of the facilities at issue. The Court merely determined that the public agency was not required to complete an EIR prior to opening escrow on the subject property. *Concerned McCloud Citizens* also involves a circumstance wherein the public agency's agreement was expressly conditioned on subsequent compliance with CEQA. Consequently, entering into an agreement to take future vague actions was not approval of a project for purposes of CEQA.

The Court has reviewed the cases cited by Petitioners (see, e.g. Reply, fn. 3) and finds they are all factually distinct such that their CEQA analyses are not instructive in this matter.

¹² The Court will not repeat its CEQA recitation herein, and instead directs the parties to its discussion in connection with the CEQA claim against DTSC.

Petitioners' argument is that every time DPH engages in the decommissioning process, it is approving a project that will follow the decommission, so long as it has information as to what the subsequent activity will be (in this case, because DPH was informed that Boeing wished to demolish the structure, the decommissioning process should have been subjected to an additional CEQA analysis.)

By decommissioning Building 4100, DPH did not commit to a definite course of action in regard to a project intended to be carried out by Boeing, and therefore, did not provide an "approval" as defined in Code of Regulations Title 14, section 15352. While Boeing indicated it intended to demolish the subject building, the decommissioning was not conditioned on Boeing following through with this intention. Further, as DPH argues, once a property has been decommissioned, it has been released for "unrestricted use" and DPH no longer has any authority to direct a licensee how to proceed. Petitioners do not argue DPH failed to comply with Code of Regulations Title 17, section 30256, subd. (k) in connection with the decommissioning of Building 4100, so the Court must presume the decommissioning was properly completed.

Petitioners do not cite to any authority vested in DPH to direct the future of building 4100 subsequent to its decommissioning. While Boeing did indicate to DPH that it intended demolition, there is no evidence that the specific details of the demolition were before DPH for purposes of consideration in connection with the decision to decommission, and no evidence that DPH "approved" the demolition itself by engaging in the decommissioning process. The Court therefore finds DPH did not grant an "entitlement for use" pursuant to CEQA in decommissioning Building 4100.

Petitioners do not reply to DPH's argument that the contractual memoranda were not subject to CEQA. The Court agrees with DPH that, pursuant to the contract, DPH merely reviewed and commented on certain documents provided by Boeing to DTSC. Nothing about the contractual memoranda implicates "issuance of a lease, permit, license, certificate, or other entitlement for use."

B. Violation of the Administrative Procedure Act

Petitioners' Third Cause of Action alleges that DPH adopted underground regulations in violation of the Administrative Procedure Act (hereinafter, the "APA"), Gov. Code sections 11340, et seq. Petitioners allege Respondents, "in issuing their approvals of Boeing's demolition and disposal activities" have relied upon Regulatory Guide 1.86, DOE 5400.5, an undated document generated by DPH's Radiologic Health Branch (referred to as "Decon-1), and a 1991 policy memorandum (referred to as "IPM-88-2.) (Pet., ¶ 84.)

The Court will not repeat its discussion of the background of the APA, already stated in its discussion concerning DTSC above. However, the Court will restate the *Tidewater* test wherein regulation subject to the APA has two principal identifying characteristics,

First the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule

must implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure. (14 Cal. 4th at 571)(citations omitted.)

Petitioners argue “in explicit contravention of the APA, DTSC and DPH have fashioned a body of underground law...and applied that underground law to their regulation of SSFL.” (Memo., pp. 28-29.) Petitioners maintain, “DPH and DTSC have jointly applied the radiological release standards to a clear and definable class of cases: the demolition of radiologically contaminated structures, and disposal of the resulting waste. Every demolition approval issued thus far for buildings at SSFL has been evaluated under these criteria.” (*Id.* at 30.)

With regard to DPH, Petitioners cite to “many” documents describing a “consistent program of enforcement and licensure” relying on the four documents. The first example Petitioners provide is what they deem the “DPH Radioactive Material License Amendments (1999-2013).” (Memo., p. 30.) Petitioners cite to nine SSFL license amendments, and asserts that each of these amendments “reference and rely upon one or more of the same four underground standards.” (Stip. Exhs. 1-9.) Petitioners also refer to the February 15, 2013 Boeing email discussed above in connection with the Court’s analysis of Petitioners’ claims against DTSC.

Petitioners then provide that DPH has “relied upon the general standards throughout California, when DPH was faced with similar licensing and enforcement situations.” (Memo., p. 31.) Petitioners then cite to examples from General Atomics, University of California, Berkeley, and Stanford University. (citing various Stip. Exhs., e.g. 21-45.) While the majority of documents are those submitted *to DPH* from the private entity (with no indication that DPH required or instructed the entity to use any of the four documents in making its calculations), Petitioners also cite to a November 19, 2013 letter from DPH to Stanford University regarding its request to decommission and remove a particular use location from its radioactive materials license. (Stip. Exh. 30, p. 51.) In this letter DPH provides,

The Radiologic Health Branch (RHB) has begun processing your request to decommission...In order to process your request, please respond to the following items... 4) Confirm that your free release criteria are 1000 dpm/100 cm² removable. (*Id.*)

DPH responds that none of the four documents are binding, and that contrary to Petitioners’ claims, DPH performs decommissioning on a “case-by-case” basis. DPH contends Petitioners’ examples demonstrate that the licensee proposes the release criteria, and that often the licensee chooses to utilize the four documents in doing so. DPH also identifies circumstances when the amendment incorporates release criteria modified from the four documents, such as an October 17, 2003 letter from DPH to Boeing regarding an amendment to radioactive materials license number 0015-19. (Stip. Exh. 8, p. 1.) The “Surface Contamination Guidelines” provides that the limits provided in DOE Order 5400.5 have been modified by “specifying the potential contaminants present in the Rocketdyne facilities, and eliminating those that are not pertinent.” (*Id.* at 20.)

With regard to the comment by DPH in the November 19, 2013 letter requesting that Boeing “confirm” its free release criteria were at a certain level, DPH contends the table Stanford provided was not a complete reproduction of Reg. Guide 1.86, and therefore DPH was merely requesting clarification as to the criteria being proposed.

The Court finds the documents Petitioners rely on as evidence that DPH is imposing certain underground regulations on licensees are documents that were submitted to DPH wherein the entity seeking the license amendment referred to Reg. Guide 1.86 limits when discussing release criteria. The Court finds evidence that entities are submitting documentation to DPH in reliance on the four documents is not a violation of the APA. As discussed in *Tidewater*, the APA is concerned with an *agency's* rule that the *agency* intends to apply generally. Evidence that private entities are relying on the four documents in discussing release criteria does not meet the first prong of the *Tidewater* test.¹³

The Court finds Petitioners have failed to identify evidence that DPH is applying an underground regulation by way of the four documents to a clear and definable class of cases: the demolition of radiologically contaminated structures, and disposal of the resulting waste. While the Court acknowledges the comment in the November 19, 2013 letter *could* be evidence that DPH is requiring licensees to comply with Reg. Guide 1.86, DPH’s explanation that the comment was merely a clarification as to what was being proposed is also possible. Accordingly, the Court finds Petitioners have not proven DPH is applying an underground regulation by way of the four documents.

The third cause of action is **DENIED** as to DPH.

C. Violation of the 2002 Peremptory Writ of Mandate

Petitioners argue that DPH’s use of the four documents to perpetuate an underground regulation is also a violation of the Court’s order in *Committee to Bridge the Gap v. Bonta* (Case No. 01CS01445) that DPH cannot adopt any numeric clean-up standards for radioactive materials without first complying with CEQA and the APA.

As the Court has already found DPH is not violating the APA and is not using the four documents as an underground regulation, the second cause of action is also **DENIED**.

D. Declaratory and Injunctive relief

In light of the Court’s above findings, Petitioners’ fourth and fifth causes of action, which are predicated on the same facts, are **DENIED** as to DPH.

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¹³ The Court notes that both DPH and Petitioners (in their reply brief) make arguments that are not relevant to the cause of action for violation of the APA. (For example, Petitioners appear to allege a violation of Regulation 30256, subdivision (k)(2), but there is no cause of action as to a violation of this regulation.) The Court has read and reviewed, but will not comment on these arguments.

IV. CONCLUSION

The petition for writ of mandate and complaint for declaratory and injunctive relief is **DENIED.**

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Counsel for Respondents shall prepare an order incorporating this ruling as an exhibit to the order, and a judgment; Counsel for Petitioners and Counsel for Real Party in Interest shall receive a copy for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit it to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

Certificate of Service by Mailing attached.

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(3)

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of November 19, 2018 **RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Jeffrey P. Reusch, Esq.
Department of Justice
Office of the Attorney General
1300 I Street
P O Box 944255
Sacramento, CA 94244-2550

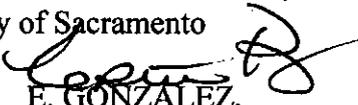
Andrea Sheridan Ordin, Esq.
Beverly Grossman Palmer, Esq.
STRUMWASSER & WOOCHELL LLP
10940 Wilshire Blvd., Suite 2000
Los Angeles, CA 90024

David Zaft, Esq.
Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

Gordon E. Hart, Esq.
PAUL HASTINGS LLP
101 California Street, 48th Floor
San Francisco, CA 94111

Dated: November 19, 2018

Superior Court of California,
County of Sacramento

By: 
E. GONZALEZ,
Deputy Clerk

Civil Case Details

 Case Information
Case Title

Physicians for Social Responsibility-Los Angeles vs. Department of Toxic Substances Control

Case Number

34-2013-80001589-CU-WM-GDS

Case Type

Writ of Mandate

Filing Date

08/06/2013

Case Category

Civil - Unlimited

 Participants

| Participant Name | Role | Represented By |
|--|-------------------------------|-------------------------|
| Committee to Bridge the Gap | Petitioner | |
| Consumer Watchdog | Petitioner | Harvey Rosenfield |
| Department of Public Health | Respondent | Jeffery P Reusch |
| Department of Public Health | Respondent | Kamala Devi Harris |
| Department of Toxic Substances Control | Respondent | David Zaft |
| Does 1-100 | Respondent | |
| Physicians for Social Responsibility-Los Angeles | Petitioner | Michael Jay Strumwasser |
| Roes 1-100 | Real Party In Interest (Rpii) | |
| Southern California Federation of Scientists | Petitioner | |
| The Boeing Company | Real Party In Interest (Rpii) | Peter C Meier |

 Scheduled Hearings

| Event Date | Event Time | Event Type | Department | Status |
|--------------------------------|------------|------------|------------|--------|
| No Scheduled Hearings Found... | | | | |

 Past Hearings

**** NOTE:** There is a cost associated with **court reporter transcripts**. When you request a court reporter transcript, you will be contacted by the court reporter regarding the cost and method of payment accepted.

| Event Date | Event Time | Event Type | Department | Status | **Request Transcript |
|------------|------------|--|------------|--------|--|
| 11/09/2018 | 11:00 AM | Petition for Writ of Mandate - Writ of Mandate | 28 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=28&eventDate=11%2F9%2F2018&eventTime=11%3A00%20AM&division=Civil&caseName=Physicians%20for%20Social%20Resp |
| 06/15/2018 | 11:00 AM | Motion - Other - Writ of Mandate | 28 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=28&eventDate=6%2F15%2F2018&eventTime=11%3A00%20AM&division=Civil&caseName=Physicians%20for%20Social%20Resp |
| 05/04/2018 | 9:00 AM | Petition for Writ of Mandate - Writ of Mandate | 28 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=28&eventDate=5%2F4%2F2018&eventTime=9%3A00%20AM&division=Civil&caseName=Physicians%20for%20Social%20Respon |
| 12/08/2017 | 9:00 AM | Motion - Other - Writ of Mandate | 31 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=31&eventDate=12%2F8%2F2017&eventTime=9%3A00%20AM&division=Civil&caseName=Physicians%20for%20Social%20Respo |
| 12/08/2017 | 9:00 AM | Motion - Other - Writ of Mandate | 31 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=31&eventDate=12%2F8%2F2017&eventTime=9%3A00%20AM&division=Civil&caseName=Physicians%20for%20Social%20Respo |
| 09/15/2017 | 1:30 PM | Motion - Other - Writ of Mandate | 44 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=44&eventDate=9%2F15%2F2017&eventTime=1%3A30%20PM&division=Civil&caseName=Physicians%20for%20Social%20Respo |
| 09/15/2017 | 1:30 PM | Motion - Other - Writ of Mandate | 44 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=44&eventDate=9%2F15%2F2017&eventTime=1%3A30%20PM&division=Civil&caseName=Physicians%20for%20Social%20Respo |
| 11/21/2014 | 1:30 PM | Motion - Other - Writ of Mandate | 42 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=42&eventDate=11%2F21%2F2014&eventTime=1%3A30%20PM&division=Civil&caseName=Physicians%20for%20Social%20Respo |
| 10/25/2013 | 2:00 PM | Motion - Other - Writ of Mandate | 42 | Heard | Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=42&eventDate=10%2F25%2F2013&eventTime=2%3A00%20PM&division=Civil&caseName=Physicians%20for%20Social%20Respo |

 Register of Actions

Click the Preview button to see a preview of the document. Previewed documents contain every other page, up to a maximum of five pages. To purchase a full version containing all pages, check the checkbox for the document(s) you want and then click the Document Cart link at the top of the page to review your cart / check out.

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|--|------------|---|-------|
| 273 | Order - Other filed. | 11/28/2018 | | 3 |
| 272 | RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF | 11/19/2018 | | 21 |
| 269 | Minutes finalized for Petition for Writ of Mandate - Writ of Mandate heard on 11/09/2018 11:00:00 AM . | 11/09/2018 | | 1 |
| | Physicians for Social Responsibility - Los Angeles v. Department of Toxic Substances Control - Petition | 11/08/2018 | | 2 |
| 270 | Tentative Ruling Filed | 11/08/2018 | | 2 |
| 268 | Response (to Objection to New Issues Raised in Reply Briefs) filed. | 11/02/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southrn California Federation of Scientists(Petitioner) | 7 |
| 267 | Proof of Service - MAILING filed. | 11/02/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |
| 266 | Objection (Boeing Company's Joinder in Objection) filed. | 11/02/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 2 |
| 271 | Notice of Lodging filed. | 11/02/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 4 |
| 265 | Objection (to New Issues Raised in Reply Briefs) filed. | 11/01/2018 | Department of Public Health(Respondent) | 4 |
| 264 | Reply to Opposition ((Supplemental) of Boeing) filed. | 10/25/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 17 |
| 263 | Reply to Opposition (to Petitioner Points and Authorities) filed. | 10/25/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 17 |
| 262 | Notice of Lodging (of Supplemental Administrative Record) filed. | 10/25/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 8 |
| 261 | Proof of Service (via email) filed. | 10/15/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |
| 260 | Opposition (to 1st Amended Petition) filed. | 10/15/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 19 |
| 259 | Supplemental - Other (Opposition to Points & Authorities) filed. | 10/15/2018 | Department of Public Health(Respondent) | 20 |
| 258 | Notice - Other (of Certification of Admin Record) filed. | 10/02/2018 | Department of Public Health(Respondent) | 8 |
| 257 | Proof of Service - MAILING filed. | 07/16/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |
| 256 | Answer (First Amended) filed. | 07/16/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 23 |
| 255 | Answer (to 1st Amended Petition) filed. | 07/16/2018 | Department of Toxic Substances Control(Respondent) | 21 |
| 254 | Answer filed. | 07/13/2018 | Department of Public Health(Respondent) | 16 |
| 253 | Certificate of Service by Mailing | 06/25/2018 | | 1 |
| 252 | Ruling on Submitted Matter: Motion for Leave to File First Amended Petition and Complaint | 06/25/2018 | | 6 |
| 251 | Minutes finalized for Motion - Other - Writ of Mandate heard on 06/15/2018 11:00:00 AM . | 06/15/2018 | | 1 |
| 250 | Minute Order Re. Status of Scheduled Hearing | 06/14/2018 | | |
| 249 | Tentative Ruling Filed | 06/14/2018 | | 4 |
| | Physicians for Social Responsibility - Los Angeles v. Department of Toxic Substances Control - Motion for Leave to File First Amended Petition | 06/14/2018 | | 4 |
| 248 | Proof of Service (via Email) filed. | 06/08/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 247 | Reply (Declaration of Beverly Grossman in Support of Motion) filed. | 06/08/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 17 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|--|------------|--|-------|
| 246 | Reply to Opposition of Noticed Motion filed. | 06/08/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 11 |
| 245 | Reply to Opposition of Noticed Motion filed. | 06/08/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 244 | Reply to Opposition filed. | 06/08/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 13 |
| 243 | Proof of Service - MAILING filed. | 06/04/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |
| 242 | Declaration - Other (of Gordon Hart in Support of Oppo to Mtn to Leave to File first Amended) filed. | 06/04/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 2 |
| 241 | Opposition (to Mtn to Leave to File First Amended) filed. | 06/04/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 20 |
| 240 | Opposition (to Motion) filed. | 06/04/2018 | Department of Toxic Substances Control(Respondent) | 6 |
| 239 | Declaration - Other (of Roger Lupo Supporting Opposition to Motion) filed. | 06/04/2018 | Department of Public Health(Respondent) | 9 |
| 238 | Declaration - Other (of Gonzalo L Perez Supporting Opposition to Motion) filed. | 06/04/2018 | Department of Public Health(Respondent) | 4 |
| 237 | Declaration - Other (of Ted Ward Supporting Opposition to Motion) filed. | 06/04/2018 | Department of Public Health(Respondent) | 3 |
| 236 | Declaration - Other (of Jeffrey Reusch Supporting Opposition to Motion) filed. | 06/04/2018 | Department of Public Health(Respondent) | 51 |
| 235 | Opposition (to Motion) filed. | 06/04/2018 | Department of Public Health(Respondent) | 20 |
| 234 | Ex Parte Application - Other - Writ of Mandate scheduled for 06/01/2018 at 02:00:00 PM in Department 28 at Gordon D Schaber Courthouse was vacated . | 06/01/2018 | | |
| 233 | Notice - Other (of Withdrawal of Ex Parte App to Specially Set Hearing) filed. | 05/31/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 10 |
| 232 | Declaration - Other (Supplemental, of Beverly Grossman re: Ex Parte Notice) filed. | 05/30/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 12 |
| 231 | Ex Parte Application - Other - Writ of Mandate scheduled for 06/01/2018 at 02:00:00 PM in Department 28 at Gordon D Schaber Courthouse . | 05/24/2018 | | |
| 230 | Proof of Service - MAILING filed. | 05/23/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 229 | Ex Parte Application - Other (to Specially Set Hearing; Memo of P&A; Dec of Palmer) filed. | 05/23/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 21 |
| 228 | Proof of Service (via Email) filed. | 05/21/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 227 | Declaration - Other (of Beverly Grossman in Support of Motion) filed. | 05/21/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 115 |
| 226 | Motion for Leave to Amend (First Amended Petition) filed. | 05/21/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 13 |
| 225 | Petition for Writ of Mandate - Writ of Mandate scheduled for 12/21/2018 at 10:00:00 AM in Department 28 at Gordon D Schaber Courthouse . | 05/18/2018 | | |
| 224 | Motion - Other - Writ of Mandate scheduled for 06/15/2018 at 11:00:00 AM in Department 28 at Gordon D Schaber Courthouse . | 05/04/2018 | | |
| 222 | Minutes finalized for Petition for Writ of Mandate - Writ of Mandate heard on 05/04/2018 09:00:00 AM . | 05/04/2018 | | 1 |
| 221 | Tentative Ruling Filed | 05/03/2018 | | 2 |
| | Physicians for Social Responsibility v. Department of Toxic Substances Control - Petition | 05/03/2018 | | 2 |
| 223 | Correspondence (Letter to the Court From Christine L. Rowe) filed. | 05/01/2018 | | 68 |
| 220 | Proof of Service - MAILING filed. | 04/30/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 3 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|--|------------|--|-------|
| 219 | Response (to Respondents' Joint Objections to Evidence Submitted) filed. | 04/30/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 3 |
| 218 | Response (to RPI's Objections to Evidence Submitted) filed. | 04/30/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 3 |
| 217 | Response (to RPI's Objections to RJN) filed. | 04/30/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 3 |
| 216 | Proposed Order (Regarding Objections to Evidence) filed. | 04/26/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 11 |
| 215 | Proof of Service filed. | 04/26/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |
| 214 | Statement - Other (Joinder in Joint Objections to Evidence) filed. | 04/26/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 2 |
| 213 | Objection (to Request for Judicial Notice) filed. | 04/26/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 6 |
| 212 | Objection (to Evidence) filed. | 04/26/2018 | The Boeing Company(Real Party In Interest (Rpil)) | 12 |
| 211 | Objection (Respondent's Joinder in RPI's Objections to Petitioner's Evidence & Request for Judicial Notice) filed. | 04/26/2018 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 4 |
| 210 | Objection (Joint Objections to Petitioners' Evidence) filed. | 04/26/2018 | Department of Public Health(Respondent) | 13 |
| 209 | Objection (Joinder in Boeing's Objections to Evidence) filed. | 04/26/2018 | Department of Public Health(Respondent) | 3 |
| 208 | Proof of Service filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 4 |
| 207 | Response (to Objections to Evidence) filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 4 |
| 206 | Objection (& Proposed Order) filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 19 |
| 205 | Reply (Declaration of Dr Benmet Alemayehu in Support of Petition) filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 31 |
| 204 | Request - Judicial Notice filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 79 |
| 203 | Reply to Opposition (in Support of Petition) filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 26 |
| 202 | Reply to Opposition (in Support of Petition) filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 25 |
| 201 | Reply to Opposition (in Support of Petition) filed. | 04/19/2018 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 26 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|--|------------|--|-------|
| 199 | Rosenfield, Harvey added as a effective 04/10/2018 . | 04/12/2018 | | |
| 200 | Notice of Change of Address/Telephone No. filed. | 04/10/2018 | Consumer Watchdog(Petitioner) | 4 |
| 198 | Notice - Other filed. | 04/09/2018 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 4 |
| 197 | Declaration - Other (of Juanita Bacey in Support of Opposition) filed. | 03/22/2018 | Department of Toxic Substances Control(Respondent) | 6 |
| 196 | Declaration - Other (of Paul Carpenter in Support of Opposition) filed. | 03/22/2018 | Department of Toxic Substances Control(Respondent) | 8 |
| 195 | Statement - Other (Joinder in Objections to Evidence) filed. | 03/22/2018 | Department of Toxic Substances Control(Respondent) | 4 |
| 194 | Opposition (to Opening Memorandum of Points & Authorities in Support of Petition) filed. | 03/22/2018 | Department of Toxic Substances Control(Respondent) | 41 |
| 193 | Proposed Order (Re: Joint Objections to Evidence) filed. | 03/22/2018 | The Boeing Company(Real Party In Interest (RpII)) | 6 |
| 192 | Proof of Service filed. | 03/22/2018 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 191 | Objection (to Evidence Submitted) filed. | 03/22/2018 | The Boeing Company(Real Party In Interest (RpII)) | 9 |
| 190 | Declaration - Other (of Lisa A Lowry in Suppport of Memorandum) filed. | 03/22/2018 | The Boeing Company(Real Party In Interest (RpII)) | 185 |
| 189 | Declaration - Other (of Dr Christopher G Wipple in Suppport of Memorandum) filed. | 03/22/2018 | The Boeing Company(Real Party In Interest (RpII)) | 177 |
| 188 | Statement - Other (Memorandum in Opposition to Opening Brief) filed. | 03/22/2018 | The Boeing Company(Real Party In Interest (RpII)) | 40 |
| 187 | Declaration - Other (of Jeffrey Reusch Supporting Opposition Brief) filed. | 03/22/2018 | Department of Public Health(Respondent) | 36 |
| 186 | Declaration - Other (of Gonzalo L. Perez Supporting Opposition Brief) filed. | 03/22/2018 | Department of Public Health(Respondent) | 8 |
| 185 | Joinder in Opposition (to Evidence Submitted in Petitioner's Memorandum of Point's and Authorities) filed. | 03/22/2018 | Department of Public Health(Respondent) | 3 |
| 184 | Opposition (to Petitioner's Points and Authorities) filed. | 03/22/2018 | Department of Public Health(Respondent) | 39 |
| 183 | Notice - Other (of Amended Certification) filed. | 02/23/2018 | Department of Toxic Substances Control(Respondent) | |
| 182 | Proof of Service (via Email) filed. | 02/22/2018 | Committee to Bridge the Gap(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southrn California Federation of Scientists(Petitioner) | 3 |
| 181 | Declaration - Other (of Dr. Bennet Alemayehu in Support of) filed. | 02/22/2018 | Committee to Bridge the Gap(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southrn California Federation of Scientists(Petitioner) | 24 |
| 180 | Motion - Other (and Points and Authorities in Support of Petition for Writ of Mandate) filed. | 02/22/2018 | Committee to Bridge the Gap(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southrn California Federation of Scientists(Petitioner) | 43 |
| 179 | Order - Other (Stipulation and Order Re Exhibit List for the Second and Third Causes of Action and Page Limits for Opening and Opposition Briefs) filed. | 02/22/2018 | | 6 |
| 178 | Stipulation and Order (Re: Exhibit List) filed. | 02/21/2018 | Department of Toxic Substances Control(Respondent) | 6 |
| 177 | Petition for Writ of Mandate - Writ of Mandate scheduled for 05/04/2018 at 09:00:00 AM in Department 28 at Gordon D Schaber Courthouse . | 02/05/2018 | | |
| 176 | Case reassigned to 28 effective 01/22/2018 . | 01/24/2018 | | |
| 175 | Order - Other (Minute Order Dated 01/24/2018 RE Order and Notice Reassigning Case) filed. | 01/24/2018 | | 3 |
| 174 | Notice of Entry - Other (of Order) filed. | 01/03/2018 | Department of Toxic Substances Control(Respondent) | 16 |
| 173 | Order After Hearing (Denying Petitioners' Motion to Augment the Administrative Records or, in the Alternative, for Judicial Notice) filed. | 12/28/2017 | | 12 |
| 172 | Declaration - Other (Rule 3.1312(b) Declaration of David Zaft) filed. | 12/27/2017 | Department of Toxic Substances Control(Respondent) | 3 |
| 171 | Proposed Order (Denying Petitioner's Motion) filed. | 12/21/2017 | Department of Toxic Substances Control(Respondent) | 12 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|--|------------|--|-------|
| 170 | Minutes finalized for Multiple Events heard on 12/08/2017 09:00:00 AM . | 12/08/2017 | | 7 |
| | Physicians for Social Responsibility - Los Angeles v. Department of Toxic Substances Control - Motions to Augment the Record | 12/07/2017 | | 9 |
| 169 | Order - Other (Stipulation and Order) filed. | 11/01/2017 | | 7 |
| 168 | Notice of Change of Address/Telephone No. filed. | 10/26/2017 | Department of Toxic Substances Control(Respondent) | 3 |
| 167 | Stipulation and Proposed Order - Other filed. | 10/19/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 7 |
| 166 | Motion - Other - Writ of Mandate scheduled for 12/08/2017 at 09:00:00 AM in Department 31 at Gordon D Schaber Courthouse . | 10/12/2017 | | |
| 165 | Motion - Other - Writ of Mandate scheduled for 12/08/2017 at 09:00:00 AM in Department 31 at Gordon D Schaber Courthouse . | 09/28/2017 | | |
| 164 | Proof of Service - MAILING filed. | 09/27/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 163 | Notice of Motion (Amended Motion) filed. | 09/27/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 162 | Notice of Motion (Amended Notice) filed. | 09/27/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 161 | Case reassigned to 31 effective 09/15/2017 . | 09/18/2017 | | |
| 158 | Petition for Writ of Mandate - Writ of Mandate scheduled for 12/15/2017 at 01:30:00 PM in Department 44 at Gordon D Schaber Courthouse was vacated . | 09/15/2017 | | |
| 156 | Minutes finalized for Multiple Events heard on 09/15/2017 01:30:00 PM . | 09/15/2017 | | 1 |
| 160 | Minute Order re: Recusal Pursuant to CCP 170.1(a)(6)(A)(iii) + Reassignment of Case to One Judge for All Purposes | 09/15/2017 | | 2 |
| 159 | Notice of Case Re-Assignment | 09/15/2017 | | 1 |
| 152 | Tentative Ruling Filed | 09/14/2017 | | 12 |
| | Physicians for Social Responsibility v. Dept. of Toxic Substances Control et al., tentative ruling on motion to augment record | 09/14/2017 | | 12 |
| 151 | Proof of Service (Electronic Service) filed. | 09/08/2017 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Southern California Federation of Scientists(Petitioner) | 3 |
| 150 | Reply (Reply Declaration) filed. | 09/08/2017 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Southern California Federation of Scientists(Petitioner) | 14 |
| 149 | Reply (Reply Briefs) filed. | 09/08/2017 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Southern California Federation of Scientists(Petitioner) | 14 |
| 148 | Motion - Other - Writ of Mandate scheduled for 09/15/2017 at 01:30:00 PM in Department 44 at Gordon D Schaber Courthouse . | 09/07/2017 | | |
| 143 | Declaration - Other (of J Reusch) filed. | 09/01/2017 | Department of Public Health(Respondent) | 6 |
| 142 | Declaration - Other (of G L Perez) filed. | 09/01/2017 | Department of Public Health(Respondent) | 75 |
| 141 | Opposition filed. | 09/01/2017 | Department of Public Health(Respondent) | 18 |
| 145 | Proof of Service - MAILING filed. | 09/01/2017 | The Boeing Company(Real Party In Interest (Rpil)) | 2 |
| 144 | Declaration - Other (of Mark Malinowski in Support of Opposition to Motion for Preliminary Injunction) filed. | 09/01/2017 | The Boeing Company(Real Party In Interest (Rpil)) | 11 |
| 140 | Declaration - Other (of Paul Carpenter in Support of Opposition to Motion) filed. | 09/01/2017 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|---|------------|--|-------|
| 139 | Declaration - Other (of Arthur J Lenox in Support of Memorandum of Opposition to Motion for Preliminary Injunction) filed. | 09/01/2017 | The Boeing Company(Real Party In Interest (RpII)) | 9 |
| 138 | Declaration - Other (of Paul Carpenter in Support of Opposition to Motion) filed. | 09/01/2017 | Department of Toxic Substances Control(Respondent) | 14 |
| 137 | Opposition (to Motion to Augment the Administrative Record) filed. | 09/01/2017 | Department of Toxic Substances Control(Respondent) | 18 |
| 136 | Notice of Appearance filed. | 09/01/2017 | Department of Toxic Substances Control(Respondent) | 2 |
| 147 | Proof of Service - MAILING filed. | 09/01/2017 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 146 | Opposition (To Motion to Augment) filed. | 09/01/2017 | The Boeing Company(Real Party In Interest (RpII)) | 12 |
| 135 | Notice of Errata (in Motion to Augment) filed. | 08/28/2017 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 29 |
| 134 | Notice - Other (of Certification & Certification of Administrative Record) filed. | 08/21/2017 | Department of Toxic Substances Control(Respondent) | 56 |
| 124 | Strumwasser, Michael Jay added as a effective 08/18/2017 . | 08/18/2017 | | |
| 133 | Proof of Service (Electronic mail) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 4 |
| 132 | Paper Exhibits (Vol 5 of 5(Exhibits 4-9)) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 578 |
| 131 | Paper Exhibits (Vol 4 of 5 (Exhibit 4 Continued)) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 532 |
| 130 | Paper Exhibits (Vol 3 of 5 (Exhibit 4 continued)) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 580 |
| 129 | Paper Exhibits (Vol 2 of 5 (Exhibit 4 continued)) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 617 |
| 128 | Paper Exhibits (Vol 1 of 5(Exhibits 1-4)) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 618 |
| 127 | Declaration - Other (Of B.Palmer) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 12 |
| 126 | Motion - Other (To Augment the DTSC Admin.Record) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 20 |
| 125 | Motion - Other (To Augment the DPH Admin. Records) filed. | 08/18/2017 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 22 |
| 122 | Reusch, Jeffery P added as a effective 08/18/2017 . | 08/18/2017 | | |
| 123 | Notice - Other (of Certification and Certification of Administrative Record BY Respondent California Department of Public Health) filed. | 08/18/2017 | Department of Public Health(Respondent) | 14 |
| 121 | Notice of Change of Address/Telephone No. filed. | 08/18/2017 | Department of Public Health(Respondent) | 3 |
| 120 | Order - Other (Stipulation and Order Re Continuance of Hearing Dates) filed. | 05/04/2017 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 10 |
| 119 | Petition for Writ of Mandate - Writ of Mandate scheduled for 12/15/2017 at 01:30:00 PM in Department 44 at Gordon D Schaber Courthouse . | 04/11/2017 | | |
| 118 | Petition for Writ of Mandate - Writ of Mandate rescheduled to 12/15/2017 at 01:30:00 PM in Department 44 at Gordon D Schaber Courthouse . | 04/11/2017 | | |
| 117 | Motion - Other - Writ of Mandate scheduled for 09/15/2017 at 01:30:00 PM in Department 44 at Gordon D Schaber Courthouse . | 04/11/2017 | | |
| 116 | Notice of Hearing filed. | 02/09/2017 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 4 |
| 115 | Petition for Writ of Mandate - Writ of Mandate scheduled for 10/06/2017 at 01:30:00 PM in Department 42 at Gordon D Schaber Courthouse . | 01/31/2017 | | |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|---|------------|--|-------|
| 113 | Order After Hearing (ORDER AFTER HEARING DENYING MOTION FOR SUMMARY JUDGMENT) filed. | 01/05/2015 | | 11 |
| 114 | Order - Other (Minute Order Re: Reassigning Writ for all Purposes) filed. | 12/17/2014 | | 2 |
| 112 | Minutes finalized for Motion - Other - Writ of Mandate heard on 11/21/2014 01:30:00 PM . | 11/21/2014 | | 1 |
| 111 | Motion - Other - Writ of Mandate scheduled for 11/21/2014 at 01:30:00 PM in Department 42 at Gordon D Schaber Courthouse . | 11/20/2014 | | |
| 110 | TENTATIVE RULING ON MOTION FOR SUMMARY JUDGMENT | 11/20/2014 | | 8 |
| | Physicians for Social Responsibility v. Department of Toxic Substances Control, Tentative Ruling on Motion for Summary Judgment | 11/20/2014 | | 8 |
| 109 | Proof of Service - MAILING filed. | 11/18/2014 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 108 | Notice of Errata (Regarding Reply in Support of Motion for Summary Judgment/Adjudication) filed. | 11/18/2014 | The Boeing Company(Real Party In Interest (RpII)) | 2 |
| 107 | Reply (Corrected in Support of Motion for Summary Judgment/Adjudication) filed. | 11/18/2014 | The Boeing Company(Real Party In Interest (RpII)) | 14 |
| 106 | Proof of Service filed. | 11/14/2014 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 105 | Reply (in Support) filed. | 11/14/2014 | The Boeing Company(Real Party In Interest (RpII)) | 25 |
| 104 | Response (to Separate Statement of Undisputed Facts) filed. | 11/14/2014 | The Boeing Company(Real Party In Interest (RpII)) | 55 |
| 103 | Supplemental - Other (Request for Judicial Notice) filed. | 11/14/2014 | The Boeing Company(Real Party In Interest (RpII)) | 35 |
| 102 | Response (to Consolidated Evidentiary Objections to Evidence) filed. | 11/14/2014 | The Boeing Company(Real Party In Interest (RpII)) | 9 |
| 101 | Reply (Declaration in Support of Motion) filed. | 11/14/2014 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 100 | Declaration - Other (of Beverly Grossman Palmer Volume 2 of 2) filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 391 |
| 99 | Declaration - Other (of Beverly Grossman Palmer) filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 399 |
| 98 | Response (to Separate Statement of Undisputed Facts) filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 35 |
| 97 | Request - Judicial Notice filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 25 |
| 96 | Statement of Undisputed Facts filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 31 |
| 95 | Opposition (to the Boeing Companies MSJ) filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 28 |
| 94 | Objection (to Real Partys Evidence in support of its MSJ) filed. | 11/07/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 8 |
| 93 | Notice - Other (of Non-Opposition to the Motion for Summary Judgment) filed. | 09/08/2014 | Department of Toxic Substances Control(Respondent) | 4 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|---|------------|--|-------|
| 92 | Notice - Other (of Non Opp to the Boeing Co MSJ) filed. | 09/03/2014 | Department of Public Health(Respondent) | 3 |
| 91 | Response (Petitioners Response to Unsolicited Letter of Christine L. Rowe) filed. | 07/03/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 4 |
| 90 | Letter to the Court from Christine Rowe | 06/26/2014 | | 17 |
| 89 | Notice of Hearing filed. | 06/19/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 4 |
| 88 | Reply (Brief in Support of Motion) filed. | 06/04/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 8 |
| 87 | Opposition filed. | 05/30/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 10 |
| 86 | Declaration - Other (in Support of Opposition to Motion) filed. | 05/30/2014 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 8 |
| 85 | Proof of Service filed. | 05/28/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 3 |
| 84 | Declaration - Other (of Peter C Meier in support of Motion to Set Hearing Date for MSJ) filed. | 05/28/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 5 |
| 83 | Proof of Service filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 4 |
| 82 | Paper Exhibits (Non-California Authorities Cited in Support) filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 3 |
| 81 | Request - Judicial Notice (in Support) filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 81 |
| 80 | Statement of Undisputed Facts filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 27 |
| 79 | Declaration - Other (in Support) filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 106 |
| 78 | Declaration - Other (in Support) filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 38 |
| 77 | Memorandum of Points and Authorities (in Support) filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 20 |
| 76 | Motion for Summary Judgment and/or Adjudication filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 4 |
| 75 | Motion - Other (to Set Hearing Date for Motion for Summary Judgment) filed. | 05/23/2014 | The Boeing Company(Real Party In Interest (Rpii)) | 18 |
| 74 | Stipulation and Order re Preparation of Administrative Record | 12/13/2013 | | 6 |
| 73 | ORDER AFTER HEARING GRANTING, IN PART, MOTION FOR PRELIMINARY INJUNCTION | 12/11/2013 | | 17 |
| 72 | Objection (to Petitioners' Second Supplemental Request for Judicial Notice in Support of Motion for Preliminary Injunction) filed. | 12/03/2013 | The Boeing Company(Real Party In Interest (Rpii)) | 8 |
| 71 | Opposition (Joint Opposition to petitioners Second supplemental Request for Judicial Notice in support of Motion for Preliminary Injunction) filed. | 12/03/2013 | Department of Toxic Substances Control(Respondent) | 10 |
| 70 | Request - Other (2nd for judicial notice) filed. | 11/26/2013 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 21 |
| 69 | Request - Other (for Hearing) filed. | 11/08/2013 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 67 | Correspondence filed. | 10/28/2013 | The Boeing Company(Real Party In Interest (Rpii)) | 7 |
| 68 | Minutes finalized for Motion - Other - Writ of Mandate heard on 10/25/2013 02:00:00 PM . | 10/25/2013 | | 1 |
| 66 | TENTATIVE RULING ON MOTION FOR PRELIMINARY INJUNCTION | 10/24/2013 | | 16 |
| | Physicians for Social Responsibility v. Dept. of Toxic Substances Control, Tentative Ruling on Motion for Preliminary Injunction | 10/24/2013 | | 16 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|--|------------|--|-------|
| 65 | Motion - Other - Writ of Mandate scheduled for 10/25/2013 at 02:00:00 PM in Department 42 at Gordon D Schaber Courthouse . | 10/24/2013 | | |
| 64 | Objection (to Supplemental Evidence Submitted with Reply Brief on Motion for Preliminary Injunction) filed. | 10/23/2013 | Department of Public Health(Respondent) | 17 |
| 63 | Proof of Service - MAILING filed. | 10/22/2013 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 62 | Objection (to Evidence Submitted in Support of Reply Brief in Support of Motion for Preliminary Injunction) filed. | 10/22/2013 | The Boeing Company(Real Party In Interest (RpII)) | 23 |
| 61 | Response (to Consolidated Objections to Evidence in Support of Motion for Preliminary Injunction) filed. | 10/22/2013 | The Boeing Company(Real Party In Interest (RpII)) | 93 |
| 60 | Objection (to Evidence) filed. | 10/18/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 68 |
| 59 | Response (to Evidentiary Objections) filed. | 10/18/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 18 |
| 58 | Reply (Briefs to Opposition) filed. | 10/18/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 36 |
| 57 | Supplemental - Other (Request for Judicial Notice) filed. | 10/18/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 69 |
| 56 | Reply (Declaration in Support of Motion) filed. | 10/18/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 67 |
| 55 | Proof of Service filed. | 10/15/2013 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 54 | Declaration - Other filed. | 10/15/2013 | The Boeing Company(Real Party In Interest (RpII)) | 31 |
| 53 | Notice of Errata filed. | 10/15/2013 | The Boeing Company(Real Party In Interest (RpII)) | 2 |
| 52 | STIPULATION AND ORDER RE 1) RESPONSIVE PLEADINGS TO THE PETITION 2) BRIEFING SCHEDULE FOR PRELIMINARY INJUNCTION 3) PREPARATION OF THE ADMINISTRATIVE RECORD | 10/15/2013 | | 5 |
| 51 | Statement - Other (Corrected Brief in Opposition to Motion) filed. | 10/10/2013 | Department of Toxic Substances Control(Respondent) | 22 |
| 50 | Notice of Errata (Re: Opposition to Motion) filed. | 10/10/2013 | Department of Toxic Substances Control(Respondent) | 4 |
| 49 | Declaration - Other (of Service) filed. | 10/09/2013 | Department of Toxic Substances Control(Respondent) | 6 |
| 48 | Answer filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 23 |
| 47 | Proof of Service filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 4 |
| 46 | Declaration - Other (in Support of Memorandum of Opposition) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 679 |
| 45 | Statement - Other (Ordinance & Non-California Authorities in Support of Memorandum of Opposition) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 8 |
| 44 | Declaration - Other (in Support of Memorandum of Opposition) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 229 |
| 43 | Declaration - Other (in Support of Memorandum of Opposition) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 63 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|---|------------|--|-------|
| 42 | Response (to Request for Judicial Notice) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 3 |
| 41 | Request - Judicial Notice (in Support of Opposition) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 85 |
| 40 | Objection (to Evidence) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 26 |
| 39 | Declaration - Other (in Support of Memorandum of Opposition to Motion) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 28 |
| 38 | Statement - Other (Memorandum in Opposition to Motion) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 19 |
| 37 | Declaration - Other (in Support of Memorandum in Opposition to Motion) filed. | 10/08/2013 | The Boeing Company(Real Party In Interest (RpII)) | 176 |
| 32 | Potter, James R added as a effective 10/08/2013 . | 10/08/2013 | | |
| 36 | Declaration - Other (in Support of Opposition) filed. | 10/08/2013 | Department of Toxic Substances Control(Respondent) | 136 |
| 35 | Declaration - Other (in Support of Opposition to Motion) filed. | 10/08/2013 | Department of Toxic Substances Control(Respondent) | 148 |
| 34 | Opposition (Brief in Opposition to Motion) filed. | 10/08/2013 | Department of Toxic Substances Control(Respondent) | 20 |
| 33 | Answer filed. | 10/08/2013 | Department of Toxic Substances Control(Respondent) | 17 |
| 31 | Proof of Service filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 3 |
| 30 | Declaration - Other filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 5 |
| 29 | Request - Judicial Notice filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 47 |
| 28 | Declaration - Other (of L. Robert Greger) filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 9 |
| 27 | Proof of Service filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 2 |
| 26 | Answer filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 14 |
| 25 | Memorandum of Points and Authorities filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 19 |
| 24 | Objection filed. | 10/08/2013 | Department of Public Health(Respondent); Department of Toxic Substances Control(Respondent) | 21 |
| 23 | Stipulation and Order (Re: Responsive Pleadings / Briefing Schedule for Preliminary Injunction / Preparation of the Administrative Record) filed. | 09/20/2013 | Department of Toxic Substances Control(Respondent) | 5 |
| 22 | Correspondence filed. | 09/11/2013 | Department of Toxic Substances Control(Respondent) | 2 |
| 21 | Correspondence with the Court and Counsel via Email | 09/06/2013 | | 1 |
| 20 | Declaration - Other (of Arnold Gundersen) filed. | 09/04/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner) | 144 |
| 19 | Declaration - Other (of Beverly Grossman) filed. | 09/04/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner) | 39 |
| 18 | Request - Judicial Notice filed. | 09/04/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner) | 386 |
| 17 | Declaration - Other (of Arnold Gundersen) filed. | 09/04/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner) | 145 |

| ROA# | ROA Entry | Filed Date | Filed By | Pages |
|------|---|------------|--|-------|
| 15 | Motion for Preliminary Injunction filed. | 09/04/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner) | 23 |
| 14 | Case reassigned to 42 effective 08/08/2013 . | 08/28/2013 | | |
| 13 | Notice - Other (of Settlement Meeting) filed. | 08/27/2013 | Department of Public Health(Respondent) | 3 |
| 12 | Proof of Service - MAILING filed. | 08/21/2013 | The Boeing Company(Real Party In Interest (Rpil)) | 3 |
| 10 | Meier, Peter C added as a effective 08/19/2013 . | 08/19/2013 | | |
| 11 | Notice of Appearance filed. | 08/19/2013 | The Boeing Company(Real Party In Interest (Rpil)) | 2 |
| 9 | Order - Other (Peremptory Disqualification CCP 170.6; Notice of Re-Assignment of Petition for Writ of Mandate to One Judge for All Purposes; Certificate of Service my Mail) filed. | 08/08/2013 | | 3 |
| 8 | Declaration of Prejudice CCP 170.6 filed. | 08/07/2013 | Physicians for Social Responsibility-Los Angeles(Petitioner) | 3 |
| 6 | Notice of Case Assignment Sac generated . | 08/06/2013 | | 1 |
| 5 | Case assigned to Department 14 . | 08/06/2013 | | |
| 3 | Summons filed. | 08/06/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 3 |
| 2 | Civil Case Cover Sheet filed. | 08/06/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 1 |
| 1 | Petition for Writ of Mandate filed. | 08/06/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 37 |
| 4 | Declaration - Other (Election to Prepare Administrative Record) filed. | 08/06/2013 | Committee to Bridge the Gap(Petitioner); Consumer Watchdog(Petitioner); Physicians for Social Responsibility-Los Angeles(Petitioner); Southern California Federation of Scientists(Petitioner) | 2 |

**The Honorable Judge Allen H. Sumner
720 9th Street
Sacramento, California 95814
Department 42
Re: Case No.: 34-2013-80001589**

June 24, 2014

Respectfully Request that the Injunction Preventing the Demolition of Structures in AREA IV of the Santa Susana Laboratory Be Immediately Lifted;

- A. In Support of the Boeing Motion for Summary Judgment;**
- B. In Support of a Ruling that DTSC and CDPH did not Violate CEQA;**
- C. In Support of a Ruling that DTSC and CDPH did not Approve the Shipments of Waste and Debris to Landfills or Metal Recyclers that were not Authorized to take that Waste**

Dear Judge Sumner,

Thank you, your Honor, for allowing me the opportunity to write this letter to you. I realize that you are buried in paper, and that this is just one more document to read.

I am writing to you as a 36 year resident of West Hills, California. West Hills is, I believe, completely within the five mile periphery of the Santa Susana Field Laboratory site. I am a potentially impacted stakeholder of the Santa Susana Field Laboratory remediation project. I have been engaged as a technical stakeholder of this project for seven and a half years. I will place my biographical information at the end.

My husband and I, (Emeritus Professor Bruce M. Rowe, and Christine L. Rowe), were, to the best of my knowledge, the only community stakeholders in your court room for this case on October 25, 2013.

After listening to your introduction, the comments from the various attorneys, your statements and questions, and after reading many of the court documents, I would like to weigh in as a friend of the court, but without a legal Amicus status.

This case, in my opinion, was brought by the Plaintiffs to claim that DTSC violated the CEQA process in approving the demolition of structures in AREA IV by the Boeing Company without CEQA review. It also alleges that DTSC approved the transfer of waste and demolition of materials to landfills and / or recyclers that were not licensed to take them.

Executive Summary

The harm from this litigation impacts no one except the residents of the Santa Susana Field Laboratory community.

- 1) The Plaintiffs in this case do not live in my community while they may represent some local residents.
- 2) All parties in this litigation are paid despite the status of this project. I am the only person that I know of outside of the Plaintiffs and Respondents that is taking the time to read the legal briefs and trying to educate the Court on behalf of my community. I am not being compensated in any way.
- 3) The litigation, in my opinion, has already delayed the demolition of structures in AREA IV, and it will potentially prevent DTSC and the Responsible Parties from achieving the 2017 clean up deadline that was determined in 2007 with the signing by all parties of the 2007 Consent Order with DTSC.
- 4) The Plaintiffs by only filing suit regarding the demolition of structures in AREA IV are Segmenting CEQA.
- 5) It is my opinion that if the Plaintiffs were really concerned about the offsite risk to the community, they would not have filed a lawsuit against the Department of Energy in 2004 (CBG), and filed the current litigation. It is my opinion that if they were concerned about offsite risk, they would be asking for an Imminent and Substantial Endangerment Order.
- 6) If the Plaintiffs were really interested in CEQA, in my opinion, they would have filed a CEQA claim more than a decade ago when demolition was occurring throughout the SSFL site.
- 7) It is my opinion that if the Plaintiffs were interested in the environmental and public health impacts from the site remediation they would want a full Scope Environmental Impact Report performed by DTSC and a full range of remediation options in the NEPA documents by NASA and the DOE.
- 8) It is my opinion that the Plaintiffs – CBG and PSR – LA, mislead the SSFL community residents, elected officials, and the media regarding the dangers of the past events at the SSFL site, and the current risks to the community from the SSFL site. It is also my opinion that the Plaintiffs attempt to recruit members to take action related to the future appointment of the next DTSC Director and on other issues based upon the use of old data and the manipulation of current data as was seen at the most recent SSFL Workgroup meeting.
- 9) It is my opinion that based upon current information that the community has about the cumulative impacts of the SSFL remediation project on our community, that the litigation filed by the Plaintiffs and the recommendations of the Plaintiffs to clean up the whole SSFL site to “Background or Detect” without a health risk assessment could be **harmful** to my community in terms of the amount of soil that will become airborne, the amount of soil that will enter the blue line streams which are subject to NPDES permitting, the exhaust from the remediation equipment, and the exhaust from the trucks used to remove the soil and debris. Our communities could be **harmed** by the large number of trucks that will enter our communities and drive through school and park crosswalks, past senior facilities and day care centers. The community will be **harmed** due to the excessive greenhouse gas emissions. The SSFL property is a wildlife corridor and these wildlife will be endangered (**harmed**) by the removal of much of the site vegetation. The whole Santa Susana site is Sacred lands

for several Native American groups, and the remediation proposed by the Plaintiffs could cause permanent damage that would forever **harm** the archaeological sites (known and unknown) without the CEQA and NEPA documents, the NASA Section 106 documents, and the NASA Record of Decision which must consider the impacts of the project on all aspects of the environment including the historical NASA structures.

10) The basis for this litigation was a white paper by CBG. The Plaintiffs had to bring in an expert witness to testify as to the accuracy of the statements of that white paper. This is what the expert Mr. Gundersen states: "I have reviewed the August 5, 2013, report entitled "Demolition of Radioactive Structures and the Disposal and Recycling of the Debris from the Santa Susana Field Laboratory Nuclear Area and the Role Played by the California Department of Toxic Substances Control and the Department of Public Health," prepared by Daniel Hirsch and Ethan Mizka (hereinafter, "the Report"). I have also reviewed a selection of source documents upon which the Report is based. I agree with the Report's findings and conclusions." Mr. Gundersen does not reference which source documents that he read. Therefore, how can the Court determine the validity of the contents of the white paper AND Mr.

Gundersen's testimony?

11) Finally, we must consider the amount of water that will be necessary to remediate this site to the level of the AOC. The water that is necessary for this remediation project could potentially **harm** other California residents because clean water that is necessary for household and agricultural uses will be diverted for this remediation project.

The Plaintiffs

The Plaintiffs in this case do not live in my community while they may represent some local residents. It is my opinion that the Plaintiffs have access to local and international data bases, and therefore, when the Plaintiffs solicit responses to public documents to the agency leaders and Responsible Parties, the agency leaders and Responsible Parties have no way to determine if the public comments are from local stakeholders, from people who may have once worked at the SSFL site, people who once lived in the local community, or people who never had a stake in the community and have only selective knowledge of the SSFL site. Therefore, in my opinion, the number of comments should not determine the cleanup, but rather the cumulative impact of the project and its risks to the local communities today should be used as the criteria for the final remediation plans.

The Plaintiffs in this project – their paid employees - are monetarily compensated no matter what the status of the project is. The employees of DTSC, CDPH, and Boeing are all paid despite the status of this case. And the attorneys for all parties are compensated well for their time. I am the only person that I am aware of in my community who is taking the time to read and understand the majority of the legal briefs and their potential impact on my community. I am not compensated in any manner for my time, nor am I reimbursed by anyone for my costs regarding this litigation or the project itself. Costs implies travel

expenses whether to Sacramento, meetings in Simi Valley, or other meetings in the Los Angeles area, meals, paper and ink for printing, etc.

The litigation of this project by the Plaintiffs, in my opinion, has delayed the Boeing demolition of structures in AREA IV of the Santa Susana Field Laboratory for more than one year. This delay in turn delays the characterization of the soil beneath those facilities / structures. DTSC as the lead agency needs the information regarding the levels of soil contamination under those structures in order to complete their Programmatic Environmental Impact Report (PEIR). When DTSC held their Scoping Meetings for their PEIR last December, I was under the impression that they would have their Draft Environmental Impact Report (DEIR) ready for community review in the fall of 2014. At a meeting that I attended in Simi Valley last week where a member of DTSC staff was present, I learned that the DEIR is now not expected until sometime early in 2015.

It is my opinion that the litigation by the Plaintiffs already has and will continue to delay the implementation of the remediation project so that the 2017 deadline for both the 2007 Consent Order between DTSC and all three Responsible Parties – The Boeing Company, NASA, and the Department of Energy is not achievable. The delays in the demolition of the Boeing structures will impact all three Responsible Parties because each party is under the 2007 Consent Order. All three Responsible Parties must wait for DTSC to complete their Final Environmental Impact Report before they begin their remediation projects. And NASA and the DOE are each under the 2010 Administrative Orders on Consent (AOC) which also have a 2017 deadline for the remediation of the soil.

It is my opinion that by only addressing the demolition of the structures in AREA IV, the Plaintiffs are Segmenting CEQA. It is my opinion that the Plaintiffs in this case with a long history on this project – Committee to Bridge the Gap (CBG), Physicians for Social Responsibility of Los Angeles (PSR – LA), and the Southern California Federation of Scientists (SCFS), should have been aware that The Boeing Company had plans to complete their demolition for all of their structures by the end of 2013. This was announced at technical meeting in the Boeing Shea Building late 2012, I believe, by the DTSC Project Manager, Mark Malinowski. If my memory is correct, that was at a technical meeting with the Federal EPA, DOE, DTSC, and Boeing staff, consultants, and community stakeholders present. CBG usually is in attendance or on the call at those technical meetings

If the Plaintiffs, in my opinion, were truly interested in what I consider to be the Spirit of CEQA as you stated in your ruling (see below), the Plaintiffs would not have filed a CEQA lawsuit to prevent demolition of the Boeing structures at this late date after hundreds of structures have been demolished. They should have emphasized the need for CEQA review two decades ago.

"CEQA is designed to provide long-term protection of the environment." It achieves this goal by requiring public agencies to inform themselves about and consider the environmental effects of projects they carry out or approve."

"CEQA does not compel a particular environmental outcome. Instead, its purpose is to require government agencies to make decisions with environmental consequences in mind."

"CEQA " is to assist public agencies in evaluating whether projects which they have discretion to approve or disapprove will have a significant adverse effect upon the adequacy of the government's environmental review."

"CEQA is thus designed to force the government to think about the environmental effects of its activities in a meaningful way, to mitigate those effects where feasible, and to give the public access to the decision-making process."

"CEQA also gives the public an opportunity to review and comment on the adequacy of the government's environmental review."

If the Plaintiffs, in my opinion, were concerned about the environmental and the public health impacts of this project, they would want to see a full scope review with multiple alternatives in DTSC's Environmental Impact Report and in the NASA and DOE Final Impact Statements. Instead, I see comments by CBG, PSR- LA, and the SCFS which insist that the DOE and NASA can only consider one level of cleanup in their FEIS – the cleanup to the "Background / Detection Limit" levels of the Administrative Order on Consent.

It is my opinion that the Plaintiffs in this litigation mislead the local community members who attend the SSFL Workgroup meetings and who read various stories related to the site, and listen to news broadcasts related to the SSFL site. It is my opinion that the Plaintiffs mislead the community and elected officials by:

- 1) Using old data at a recent SSFL Workgroup meeting to imply that the risks to the community are the same today as they were in the 1990's – early 2000's when this was still an active site;
- 2) The Plaintiffs continue to use the term "meltdown" and "partial meltdown" synonymously and to state that there is a risk to the local residents "every time the wind blows or every time it rains".
- 3) The Plaintiffs imply that there is still radiation at the SSFL site from a "meltdown", and that this radiation poses a risk to the community today.
- 4) The Plaintiffs imply that perchlorates found in Simi Valley's wells are from the SSFL site. DTSC has stated that they do not believe that the perchlorates in Simi Valley are sourced at the SSFL site.
- 5) The Plaintiffs imply that the residents are getting their water from these Simi wells; they did not inform the community members at the recent Workgroup meeting that the majority of Simi Valley drinking water is imported. They did not tell the community members at the recent Workgroup meeting that if Simi Valley drinking water is used from the local municipal wells, that the water is blended to EPA or California drinking level standards.
- 6) In the past, CBG has gone to the community of Kettleman, and they have implied that the birth defects and early deaths in youth were attributed to the contamination that

was sent to the Kettleman Hills landfill. CAL EPA and the federal EPA worked together on an extensive report on this community to determine the possible causes of these health problems. The landfill was found not to be the source of these health issues.

- 7) At the recent Workgroup meeting, CBG implied that there were alternative routes or rail systems that could be employed to move soil from the SSFL site in addition to the Woolsey Canyon route. It is my opinion that NASA has ruled out any additional routes in their FEIS. Other routes would require eminent domain, and to the best of my understanding, those new projects would not only require funding, but they would require their own CEQA and possibly NEPA reviews which could add at least another five years to the cleanup process if the Responsible Parties wanted to use those new routes.

CBG was a party in the litigation starting in 2004: NRDC, CBG, and the City of Los Angeles v the Department of Energy in which Judge Samuel Conti ruled that the DOE must complete a full site EIS for all of AREA IV. That EIS process began with community meetings in 2008. The DOE just began a second Scoping for their EIS this past February (as a result of SB 990 and the 2010 AOC), and it is unlikely that their FEIS will be completed before some time in 2015.

CBG was, to the best of my understanding, one of the authors of SB 990. It is my understanding that this is why this legislation mentions a “partial meltdown” at the Santa Susana site.

CBG, PSR – LA, and the SCFS were Amici’s in the litigation of The Boeing Company v DTSC regarding SB 990 which was found to be unconstitutional in a federal court. It is on appeal by the State, and the parties have been waiting for a ruling on this issue for three years.

It is my understanding that the Plaintiffs may have been involved with elected officials in trying to codify the Administrative Orders on Consent by sneaking them into the California State Budget as a Budget Trailer.

Based upon the recent NASA Final Environmental Impact Statement, an estimated 316 trucks per day would have to leave the Santa Susana site to achieve the 2017 deadline. Another 316 trucks would be going back to the SSFL site empty. This number does not include trucks carrying back fill soil. The Responsible Parties have stated that there is no back fill soil that meets the screening criteria of the AOCs.

These trucks all must go down one steep two lane highway and they will enter the community of West Hills shortly thereafter. From West Hills they enter Canoga Park. Along this route on Topanga Canyon Blvd, numerous census tracts meet Environmental Justice community criteria; they are either high minority, low income, or both. The landfill areas that this soil will go to will also be Environmental Justice communities as are parts of Canoga Park and Chatsworth.

The Federal EPA in their comments on the NASA DEIS and FEIS was concerned about the soil volumes that NASA had estimated, and its potential impact on the Kettleman landfill. It is my interpretation that the EPA supported cleaning up to Background of the radionuclides, but stated that both the EPA and DTSC normally clean up chemicals based upon risk.

Building demolition has gone on at Santa Susana for decades. I believe that the attorney for CDPH, Mr. Reusch, responded that the reactors had been removed years ago, and therefore it was too late to declare a CEQA violation for the removal of the reactor structures. In fact, it is my understanding that in the roughly 67 year history of the SSFL site, that there had been as many as 270 structures over the years just in AREA IV. It is my understanding that there are now less than 25 structures in AREA IV.

The structures containing nuclear reactors were reviewed by the California Department of Health Radiological Health Branch (DPH RHB), and usually there was some other confirmation by another body to confirm that review before their licenses were terminated.

If the Plaintiffs were concerned about CEQA, why did they not, to the best of my knowledge, bring the demolition of all of the Boeing test stands such as “The Bowl”, and their potential environmental impact to one of the DTSC meetings? This demolition of major structures occurred in 2008. If the Plaintiffs were concerned that CEQA was not being complied with, why did they not file for an injunction at that time?

There are no nuclear reactors remaining at the SSFL site.

The White Paper

The basis of this litigation is a white paper by Daniel Hirsch and Ethan Miska of Committee to Bridge the Gap. ***“DEMOLITION OF RADIOACTIVE STRUCTURES AND THE DISPOSAL AND RECYCLING OF THE DEBRIS FROM THE SANTA SUSANA FIELD LABORATORY NUCLEAR AREA AND THE ROLE PLAYED BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH”***

by

Daniel Hirsch

Ethan Miska

COMMITTEE TO BRIDGE THE GAP”

In this document, Mr. Hirsch sites himself as the source of the information on the cover up of what he calls a “partial meltdown” at the Sodium Reactor Experiment (SRE).

First of all, Atomics International who was the operator of that reactor in 1959 did not cover up this incident. It was referenced in two San Fernando Valley newspapers in the next two months. I had interviewed a former employee who stated that the media had come to the SSFL site after the event.

In the summer of 2009, when the media was calling the event at the SRE the 50th Anniversary of the meltdown, I was interviewing more than twenty Atomics International employees including the Senior Engineer in charge of the reactor, Jim Owens. I also interviewed the Ad Hoc Chair for the Sodium Reactor Experiment, Dr. Joe Lundholm. I had been emailing a number of these former employees, and one day Dr. Lundholm called me and asked if I knew who he was. He pointed out that the SRE Fuel Damage Preliminary Report had a distribution of 700 copies.

The document states: "DISTRIBUTION: This report has been distributed according to the category Reactors - Power" as given in "Standard Distribution Lists for Unclassified Scientific and Technical Reports" TID-4500 (15th Ed.), August 1, 1959. Additional special distribution has been made. A total of 700 copies was printed."

It is my understanding that when the reactor was shut down in July 1959, the reactor had to cool down before the stainless steel plug could be opened. Many radionuclides had short half-lives, and by waiting a few weeks, these half-lives would have been reduced.

I believe that you should understand the scale of the SRE. This reactor at full power would have been running at 20 MW thermal, 6 MW of energy. However, because this was a prototype reactor, there had been a series of problems with the seals and the coolant that caused the reactor to overheat in July 1959. In the final two weeks of 1959, the reactor was running between 0.5 – 3 MW of energy. To give you an idea of the scale of that energy, a modern commercial windmill runs at 2 – 3 MW energy.

Dr. Thomas Cochran of the NRDC during an Expert Panel on the SRE in August 2009 stated that the SRE could not be compared to the incident at Three Mile Island which the Plaintiffs have done. ". "Its power was 128 times larger than that of the SRE."

The SRE by design was a sodium cooled reactor. The use of sodium as a coolant prevented the SRE from having the hydrogen related problems of commercial nuclear reactors such as the Fukushima reactors. There was no explosion; no breach of the various containment structures at the SRE. The reactor itself was below grade with numerous barriers.

From Dr. Cochran's statement: "When all is said and done the controversy over potential off site exposures boils down to differences in expert opinions regarding two potential scenarios. All parties agree that there was not sufficient noble gas radioactivity alone to cause significant public harm. Therefore the analysis turns on what experts believe happened to selected volatile fission products, primarily, iodine-131. One set of experts believes, on the basis of phenomenological chemistry considerations, that relatively little iodine would have escaped from the uranium fuel. You will hear these arguments from Dr. Pickard and Professor Denning. Another set of experts believes it is possible that significant amounts of noble gases and iodine could have been released from the fuel, bubbled up through the sodium to the helium cover gas and subsequently released. During the course of the accident these experts believe the cover gas containing the noble gases and volatile fission products was pumped into the radioactive decay holding tanks and then these tanks were purged through the stack. There is not hard reliable data associated with the SRE reactor accident itself to favor one scenario over the other."

Iodine 131 has a half live of 8 days. Therefore, if any iodine was released during this event in 1959, only the local residents that were exposed to that release in 1959 would have been impacted.

I have reviewed probably more than twenty of the technical documents on the SRE including the documents by the SRE Expert Panel who had access to more than 80 documents, I believe, related to that event.

CDPH has stated in its Answer to the Respondent dated October 8, 2013, in its Statement of Facts:

“Answering paragraph 35 of the Petition, the Respondent DENIES that the Santa Susana Field Laboratory is a former “nuclear meltdown” site.”

“Answering paragraph 37 of the Petition, Respondent DENIES that the Sodium Reactor Experimental Unit suffered a partial nuclear meltdown.”

It is my understanding that after a \$40 million radiological survey of AREA IV and the Northern Buffer Zone performed by the EPA, that there were less than 20 exceedences of the previous dose based cleanup levels of thousands of samples taken. Most of those exceedences above local background are near the Radioactive Materials Handling Facility which has not been removed.

Twice since I have been involved with this project, the DOE has come in with funds to demolish their structures in AREA IV. I was new to this project when this occurred in around 2007 when the DOE expected to have all of their structures down by 2009. The DOE again came in which Stimulus money – and this was a shovel ready project. But based upon misinformation in the community, those structures remain today. Many SSFL stakeholders believed that Judge Conti in the litigation of NRDC, CBG, and the City of Los Angeles had ruled that the structures could not be removed until the DOE completed their EIS. However, there is nothing in that ruling that states anything relative to the removal of structures. If these structures are the most radioactive components / areas remaining on the SSFL site today, why was DOE blocked from the removal of these structures? If these structures were removed, it is my opinion that the majority of the radioactive waste above local Background would be gone.

It is my opinion that DTSC and CDPH in their roles only review the structures for contamination at the SSFL site to make sure that the appropriate mitigation efforts are taken to prevent airborne contaminants and to prevent further contamination of the SSFL site in areas that have been previously been characterized.

As a former West Hills Neighborhood Council Board member (Neighborhood Council members are considered elected officials in the City of Los Angeles who are advisory bodies to the City Government), I have worked on City Planning projects and I have weighed in on their CEQA reviews. I have never seen a CEQA review required for the demolition project in Los Angeles. I have only seen a CEQA review for demolition when a project would have impacted a historical site. For any other project, it is my understanding that the land owner has the discretion to demolish their structures when permitted by the City without CEQA review. Neighborhood Councils are under an Early Warning System, and a City Planning project would go to the

Neighborhood Council for review and recommendation before going on to the Planning Commissions or to the City Council Planning and Land Use Committee.

Landfills:

One of the SSFL stakeholders is a member of the Los Angeles County Task Force on Integrated Waste Management. She has checked on the landfills mentioned in the original litigation, and in her statements to me, she is of the opinion that these landfills have radiation detectors that would prevent radioactive waste from entering these landfills.

Off Site Risk:

At a recent Open House by DTSC, Dr. Thomas Mack, the former Chair of Cancer Surveillance for Los Angeles County, did a presentation on cancer incidence surrounding the SSFL site. These are his conclusions:

“Conclusion

- 1. It is not possible to completely rule out any offsite carcinogenic effects from SSFL**
- 2. No evidence of measureable offsite cancer causation occurring as a result of emissions from the SSFL was found.**
- 3. Further, no evidence of any cancer causation by any environmental factor was found.”**

Department of Justice Attorney James Potter stated, to the best of my memory, that the ***harm*** to the community of ordering an injunction would be the implication that the buildings on the site were more of a danger than they really are.

I believe that Mr. Potter also stated that ***harm*** to the community would be caused if the community (based upon your ruling) was made to believe that the waste that was being sent to the landfills was more dangerous in terms of radioactivity than stated by DTSC and CDPH

An injunction that states that DTSC failed to include building demolition as a part of their Programmatic Environmental Impact Report (PEIR) could cause ***harm*** by causing a “Force Majeure” as mentioned in the 2007 Consent Order which was signed by DTSC, Boeing, NASA, and the DOE. All three Responsible Parties could be ***harmed*** if DTSC is not allowed to approve any building demolition / if the building demolition throughout the site is blocked prior to the completion of the PEIR.

Potential ***harm*** could be caused to the Responsible Parties if funds that they have requested under Congressional or other annual budgets are not used in the allocated years. Both NASA and the DOE have had reduced funding in recent years from Congress.

In conclusion, I respectfully request that the Court rule as soon as possible that the Boeing demolition in AREA IV can proceed to prevent further slippage of the DTSC time table. I respectfully request that the Court rule that all parties may proceed with demolition

throughout the site to allow the DTSC to complete the characterization of the SSFL site in order to inform its Final Environmental Impact Report.

I respectfully request that the Court ask for clarification from the parties in its next document related to offsite risk and whether there is any radiation throughout the SSFL complex that would imply widespread radiological contamination from a “nuclear meltdown”.

I respectfully request that the Court ask that the terms meltdown and partial meltdown be defined by CDPH and DTSC, and I respectfully request that the Court require these agencies to clarify these terms and the risk from radiation at the SSFL site to the surrounding communities as soon as possible.

Respectfully submitted,

Christine L. Rowe
6732 Faust Avenue
West Hills, California 91307
(818)-481-1220

Biographical information

Christine L. Rowe

1. B.S. in Health Education, California State University, Northridge
Coursework included biology, chemistry, biostatistics, epidemiology, and environmental geology
2. One graduate level class in Environmental Health
3. Archaeological Site Stewardship Program Training through the State Parks system
4. Involved as a Santa Susana Field Laboratory stakeholder – West Hills resident of 36 years. I live within the prevailing winds area of the SSFL site; roughly five miles from the site.
5. In my 7 ½ years of involvement with the SSFL site, I have been to the site probably 40 or more times with the agency leaders and responsible parties. I have read and commented on hundreds of technical documents. I have attended hundreds of meetings relative to the SSFL site – in some years several meetings per month.
6. I have been a DTSC technical stakeholder, a DOE technical stakeholder, a NASA technical stakeholder, an EPA technical stakeholder, I am a DOE Soil Treatability Investigation Study (STIG) member, and I am a NASA SSFL Section 106 Consulting Party. I was a member of DTSC's Public Participation Group.
7. I was a member of the West Hills Neighborhood Council's Dayton Canyon Committee which addressed the impact of the SSFL site to this part of West Hills.
8. In September 2008, I was appointed to fill a vacancy of the West Hills Neighborhood Council. Neighborhood Councils in the City of Los Angeles (West Hills is a community within the City of Los Angeles) are advisory bodies. Members are volunteers; there is no remuneration for this normally elected position. I was also elected to this advisory body in March 2010. I resigned after four years on this Board (in October 2012) at the advice of my physician. (I am cancer survivor, and I am being monitored for its reoccurrence).
9. In my capacity as a Board member of the West Hills Neighborhood Council (WHNC) The Dayton Canyon Committee was renamed the Santa Susana Mountain Area Committee; I was elected as Vice Chair of that committee. This committee was later named the WHNC Environment Committee. At the time of my retirement, I was the Chair of the Environment Committee. This committee addressed Santa Susana Field Laboratory related issues and brought them to the full WHNC Board for discussion and action when I was Chair as it continues to do today.
10. I was also the Public Health Committee Chair of the WHNC. Our focus was on Public Health, and one issue was the potential impact of the Santa Susana site on the community of West Hills.
11. I continue to be involved with several local Neighborhood Councils and their committees which address issues of public health, public safety, and the impact of the Santa Susana site remediation on our community.

Judge Richard K. Sueyoshi
Gordon D. Schaber Sacramento County Courthouse
Department 28
720 9th Street
Sacramento, CA 95814

April 30, 2018

RE: CASE NUMBER 2013-80001589
Physicians for Social Responsibility-Los Angeles v. Department of Toxic Substances Control

Dear Honorable Judge Sueyoshi,

I am writing to you as a 40 year resident of West Hills, California, which is a community within the City of Los Angeles. I believe that most of West Hills lies within five miles of the periphery of the Santa Susana Field Lab (SSFL) site.

I have been involved with the SSFL for about 11 ½ years. I have been a Technical stakeholder for DTSC, the WaterBoard, the EPA, Boeing, NASA, and the DOE. I have been a DOE and NASA Section 106 Consulting Party. It is important for you to understand this because technical stakeholders are referenced in the EPA Fact Sheet that I am submitting. It also references the Public Participation Group (PPG) of which I was also a member. I was appointed to the PPG by the President of the West Hills Neighborhood Council (WHNC). I was a member of the WHNC (2008 – 2012) which is an advisory body to the City of Los Angeles under the City Charter. Unfortunately, I had to resign from that body after a cancer diagnosis in 2011. One of my physicians told me that I had to make choices, and I chose to continue my involvement with the Santa Susana Field Lab cleanup due to my B.S. in Health Education. This is where I felt that I could best help my community.

I would like to make it clear to you that I have not had access to the last roughly 100 filings in this case because the cost for me to get these documents would exceed \$1000.00. I do not have a non-profit, so these costs are not affordable to me.

I am asking you to make very specific rulings in this case which I recognize is a CEQA case and it also has to do with whether DTSC allowed radioactive waste to be transported to landfills that were unable to by law to accept this waste.

In your ruling, will you please:

- 1) Ask DTSC why they had released a fact sheet in October 2014 called: "Was There a Meltdown at SSFL"? (please see this document attached) This question has been asked by numerous stakeholders and members of our local Neighborhood Council systems. This fact sheet was released on the Friday before an SSFL Town Hall sponsored by the Woodland Hills Warner Center Neighborhood Council and the Canoga Park Neighborhood Council. I facilitated bringing DTSC, the WaterBoard staff, and employees of Boeing, NASA, and the DOE to do a panel presentation at this event. It was my expectation that the question of a "meltdown" at the site would have been addressed by DTSC staff at that event for the more than 200 – 300 stakeholders present at that night, and they didn't address that issue at all. In fact, DTSC pulled the fact sheet from their website the Monday after its release, and to this date – as of the DTSC Open House earlier this month, they still will not explain why they took the fact sheet down and why they will not repost it to their site.

- 2) Could you please ask DTSC to repost the fact sheet referred to above and to create more fact sheets related to offsite risk from the SSFL site where they have sampled recently, and they should inform the public of whether or not they have found any contaminants that would pose an offsite risk to the community.
- 3) At a recent DTSC Open House, a member of DTSC Staff stated that “we are not a public health agency.” DTSC did attempt to bring in the Agency for Toxic Substances and Disease Registry (ATSDR) a number of years ago due to petitions by me and another local stakeholder. However, the “machine” of the Rocketdyne Cleanup Coalition managed to have elected officials block ATSDR from reviewing offsite risks. What we are left with then is elected officials being informed by old information, or “cherry picked” data by non-scientists that has been presented on numerous occasions by Channel 4 News Los Angeles and in other media. Could you recommend that DTSC work with CDPH or other agencies to create fact sheets related to whether the site in its shut down mode is posing a health risk offsite? Could DTSC put out a fact sheet about the potential risks from remediating more than 2.5 million cubic yards of soil which is what they stated in their DTSC Draft Programmatic Environmental Impact Report (PEIR) is being recommended?
- 4) Can you please clarify with DTSC and CDPH as to whether most of the contamination in AREA IV of the SSFL site is near the Sodium Reactor Experiment as stated in the ruling by the 9th Circuit Court of Appeals? The Plaintiffs in this case had Amicus status on the Boeing V DTSC case regarding the constitutionality of SB 990. In that ruling, the Court states:

In 1959, one of the reactors experienced a partial meltdown that released radioactive gases into the atmosphere for three weeks. This partial meltdown accounts for about 90% of the radioactive contamination. Much of the rest came from other nuclear reactor accidents, an open burn pit for sodium-coated materials, and numerous fires and accidents at the “Hot Lab.” The “Hot Lab” was used for cutting up spent

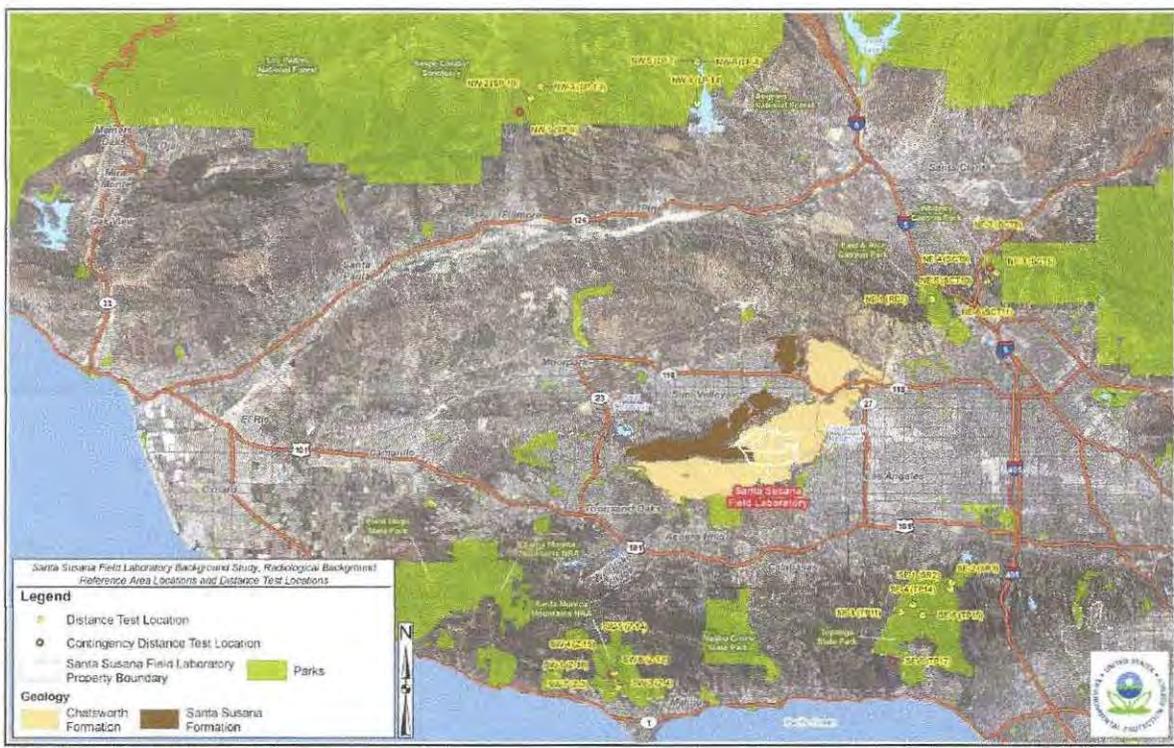
This is a screen shot from the ruling from the 9th Circuit Court of Appeals on this case to be included as an attachment at the end.

- 5) Can you please request that DTSC and CDPH, and any other applicable agencies work with the California Cancer Registry and other Public Health agencies to put out fact sheets related to offsite risk now, and whether there is a risk to my community of West Hills or the other communities which surround the SSFL site, from the proposed remediation? And will the remediation under DTSC’s Draft Programmatic Environmental Impact Report cause more “Pollution Burden” to the offsite communities and pose a greater risk than leaving some of the soil in place?
- 6) Could you please ask DTSC to hold a meeting and to disseminate fact sheets that explain that DTSC has been tied up with the litigation of Boeing V DTSC for the SB 990 lawsuit from the filing by Boeing in November 2009 to the ruling by the 9th Circuit in September 2014?

- 7) Could you please ask DTSC to advise the community that they have been tied up in Public Records requests due to this litigation and the movement within the court system to five judges at this time. I don't believe that the community realizes that Boeing is prevented from doing any further demolition while this case is ongoing. Most stakeholders are unaware that this case began in August 2013, and hopefully there will be a resolution of this case this week.

- 8) The Federal EPA in its "Background Study" chose locations to determine "Background" for cleanup purposes that they considered to be unimpacted by the SSFL site. If these sites at distances of five miles or less were considered "unimpacted" by the site, and they also tested at "Distance Test Locations" to confirm that the numbers at these locations were consistent with those at ten to twenty miles from the SSFL site – why should radiation or chemicals from the SSFL site cause cancers beyond that five mile radius or to anyone within it? Precisely to what are people being exposed? How (through what pathways) are these people being exposed?

Distance Test Locations



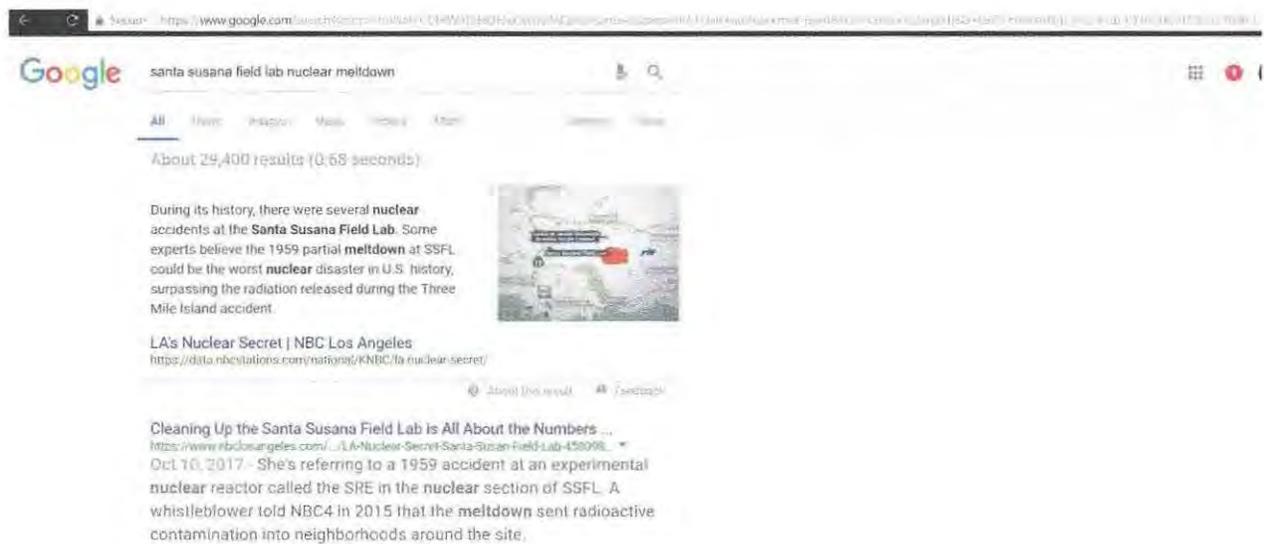
Map Source EPA Background Study Power Point Update for SSFL December 9, 2010

We are being terrorized by Committee to Bridge the Gap, PSR – LA, Consumer Watchdog, and other members of the Rocketdyne Cleanup Coalition, and the media – particularly NBC News Los Angeles. The information provided by these sources is often incomplete, "cherry picked", uses "dated" aka: old sources, is misleading, and scientifically questionable. The information on these news programs makes people – including myself – afraid to move any closer the SSFL site. Some people when they learn about

the proximity to the SSFL site chose not to move to West Hills or to surrounding communities. I have spoken to DTSC Public Participation people in the past who have told me as many as 20 families were planning to move away from the area due to the stories in the media and from presentation by local activists.

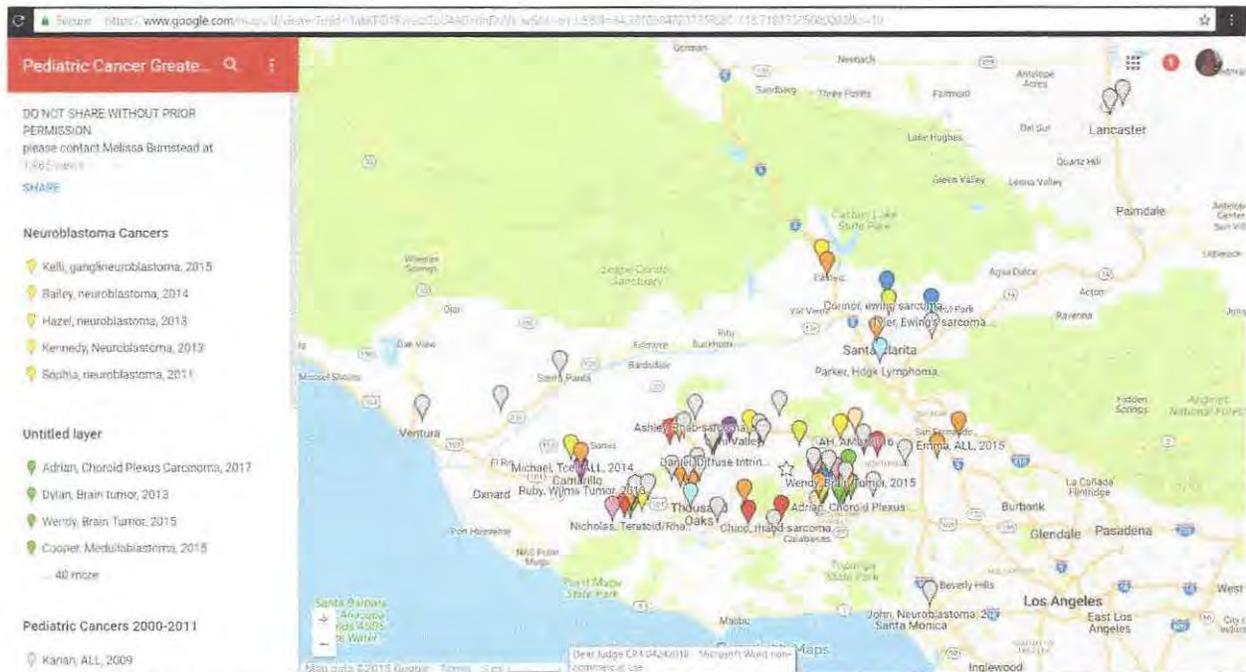
Can you imagine what it is like for people who have lived in the area surrounding the Santa Susana Field Lab (SSFL) – some for more than sixty years – and for them to hear that there was a “meltdown” or a “partial meltdown” there in 1959? Can you imagine what it is like to hear that this incident was “250 – 400 times worse than Three Mile Island” or that it is “the worse nuclear disaster in the history of the United States”? This is what a GOOGLE search relative to the SSFL site produces.

Please see the screen shot taken below when a GOOGLE search for Santa Susana Field Lab nuclear meltdown is performed.



Then there are the people with cancer – or some people whose children have cancers. How would you feel if you were lead to believe that a “meltdown” or plutonium at the Santa Susana Field Lab caused your or your child’s cancer?

One of the local residents who lives – according to her public statements – at Sherman Way and Fallbrook in West Hills – has created a map for children she has met with cancers – most of whom are treated at Children’s Hospital Los Angeles. This is her map.



Markers indicate children with cancers from Oxnard to Lancaster – some children who may be as far as 50 miles? from the SSFL site.

This is the kind of information that PSR – LA and Committee to Bridge the Gap are propagating in the media. NBC News Los Angeles has referenced its source as Dan Hirsch of Committee to Bridge the Gap. It is unclear at PSR – LA if any physicians or anyone with a degree in Health Education or a Master’s Degree in Public Health or above are reviewing the historic health studies and the technical files related to the 1959 incident or if they even have the qualifications to do so.

Epidemiological studies carried out by various scientists have not conclusively been able to establish causality between offsite incidences of cancer and other illnesses and the SSFL. The parties that do claim that such cancers have occurred at high rates, use outdated and disputed epidemiological and other types of reports and anecdotal reporting by stakeholders which has no scientific value. It is difficult to impossible to establish such a causal relationship when so many factors are involved in cancer causation.

The parties in this case reject the studies by Dr. Thomas Mack. I have requested several studies by Dr. Mack in my previous capacity as the Public Health Chair of the West Hills Neighborhood Council. I am attaching the most recent information relative to these children’s cancers that Dr. Mack presented to the physicians at Children’s Hospital Los Angeles at their request. Dr. Mack is the former Chair of Cancer Surveillance for Los Angeles County, and he gets funding for his work with the Cancer Registry from the CDC as a part of his USC salary. Dr. Mack is also the Chair of the State of California’s Proposition 65 Committee which defines a carcinogen for the State of California.

From Dr. Mack's letter addressed to me which will be attached:

"For these reasons I was requested by the State agencies to analyze the adult cancer occurrence by neighborhood (census tract), calendar period, gender and anatomic site. I examined 13 kinds of cancer in each gender in 130 different census tract-periods from 1988 to 2009 and found no evidence of a relationship between "offsite" residence and cancer incidence.

None of these studies considered childhood cases. I was recently asked by the State, by CHLA, and by some groups of local residents (understandably, residents are not in perfect agreement about the best course of action) to re-examine offsite risk, this time with attention to childhood (0-14) cancer and leukemia in particular. My colleagues and I have done so, again looking at each census tract within an area slightly greater than 5 miles from SSFL. At that farthest distance, carcinogens from on site would be unlikely to be present in doses that could produce extra cases, much less clustered cases. We looked at four periods, including the more recent one of 2010-2015".

Furthermore, these non-profits rely on an offsite assessment that was done by UCLA – Dr. Yoram Cohen and Dr. Adrienne Katner – that was reviewed by The Boeing Company. It was unclear to me when I saw a presentation by computer with Dr. Katner at an "SSFL Workgroup Meeting" a couple of years ago if she was aware of the Boeing responses to Dr. Cohen. I believe when I asked Dr. Cohen if he had ever responded to Boeing's comments, he responded by email and said something to the effect of: "Talk to ATSDR".

Dr. Katner, on the other hand, during questions on her presentation, stated that she had no knowledge of the current site conditions. In other words, to me, this presentation on "offsite risk" (by the "SSFL Workgroup" lead by Committee to Bridge the Gap and PSR – LA) was based on old data, and did not reflect the remediation that had occurred over the past decade or more at the Santa Susana Field Lab site based upon orders from DTSC and the WaterBoard. This is the link to her presentation given by computer to the "SSFL Workgroup" which is really the Rocketdyne Cleanup Coalition in my opinion. The "SSFL Workgroup" was a technical group that included the Responsible Parties, and the lead agency, DTSC, the WaterBoard, the EPA, and at times, CDPH and other agencies. But it was dissolved in that form, and now does not include participation or oversight by those agencies or Responsible Parties.
<http://www.ssflworkgroup.org/files/Potential%20for%20Offsite%20Exposures%20presentation%206-18-14.pdf>

Limitations

- Conservative assumptions used to estimate some contaminant concentrations and exposures
 - Report characterizes *potential* exposures
 - No conclusions made with regards to *real risks*
 - Results most useful for *prioritizing* future monitoring and remediation efforts
- Report based on data collected *up to 2003*
 - Report characterizes potential exposures *up to 2003*
 - No knowledge of current status of site

From: "Potential for Offsite Exposures Associated with Contaminants from Santa Susana Field "Laboratory": Adrienne Katner, D.Env., M.S. Assistant Professor Louisiana State University Health Sciences Center School of Public Health, June 18, 2014, SSFL Workgroup Meeting, Simi Valley, CA

EPA FACT SHEET FOR AREA IV OF THE SANTA SUSANA FIELD LAB – MAY 2012

I am including the complete May 2012 EPA FACT sheet because it does reference what radionuclides were found on the SSFL site. I walked all of AREA IV with the EPA or their contractors – I believe almost every month for almost two years as one of their technical stakeholders. Some of these meetings were held in conjunction with the DOE and DTSC who were doing chemical sampling at the same time. On other occasions I walked with DOE and DTSC staff, and other contractors around AREA IV during this same 2010 – 2012 time period to look for what had been in areas historically, what had already been remediated, and where there were "data gaps".

In fact, when I walked AREA IV with a member of the EPA Radiological Team, she recommended to us that the slab from one of the former reactor buildings as well as a shielding wall that was standing in a field be removed while the EPA was there so that they could sample that area below the slab and shielding wall better. At that time, I did not know that Boeing owned any of the structures in AREA IV.

EPA Radiation Investigation Update

The U.S. Environmental Protection Agency (EPA) has made significant progress in its investigation of radiological contamination at Area IV and the Northern Buffer Zone (NBZ) of the Santa Susana Field Laboratory (SSFL) Site, which borders Ventura and Los Angeles Counties.

The State of California Department of Toxic Substances Control (DTSC) has exclusive responsibility for overseeing cleanup for the entire SSFL Site. DTSC will make all cleanup decisions and will oversee the work that will be conducted by the parties responsible for the contamination. Cleanup agreements are in place with US Department of Energy (DOE), NASA and the Boeing Company (Boeing) for DTSC to manage the site work to its projected completion in 2017.

SSFL Open House

May 17, 2012
6:30pm to 8:30pm

Grande Vista Hotel
999 Enchanted Way
Simi Valley, CA

Summary

EPA fieldwork will be completed by the end of Summer 2012 with the final reports due in December. The on-going sampling results are provided to DTSC to inform its future cleanup decisions. To date, EPA has collected more than 2,500 soil samples and 233 groundwater, surface water and sediment samples. Each sample was analyzed for 56 radioactive contaminants. It is worth noting that of the more than 1,600 analyzed soil samples that were taken during Round One, less than one percent of radioactive contaminants analyzed exceeded screening tools, called the Radioactive Trigger Levels (RTLs), used to indicate areas of contamination.

So far, EPA has not found any unexpected radioactive contamination. Radiological contamination has primarily been limited to locations in the vicinity of the Sodium Reactor Experiment (SRE), the Radioactive Material Handling Facility (RMHF), and a few other locations, all onsite.

Site access is restricted and therefore, the public is not exposed to this contamination.

EPA's Radiological Investigation Update

EPA is nearing completion of its fieldwork. We divided Area IV into ten subareas based on the historic operations conducted at each location (see map). When completed, the work plans and reports for each of the individual investigations mentioned below can be accessed on EPA's SSFL webpage, at the Information Repositories, or EPA's Superfund Records Center (see Public Participation section about how to access each resource).

We used multiple lines of evidence (data) to pinpoint radiological contamination in Area IV and the NBZ.

Field investigations completed:

Background Study – In order to determine the differences between ambient radiation levels and site contamination, we collected 149 soil samples from a geologically similar, but undisturbed open space area miles from SSFL.

This EPA FACT SHEET from May 2012 states that: "Site access is restricted and therefore, the public is not exposed to this contamination."

This fact sheet will be included at the end of this document.

Since this is a CEQA lawsuit, can you rule as to whether you believe that DTSC can force The Boeing Company, NASA, and the DOE to clean up the site to levels higher than would be required than if this was an EPA Superfund site where the end use is planned to be open space / parkland?

unreasonable to foresee subsistence farming at the site. The record does not show why this standard was adopted, or whether subsistence farming of this sort was contemplated for the Los Angeles suburbs. The subsistence farming standard is more stringent than the suburban residential standard required by the agreed-upon order governing the cleanup of non-radioactive chemicals. DOE's cleanup procedures specifically rejected the state law's standard as "not a reasonable scenario for the site." Boeing has made a public commitment to dedicate the site for public use as open space parkland, not subsistence farming. But reasonable foreseeability of subsistence farming is not the controlling issue in this case. The relevant tension in this case is the state's authority to impose its subsistence farming standard as against the less stringent federal industrial, recreational, and residential standard.

Screen shot from Boeing v DTSC aka: Boeing V Raphael ruling by the 9th Circuit Court of Appeals.

Here the court has made it clear that Boeing has made a commitment to use the property as open space or parkland.

Yet, in the DTSC Draft Programmatic Environmental Impact Report for the SSFL, DTSC only considers two real scenarios: The No Further Action baseline, and the Revised AOC Alternative. In this Revised AOC Alternative, they are asking Boeing to cleanup to a Residential Standard with a Backyard Garden Scenario.

From my perspective, and the perspective of many Neighborhood Councilmembers, as well as some environmental groups, we are concerned that cleaning up to this proposed level will cause greater harm to our communities from the diesel emissions, the particulate matter, potential Valley Fever spores, and the impact that erosion among other things that the removal of more than 2.5 million cubic yards of soil will or could cause. Neighborhood Councils and many local stakeholders requested a "risk based cleanup". But DTSC failed to even show us what that alternative would look like in their Draft PEIR.

6.2.7 Area I and III Cleanup to Background

An alternative to cleanup to background levels in Areas I and III was considered but eliminated from further analysis. This alternative has the potential to increase impacts associated with an increase in the quantity of soil to be excavated and removed from the project site, which would significantly increase truck trips. An increase in truck trips would increase significant and unavoidable impacts related to air pollutant emissions, GHG emissions, traffic, and traffic noise. In addition, an increase in the quantity of excavated soil has the potential to increase impacts to cultural and biological resources, which also results in conflict with the Ventura County General Plan goals and policies regarding preservation of natural resources. However, this alternative was eliminated from further analysis because it is inconsistent with the soil cleanup requirements included in the 2007 Consent Order as described in Section 3.3, *Regulatory Orders and Cleanup Requirements*, of this PEIR.

6.2.8 Risk-Based Cleanup Standard

Risk-based cleanup alternatives for the NASA and DOE portions of the site were considered but rejected from further analysis, as this alternative would not meet the cleanup standards of the 2010 AOCs. Risk-based cleanup levels are determined following methods outlined in DTSC-approved SRAM Work Plan Addendum Revision 2 (summarized in Section 2.2.3.2, *Standardized Risk Assessment Methodology*, of this PEIR). This alternative would clean up the project site to either a "Suburban Resident – Excluding Consumption of Garden Produce" exposure scenario or "Recreator" exposure scenario (see Appendix B) and has the potential to substantially reduce the quantity of soil to be excavated and removed from the project site, which would significantly reduce truck trips. A significant reduction in truck trips would reduce significant and unavoidable impacts related to air pollutant emissions, GHG emissions, traffic, and noise. In addition, a reduction in the quantity of excavated soil has the potential to reduce impacts to cultural and biological resources as well as conflicts with the Ventura County General Plan. However, this alternative was eliminated from further analysis because it is inconsistent with the soil cleanup requirements of the 2010 AOCs described in Section 3.3, *Regulatory Orders and Cleanup Requirements*, of this PEIR.

Risk based cleanup alternatives were rejected from further analysis. This is my community – why do groups like Committee to Bridge the Gap and PSR – LA get to "inflict" what they think is the best cleanup – SB 990, the AOCs, and a Residential Standard with a Backyard Garden scenario when they are not the ones who will be impacted by the airborne contaminants, the surface water, or truck traffic through their communities? And what about the end destinations – is it fair to these mainly Environmental Justice Communities for us to send our toxic waste to them if it is not posing a public health risk to us?

Bookmarks

- Transportation Feasibility Analysis
 - Table of Contents
 - Acronyms and Abbreviations
 - Executive Summary
 - 1.0 Introduction
 - 2.0 Potential Transport Routes Feasibility Analysis
 - 3.0 Environmental Analysis
 - 4.0 Comparison of Feasible Transportation Options
 - 5.0 Summary
 - 6.0 Preparers
 - 7.0 References
- APPENDIX A: Real Estate Data
- APPENDIX B: Cost Estimate Details
- APPENDIX C: Air Quality and GHG Calculations

As shown in Table 1-2, it is assumed that contaminated soil would be excavated at a rate ranging between 413 CY per day and 1,027 CY per day and that clean backfill would be delivered to the site at a rate ranging between 245 CY per day and 444 CY per day. These volumes correlate to the daily truck volumes shown in Table 1-2.

**TABLE 1-1
SSFL CLEANUP PROJECT SOIL VOLUMES**

| Soil Type ^a | NASA (CY) | DOE (CY) | Boeing (CY) | Total (CY) |
|--------------------------------|----------------------|----------------------|----------------------|------------------|
| Radiologic | 26,000 | 81,000 | 17,000 | 134,000 |
| Hazardous | 696,000 | 49,000 | 63,000 | 808,000 |
| Non-hazardous | 148,000 | 1,123,000 | 310,000 | 1,581,000 |
| Total Contaminated Soil | 870,000 | 1,263,000 | 390,000 | 2,523,000 |
| Backfill | 290,000 ^b | 947,000 ^c | 129,000 ^b | 1,366,000 |
| Disposal + Backfill | 1,160,000 | 2,210,000 | 519,000 | 3,889,000 |

Notes:
 All number rounded to nearest 1,000.
 a. Soil waste type ratios are based on historical interim source removal actions and correspondence between each RP and DTSC (NASA, 2015c), (Boeing 2015a), (DOE, 2017).
 b. Boeing and NASA estimate backfill volume to be approximately 1/3 of the total excavation volume.
 c. DOE estimates backfill volume to be approximately 3/4 of the total excavation volume. The additional backfill percentage compared to Boeing and NASA's areas is to account for deeper excavations required in DOE's areas of responsibility.

**TABLE 1-2
SOIL EXCAVATION AND BACKFILL DELIVERY RATES ^a**

| Years | Excavation | | Backfill | | Total Daily Truck Volume ^d |
|-------|----------------------|---------------------------------|-----------------------------------|--------------------|---------------------------------------|
| | Daily Rate (BCY/day) | Daily Truck Volume ^b | Daily Rate (BCY/day) ^c | Daily Truck Volume | |
| 1-2 | 736 | 48 | 245 | 16 | 64 |
| 3-4 | 1,027 | 67 | 444 | 29 | 96 |
| 5-10 | 781 | 51 | 444 | 29 | 80 |
| 11-15 | 413 | 27 | 321 | 21 | 48 |

These are the proposed soil volumes that DTSC is recommending that be remediated at the SSFL site based on considering only one alternative – the Revised AOC. Please note that the 2007 Consent Order anticipated that the site remediation would be completed by 2017. Please also note that this chart anticipates remediation over the next 15 years – with a start date to be determined.

Finally, I want to point to a Committee to Bridge the Gap website related to the Department of Energy.

<http://committeetobridgethegap.org/2018/01/05/santa-susana-cleanup-danger/>

“Santa Susana Cleanup in Danger”

CBG Releases Annual Newsletter

Search



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Name *

Email *

Empty text input field

Submit

ARCHIVES

Select Month

Chemical contamination burdening the site, some of which migrates offsite. Government-funded studies found contaminants had migrated offsite in excess of EPA levels of concern, and a greater than 60% increase in incidence of key cancers associated with proximity to the site.

In 2010, Bridge the Gap was instrumental in getting legally binding agreements for full cleanup of the contamination, to be completed by 2017. As we approach the end of 2017, however, the cleanup not only hasn't been concluded, it hasn't even begun. The parties responsible for the pollution

—the Department of Energy (DOE), NASA, and Boeing— and the regulatory agency, the California Department of Toxic Substances Control (DTSC) have all dragged their feet. And now they are trying to break out of the cleanup commitments and leave virtually all of the contamination not cleaned up.

This would put at continued risk the people living nearby.

In January 2017, DOE released its draft Environmental Impact Statement for the cleanup. Every option proposed would breach the cleanup agreement it had signed in 2010. Rather than cleaning up all the contamination, as promised, DOE proposed to leave in place as much as 99%.

Thousands of people submitted comments in protest. The Los Angeles City Council and the Los Angeles and Ventura County Boards of Supervisors passed resolutions in opposition. The Los Angeles City Attorney, Bridge the Gap, and the Natural Resources Defense Council submitted joint, extremely detailed critical comments. Fifteen years ago, CBG, LA City and NRDC successfully sued DOE when it tried to walk away from cleanup obligations, and the court retains jurisdiction. Now, we may have to return to the court to stop DOE all over again.

In the last sentence of this screen shot, it states that: "Fifteen years ago, CBG, LA City, and NRDC successfully sued DOE when it tried to walk away from cleanup obligations, and the court retains jurisdiction. Now, we may have to return to the court to stop DOE all over again."

I am including this full article in the end material.

What can we do to prevent this site from being tied up in perpetual litigation by CBG et al?

When I became involved in this project in late 2006, in early 2007, the DOE told us that they had the funds to complete the demolition of the remaining DOE structures in AREA IV by 2009. Nowhere in the ruling by Judge Conti have I seen that the structures could not be demolished without the completion of the NEPA review. The DOE started a NEPA review in the summer of 2008, but then they had to stop because of the implementation of SB 990 into their plans.

The DOE then came in with Stimulus Package money in around 2011, and again their request to demolish these structures was blocked by DTSC and certain groups.

Now, it is unlikely that the DOE will have funding in the near future to remediate to the AOC level. Furthermore, it is clear to me that Boeing owns all of the property in AREA IV, and that Boeing may not want the DOE to clean up to the AOC level for various reasons.

Finally, I want to reference a comment to NASA by the EPA for NASA's DEIS.

We acknowledge the complexity of the cleanup of NASA administered federal land at the Santa Susana Field Lab. The proposed action has three major components: demolition of buildings and structures; soil removal, including multiple treatment options; and groundwater cleanup, which also includes treatment options. The DEIS explains that NASA must satisfy the requirements of the Agreement on Consent it signed in 2010 with the California Department of Toxic Substances Control, which includes a requirement to remove contaminated soil that exceeds soil concentration limits based on factors such as background values and detection limits. The Proposed Alternative represents that action, and we understand that the Council on Environmental Quality has advised that NASA is not obligated, under NEPA, to consider other alternatives, given NASA's commitment in the AOC to cleanup chemical and/or radiological contaminants to local background levels.

We agree that cleanup of radioactively contaminated soil to background is imperative. EPA and DTSC have cooperatively overseen the cleanup of radioactive contamination to background at, for example, Hunter's Point Naval Shipyard and McClellan Air Force Base. For chemical contamination sites, EPA, as well as DTSC, typically performs soil cleanups to health-based levels, unless background concentrations exceed those health-based levels.

We are concerned about the impacts associated with NASA's proposed removal, transport, and disposal of the large volume of soil that is chemically contaminated at levels below risk-based thresholds. At other cleanup sites, including adjacent non-federal portions of the Santa Susana site, nearly two-thirds of the soil with comparable levels of chemical contamination would be left in place. The increase in traffic and associated air emissions that would result from this action

Here the EPA supports the cleanup of the radiologically contaminated soil at NASA SSFL to Background. But they are concerned about the removal of the large volume of chemically contaminated soil that is below risk –based screening thresholds.



Effects and Potential Safety of School Children

We commend NASA for its consideration of the impact of truck traffic on school children. As the analysis is novel, we offer some recommendations for improvement. We noted that the DEIS did not include childcare centers, preschools, parks nor recreation centers in its evaluation of truck traffic and children. While fewer children may walk to these facilities than to schools, their safety is relevant for consideration. Additionally, the DEIS does not consider the role of crossing guards at intersections near schools, nor educational outreach to schools, childcare centers and residents.

Recommendation:

The FEIS should:

- consider childcare centers, preschools, parks and recreation centers as well as schools in the evaluation of truck traffic and potential exposure to children;
- provide additional funding for crossing guards, if busy intersections near schools are not currently staffed;
- target outreach material about the construction schedule and truck routes to schools and childcare centers and residents.

Cumulative Impacts

As the Cumulative Impacts Section (4.13) mentions, DOE and Boeing are also actively cleaning up soil and groundwater at their portions of the Santa Susana Field Lab. While the DEIS provides additional waste volumes and trucks for the Boeing and DOE cleanup, it does not model the cumulative impacts to children, traffic, and air quality. A cumulative model of these impacts is likely to be of much more interest and value to the public than the individual analysis of impacts from NASA, Boeing, or DOE.

Recommendation:

To the extent possible, in coordination with Boeing and the DOE, NASA should update its analysis to consider the cumulative impacts (including Boeing and DOE soil removal) on traffic, children and air quality.

Cost

Many factors should be considered in making a remedy selection for soil removal. For example, EPA uses nine criteria to evaluate cleanup alternatives under the Comprehensive

In the comments here, the EPA is concerned about the potential impacts of truck traffic on school children – that they did not include childcare centers, preschools, parks nor recreation centers in its evaluation of truck traffic and children. They also reference the cumulative impacts of the DOE and Boeing on traffic, children, and air quality.

In conclusion, can you please advise DTSC as to the legality of considering only one cleanup scenario in their CEQA review – one that does not consider a complete risk analysis and multiple cleanup standards as referenced by the 9th Circuit Court of Appeals in their ruling on SB 990?

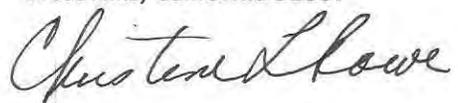
Please see the attachments as referenced.

Respectfully submitted,

Christine L. Rowe

6732 Faust Ave

West Hills, California 91307

A handwritten signature in cursive script that reads "Christine L. Rowe". The signature is written in black ink and is positioned below the typed address information.

DTSC-SSFL Document Upload Notification: FAQ - Was there a meltdown at SSFL?

Inbox x
DTSC x
Meltdown x

noreply@dtsc-ssfl.com

Oct 20 (9
days
ago)

to me

The following document has been uploaded to the DTSC Santa Susana Field Laboratory website.

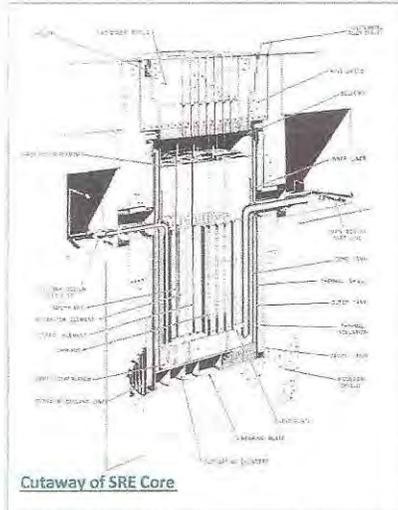
Please do not respond to this email. If you have questions please contact the Public Participation Specialist as detailed below.

Marina Perez
(818) 717-6569
Marina.Perez@dtsc.ca.gov

Document Title: FAQ - Was there a meltdown at SSFL?
File Name: [66482_SSFL_SRE_FAQ.pdf](#)
File Size: 450 KB
Publication Date: 10/17/2014
Location: Public Involvement / Fact Sheets

Was there a meltdown at the Santa Susana Field Lab (SSFL)?

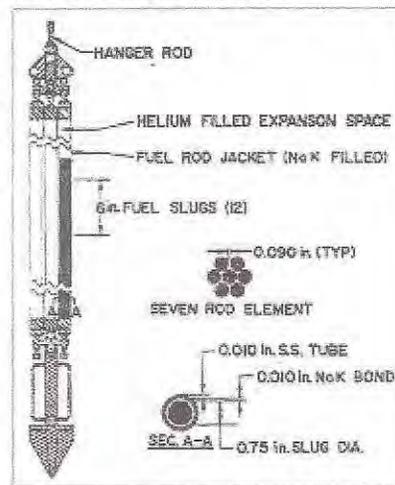
DTSC does not believe the term provides a useful description of the events that occurred at SSFL in the summer of 1959. A meltdown is commonly understood to mean a catastrophic failure at a nuclear reactor. The term implies loss of cooling to the reactor core, uncontrolled fission and subsequent melting of a large portion of the nuclear fuel with potential containment failure and large-scale release of radioactive materials to the environment. Meltdown (or partial meltdown) is not typically used to communicate technical or regulatory information. The Nuclear Regulatory Commission uses the term core melt accident to describe "an event or sequence of events that result in the melting of part of the fuel in the reactor core."



The U.S. Department of Energy (DOE) describes the incident that occurred at SSFL's Sodium Reactor Experiment (SRE) during a two week period in July 1959 as a core damage accident. At that time the SRE, a small federally funded research reactor located in the Simi Hills about 30 miles northwest of downtown Los Angeles, suffered significant fuel damage as a result of overheating

in the reactor's core. During that event 13 of 43 fuel elements were damaged as a result of localized overheating due to a carbonaceous material contaminating and restricting the flow of the molten sodium coolant circulating past fuel rods within the reactor core. For the SRE, a fuel rod typically consisted of a column of twelve, six inch long cylindrical slugs of slightly enriched uranium contained by a tube of closely fitted stainless steel cladding. The fuel elements were made up of seven, six foot long, 0.75 inch diameter fuel rods.

After the reactor was successfully shut down, inspection of the damaged elements revealed that excessive heat in areas of the core that experienced restricted coolant flow caused some of the uranium slugs to swell and, where there was metal to metal contact, diffuse into the stainless steel cladding, forming a low-melting point uranium/iron alloy. Rupture of the cladding and formation of the alloy resulted in migration of the radioactive noble gases krypton and xenon and potentially other volatile radioactive isotopes into the liquid sodium coolant, which continued to circulate in the reactor core.



Typical Fuel Element Configuration

When operators became aware of erratic temperature and power readings, the reactor was successfully shut down without loss of primary power. The sodium coolant, though restricted in some channels, continued to immerse and circulate through the reactor core. However, contrary to what is commonly inferred from the term "meltdown," molten uranium fuel **did not** pool in the bottom of the reactor vessel, and the integrity of the primary reactor vessel was never in jeopardy.

Through the years, numerous studies of this event have been conducted. Most can be found online at http://www.etec.energy.gov/Library/Historical_Docs.html. These reflect substantial agreement that relatively non-reactive and short-lived radioactive fission products, the noble gases xenon and krypton, did migrate to the helium gas used to blanket the pool of circulating liquid sodium within the reactor



SRE 1958 Looking West

core. Following the incident, between July 20th and September 28th 1959, the helium cover gas, which had become contaminated during the accident, was transferred to shielded holding tanks and periodically vented into the atmosphere when levels of radioactivity were deemed safe according to the regulatory standards of the time.

Soon after the 1959 incident, the SRE was repaired and new fuel installed. The SRE continued to operate as a research reactor until 1965. Between 1967 and 1978, all nuclear fuel used during SRE operations was removed for reprocessing at DOE's Savannah River facility. The reactor vessel and all other contaminated structures and equipment were dismantled and removed for disposal as low level radioactive waste at a DOE facility in Beatty, Nevada. By 1985 all remaining SRE structures had been decommissioned, decontaminated and released for unrestricted use by DOE. In 1999 the last remaining SRE buildings were demolished.

Throughout the period of SRE operations, DOE and its predecessor agencies directed other nuclear research and energy development projects in Area IV, the 290 acre western portion of SSFL. Environmental sample results indicate that some of these activities resulted in both chemical and radionuclide contamination of soil within Area IV that will require cleanup. With respect to the history of nuclear



Former SRE Site Circa 2002 Looking Northeast

research conducted at SSFL, DTSC's primary concern is not the terminology used to describe these undertakings but to understand and effectively characterize the nature and extent of any resulting contamination and then ensure implementation of fully protective and environmentally sound cleanup actions.

Thomas M. Mack, M.D.
USC/Norris Comprehensive Cancer Center
University of Southern California
Department of Preventive Medicine
1441 Eastlake Ave, Mail Stop 44
Los Angeles, California 90033-0800
~~213-764-0445, Fax 764-0141~~

323-865-0445 Fax 323 865-0141

e-mail: tmack@usc.edu



Dear Mrs. Rowe:

March 27, 2018

You have asked me to summarize my presentation to the staff of the Childrens' Hospital of Los Angeles regarding the recent leukemia experience in those regions of Los Angeles County adjacent to Ventura County and less than 5-6 miles from the Santa Susana Field Laboratory (SSFL).

As you know, SSFL has been in operation since 1948 and covered an area of nearly 3000 acres. During the 70's and 80's it was extensively used for the testing of rocket engines and rocket fuel by North American Aviation, Rocketdyne, NASA, DOE, and Boeing. The activities were not fully disclosed to the public, and many have presumed, with some reason that the materials used were probably not meticulously cleaned up, and the companies have not been especially forthcoming in the past. These materials included solvents, such as TCE, Hydrazine fuel, heavy metals, perchlorate, PCB's, PAH's, Dioxins, Furans, and nuclear research produced radionuclides such as Cesium 137 and Strontium 90. Many of these compounds are possible or probable carcinogens, and a study of Rocketdyne conducted by investigators from UCLA concluded that some lung cancers among the workers were probably due to radiation exposure on the job. For these legitimate reasons, there have been concerns among the residents of nearby areas since at least the 1970's that they and their children have been endangered by proximity to the SSFL location. However, attempts by the California Toxics agency and the EPA to identify dangerous levels of carcinogens and ionizing radiation in areas near to the site have not documented dangerous levels in any recent surveys. According to the EPA after their radiological survey results, they stated in their May 2012 newsletter: "Site access is restricted and therefore, the public is not exposed to this contamination." However, most would agree that in this case the empirical evidence of cancer incidence among nearby residents would be a better guide to the magnitude of the problem. Unfortunately, there is no way to measure levels of cumulative exposure to carcinogens on a personal basis. People move in and move out, unaffected families cannot always be expected to be as cooperative as affected families, and the levels of education and income among nearby residents are quite different from those of all residents of the two Counties. Studies of individuals are quite expensive and require extended periods to complete.

For these reasons, the studies that have been done are not of individuals, but of populations, and have been of the "quick and dirty" kind, in which the cases occurring among blocks of nearby residents have been compared to overall county rates. Such studies have their own problems. In addition to the above, counts of residents needed to estimate rates of incidence are only made every decade, and with particular reference to children, the inter-census extrapolations cannot be assumed to be accurate.

None of the four studies conducted in the past were able to find evidence of a link between SSFL and "offsite" cancer occurrence, but these studies tended to make arbitrary assumptions about the uniformity of exposure to large groups, and paid insufficient attention to the differences between local residents and the population at

large. For these reasons I was requested by the State agencies to analyze the adult cancer occurrence by neighborhood (census tract), calendar period, gender and anatomic site. I examined 13 kinds of cancer in each gender in 130 different census tract-periods from 1988 to 2009 and found no evidence of a relationship between "offsite" residence and cancer incidence.

None of these studies considered childhood cases. I was recently asked by the State, by CHLA, and by some groups of local residents (understandably, residents are not in perfect agreement about the best course of action) to re-examine offsite risk, this time with attention to childhood (0-14) cancer and leukemia in particular. My colleagues and I have done so, again looking at each census tract within an area slightly greater than 5 miles from SSFL. At that farthest distance, carcinogens from on site would be unlikely to be present in doses that could produce extra cases, much less clustered cases. We looked at four periods, including the more recent one of 2010-2015.

You have asked that I describe our findings with respect to that period and in particular to the "offsite" census tracts in Los Angeles County, including West Hills. Overall we found no trend over time in the frequency of childhood cancer or of leukemia (ALL and AML), no consistent excess by census tract. Those census tracts within 3 or 5 miles of the site in either County saw no more cases than those more distant. No more than two cases of leukemia occurred in any one census tract, and even that number occurred only twice among the 60 tracts with such cases. As indicated above, calculation of local incidence is not feasible on account of the unreliability of the population counts, so we looked at the percent of all cancers diagnosed represented by childhood cancer (since the large number of adult cancer types has ensured that the total number closely reflects the population in California), and in each period these were consistent with the overall percentage.

With respect to leukemia occurring in areas of Los Angeles County adjacent to the Ventura County border and therefore relatively near SSFL, we counted cases in 15 census tracts and found 5 cases of acute leukemia. Based on an estimate of the combined population of those tracts, and the five years at risk, one should have expected two cases, so there were more observed than expected. However, before we conclude that the 3 unexpected cases were a result of exposure to the relatively distant (in dosage terms) SSFL site, we must calculate the probability that such an outcome would result by chance. That takes the form of estimating how many of the many groups of 15 tract combinations in either County would be likely to see this many or more cases of childhood cancer by chance. There are roughly 3000 census tracts in the two Counties, and even if they were divided such that no census tract was in more than one 15-tract set, there would be 200 sets. Using the Poisson statistical method of estimation, we calculated that 5.2% of all the units under surveillance would see 5 or more cases, given as indicated that the expected number was 2. Thus even under the unrealistic assumption that if no tract were to be in more than one 15-tract set, there would be about 10 such sets with 5 or more cases during 2010-2015 in the two Counties, and the true number appearing by chance would be substantially larger. We conclude therefore that the extra 3 cases can be explained reasonably on the basis of chance alone and that we have been unable to find evidence of local childhood cancers caused by SSFL. As you well know, we have to carefully say that we cannot rule out such causation, and can only say that we have been unable to find support for it.

I hope this explanation is satisfactory. If you have further questions, don't hesitate to ask.

Thomas Mack MD, MPH.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE BOEING COMPANY,
Plaintiff-Appellee,

v.

MAZIAR MOVASSAGHI, in his official
capacity as the Acting Director of
the California Dept. Of Toxic
Substances Control; LEONARD
ROBINSON, in his official capacity as
the Acting Director of the California
Dept. Of Toxic Substances Control,
Defendants,

and

DEBBIE RAPHAEL, in her official
capacity as the Acting Director of
the California Dept. Of Toxic
Substances Control,
Defendant-Appellant.

No. 11-55903

D.C. No.
2:10-cv-04839-
JFW-MAN

OPINION

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted May 31, 2013*
Pasadena, California

Filed September 19, 2014

Before: Alfred T. Goodwin, Andrew J. Kleinfeld,
and Barry G. Silverman, Circuit Judges.

Opinion by Judge Kleinfeld

SUMMARY**

Environmental Law

The panel affirmed the district court's decision that a California law governing cleanup of a federal nuclear site violated the doctrine of intergovernmental immunity.

The Boeing Co. challenged the validity of California's Senate Bill 990, which prescribes cleanup standards for radioactive contamination at Santa Susana Field Laboratory. SB 990 requires that the site be made suitable for subsistence farming, a more demanding standard than that imposed by a plan adopted by the federal Department of Energy.

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel held that Boeing had standing because as landowner, it established injury in fact.

The panel held that SB 990 violated the doctrine of intergovernmental immunity because it regulated DOE's cleanup activities directly in violation of the Supremacy Clause. In addition, SB 990 discriminated against the federal government and Boeing as a federal contractor hired to perform the cleanup of the Santa Susana site.

The panel did not reach the question of whether the federal laws governing nuclear materials and cleanup of hazardous substances preempted the state law. It also did not reach Boeing's claim under 42 U.S.C. § 1983 for a declaratory judgment and an injunction.

COUNSEL

Brian W. Hembacher, Supervising Deputy Attorney General, Los Angeles, California, for Defendant-Appellant.

Randolph D. Moss, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, D.C., for Plaintiff-Appellee.

Daniel P. Selmi, Los Angeles, California, for Amici Curiae Southern California Federation of Scientists, Los Angeles Chapter of Physicians for Social Responsibility, Rocketdyne Cleanup Coalition, and Committee to Bridge the Gap.

David C. Shilton, United States Department of Justice, Washington, D.C., for Amicus Curiae United States.

OPINION

KLEINFELD, Senior Circuit Judge:

We affirm the district court's decision that a California law governing cleanup of a federal nuclear site violates the doctrine of intergovernmental immunity. Because we decide that the state law impermissibly regulates and discriminates against the federal government and its contractor, we do not reach the question of whether the federal laws governing nuclear materials and cleanup of hazardous substances preempted the state law. We need not reach Boeing's Section 1983 claim for a declaratory judgment and an injunction.

FACTS

The federal government made and tested rockets, nuclear reactors, and various nuclear applications for war and peace at the Santa Susana Field Laboratory beginning shortly after World War II. When built in the 1940s, this lab was far from people, thirty miles from Los Angeles in Ventura County. Los Angeles grew, though, and now over 150,000 people live within five miles of the site and half a million people live within ten miles.

When the state law challenged in this case was promulgated, 452 acres of the 2,850 acre lab site were federally owned and managed by the National Aeronautics and Space Association ("NASA"). Most of the site, the remainder, was owned by Boeing, a defense contractor, which acquired the land from another defense contractor, Rockwell International Corporation, in 1996. Rockwell International and its predecessor, North American Aviation, had occupied or owned the land since 1947. (For

convenience, we refer to Boeing and its predecessors, Rockwell International and North American Aviation, as “Boeing.”) Since the 1950s, the federal Department of Energy (“DOE”) and its predecessor agencies have leased 90 acres of the site from Boeing, where it built and operated 16 nuclear reactors of various sorts and over 200 facilities for nuclear research.

These two federal agencies, DOE and NASA, hired Boeing to assist in the nuclear research and rocket testing. Most of Boeing’s work was as a contractor on behalf of the federal government, though it also did some commercial work on its own account at the site. Boeing operated one commercial nuclear reactor under a license from the Atomic Energy Commission. It also handled what the California statute calls “radiological contaminants” under licenses from the State of California to perform activities involving the use of x-ray machines, calibration devices, gas chromatographs, smoke detectors, and various gauges.

All this work created a terrible environmental mess. It also created tremendous benefits, for war and peace, but the government’s work unarguably imposed tremendous harm to the environment. The soil, ground water, and bedrock were seriously contaminated. Disasters and foolishness added to the environmental harm.

In 1959, one of the reactors experienced a partial meltdown that released radioactive gases into the atmosphere for three weeks. This partial meltdown accounts for about 90% of the radioactive contamination. Much of the rest came from other nuclear reactor accidents, an open burn pit for sodium-coated materials, and numerous fires and accidents at the “Hot Lab.” The “Hot Lab” was used for cutting up spent

nuclear fuel from the site's reactors and spent fuel shipped to the lab from elsewhere in the United States. Radioactive material was also dumped at various locations around the site. One disposal procedure consisted of shooting barrels of toxic substances with shotguns to make them explode and burn.

The federal government, not Boeing, appears from the record to be responsible for the radioactive pollution. Though Boeing conducted some commercial nuclear work at the site, no radioactive contamination has been traced to Boeing's private activity. It is undisputed in this case that the site's radioactive contamination either resulted from federal activity or is indistinguishable from federal contamination.

That is not to suggest that the pollution was merely wanton. The United States Air Force and NASA used the site to test rocket engines for ballistic missiles and space exploration. In the 1940s, the Air Force hired Boeing to help develop the Navaho guided missile system. The Air Force and NASA also used Boeing to test liquid-propellant rocket engines, many of which were used in the space program. But over 500,000 gallons of the solvent used to clean rocket engines and launch sites, trichloroethylene, contaminated the soil, along with heavy metals and other toxins. A trichloroethylene containment system was implemented in 1961, after which Boeing did its private commercial testing, but the damage was already done. California concedes that it cannot identify any chemical contamination that resulted from non-federal activity and that, to the extent that there is any contamination from Boeing's private activity, it cannot be distinguished from federal contamination.

All this nuclear and rocket research is over now. DOE ended its nuclear research at Santa Susana in the 1980s. In

1996, DOE decided to close its research center and removed many of the facilities. The Air Force's and NASA's rocket research ended in 2006. Operations at the site now are limited to trying to clean it up. Different aspects of the cleanup are carried out under different federal and state authorities. The federal government supervised the cleanup of radioactive contamination, and the California Department of Toxic Substances Control supervised the cleanup of chemical contamination under generally applicable state law.

The subject of this litigation is a state's authority, as opposed to the federal government's authority, to regulate the cleanup of radioactive pollution. The issue is whether the state may mandate more stringent cleanup procedures, not generally applicable within the state, to a particular site where the federal government undertook to clean up nuclear contamination it created. In the circumstances of this case, the answer is no.

So far, the federal Department of Energy, as successor to the Atomic Energy Commission, has supervised and implemented the cleanup of radioactive material. Under the Atomic Energy Act, DOE is responsible for establishing a comprehensive health, safety, and environmental program for managing DOE's nuclear facilities nationwide.¹ DOE has implemented that authority by issuing orders that set health and safety limits for radioactive releases and cleanup and site-closure procedures.²

¹ 42 U.S.C. §§ 2121(a)(3), 2201.

² See DOE Orders 435.1, 458.1, 5400.1, 5400.5, available at <https://www.directives.doe.gov/directives>. DOE Order 435.1, *Radioactive Waste Management*, and its accompanying manuals set forth requirements

To clean up the radioactive contamination, DOE hired Boeing. Boeing conducted a study of the contamination at Santa Susana. The soil, bedrock, and groundwater contamination has been extensively sampled and analyzed. Different parts of the site have different sorts of pollutants, since rocket testing was done in some areas, and nuclear research in others. In 2003, DOE adopted an environmental assessment for cleaning up radioactive waste in the area where nuclear research was performed. This federal plan proposed to clean it up to standards suitable for industrial, recreational, and even suburban residential use. As a cleanup contractor, Boeing is actively cleaning up the Santa Susana site on behalf of DOE. Boeing pays a portion of the cleanup costs and will bear the portion of costs not paid by or recovered from the federal government. The federal government sets the standard for the entire cleanup of radioactive materials (the only waste at issue in this case) and directs Boeing's conduct.

Not everyone was satisfied with the DOE plan. The federal Environmental Protection Agency ("EPA"), the State of California, and various advocacy groups have challenged both the plan and DOE's decision to prepare an environmental assessment as opposed to an environmental impact statement. The question whether an environmental impact statement should be prepared is not before us in this litigation. A federal district court injunction in another case prohibits DOE from transferring ownership, possession, or

for managing radioactive waste including characterization, treatment, disposal, and monitoring. DOE Order 5400.5, *Radiation Protection of the Public and the Environment*, addresses cleanup standards that DOE contractors are required to implement during decontamination and decommissioning activities.

control over anything in the primary area of radioactive contamination until it prepares an environmental impact statement.³

Non-radioactive chemical pollutants are regulated differently from radioactive pollutants.⁴ The California Department of Toxic Substances Control regulates the cleanup of chemical contamination, pursuant to an agreement with EPA authorizing state control, under a different federal statute from the one applicable to radioactive materials.⁵ The various state and federal agencies involved, and Boeing, agreed upon an order from California's Department of Toxic Substances Control to clean up the chemical contamination to a level adequate for suburban residential use. That order does not address the cleanup of radioactive materials.

This case arises from the State of California's decision to extend its control to cleanup of radioactive pollutants. In October 2007, California passed Senate Bill 990, "Cleanup of Santa Susana Field Laboratory," prescribing cleanup standards for both radioactive and chemical contamination.⁶ The statutory standard requires that the site be made suitable for "suburban residential or rural residential (agricultural)

³ *Natural Res. Def. Council, Inc. v. Dep't of Energy*, No. C-04-04448 SC, 2007 WL 1302498, at *22 (N.D. Cal. May 2, 2007).

⁴ *United States v. Manning*, 527 F.3d 828, 833 (9th Cir. 2008).

⁵ California operates a federally approved hazardous waste management plan pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6926. This plan covers only chemical contamination, not radioactive materials. 42 U.S.C. §§ 6903(5), (27), 6905(a).

⁶ S.B. 990, 2007 Reg. Sess., ch. 729 (Cal. 2007).

[use], whichever produces the lower permissible residual concentration” for each contaminant found at the site.⁷ The state statute does not further define the “rural residential (agricultural)” standard, but the federal EPA “agricultural” standard apparently intended by the state statute assumes “consumption of farm products for a subsistence farmer,” getting all his or her vegetables, fruit, meat, fish, and milk from the land, along with incidental consumption of soil and inhalation of dust.⁸ In effect, Senate Bill 990 (“SB 900”) would require that hypothetical subsistence farmers could live safely on their farms eating nothing but their chickens, eggs, crops, and cheese and drinking their milk from their cows eating the grass, in this patch of nuclear and chemical toxic waste in the Los Angeles suburbs.

Boeing and the federal agencies contend that this standard is more demanding than the usual practice under state and federal law of setting a cleanup level commensurate with a site’s reasonably foreseeable use.⁹ It may well be

⁷ Cal. Health & Safety Code § 25359.20(c).

⁸ EPA, *Preliminary Remediation Goals for Radionuclides: Agricultural Biota, Soil and Water Graphic and Supporting Text*, available at <http://epa-prgs.ornl.gov/radionuclides/agsoilimage.html>.

⁹ See Cal. Health & Safety Code § 25356.1.5(d) (“The exposure assessment of any risk assessment . . . shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.”); EPA, OSWER Directive No. 9355.7-19, *Considering Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites* (2010); EPA, OSWER Directive No. 9355.7-04, *Land Use in the CERCLA Remedy Selection Process* (1995); EPA, Publ’n No. 9285.7-01B, *Risk Assessment Guidance for Superfund (RAGS) Part B*, ch. 2.3 (1991).

unreasonable to foresee subsistence farming at the site. The record does not show why this standard was adopted, or whether subsistence farming of this sort was contemplated for the Los Angeles suburbs. The subsistence farming standard is more stringent than the suburban residential standard required by the agreed-upon order governing the cleanup of non-radioactive chemicals. DOE's cleanup procedures specifically rejected the state law's standard as "not a reasonable scenario for the site." Boeing has made a public commitment to dedicate the site for public use as open space parkland, not subsistence farming. But reasonable foreseeability of subsistence farming is not the controlling issue in this case. The relevant tension in this case is the state's authority to impose its subsistence farming standard as against the less stringent federal industrial, recreational, and residential standard.

Until SB 990's cleanup standard is met, the state law makes it a crime for "[any] person or entity [to] sell, lease, sublease, or otherwise transfer" the land.¹⁰ The "Statement of Uncontroverted Facts," not disputed by the California Department of Toxic Substances Control, says that remediating the groundwater to the California standard "could take as long as 50,000 years."

Boeing filed this lawsuit in federal district court challenging the validity of the California statute, SB 990, controlling cleanup of the Santa Susana Laboratory grounds. Boeing argued, and the district court agreed, that the federal government had preempted the field of regulation of nuclear safety, and alternatively that cleanup of radioactive materials at the Santa Susanna site is a federal activity, so state

¹⁰ Cal. Health & Safety Code §§ 25359.20(d); 25190.

regulation of how the federal government cleans it up violates the Supremacy Clause and the doctrine of intergovernmental immunity.

The California Department of Toxic Substances Control (“California”) appeals. We vacated oral argument to give the government an opportunity to file an amicus brief, which it did. The federal government agrees with the district court that the state law, SB 990, is unconstitutional under the Supremacy Clause and alternatively, because Congress has preempted the field.

ANALYSIS

The case was decided on summary judgment, so we review de novo.¹¹

I. Standing

California does not challenge Boeing’s standing, but some advocacy groups as amici curiae do. Their argument is that Boeing suffers no injury in fact from SB 990 because as a federal contractor, it will be paid for its work and bears no other costs. We disagree. The law prohibits Boeing from transferring its own real property, injury enough.¹² Even if the federal government does pay for all the cleanup work, the estimated 50,000 year delay in transferability (based on estimated time for cleanup of groundwater to be completed)

¹¹ *United States v. Manning*, 527 F.3d 828, 836 (9th Cir. 2008).

¹² *Andrus v. Allard*, 444 U.S. 51, 64 n.21 (1979) (“Because the regulation they challenge restricts their ability to dispose of their property, appellees have a personal, concrete, live interest in the controversy.”).

is indeed an injury in fact to Boeing as landowner. Nor has the federal government agreed to cleanup the entire site at its own expense to SB 990's standards. California concedes that Boeing will pay the portion of the cleanup expenses not borne by the federal government. Injury in fact is clear.

II. Intergovernmental Immunity

Under the Supremacy Clause, “the activities of the Federal Government are free from regulation by any state.”¹³ Accordingly, state laws are invalid if they “regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals.”¹⁴ SB 990 is invalid on both grounds.

A. Direct Regulation of the U.S. Government

SB 990 regulates the Department of Energy's cleanup activities directly. SB 990 authorizes California's Department of Toxic Substances Control to “use any legal remedies available” under the State's hazardous waste laws “to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site.”¹⁵ DOE is a “responsible party” with respect to radioactive contamination. All of the contamination at Santa Susana is the result of federal activity

¹³ *Mayo v. United States*, 319 U.S. 441, 445 (1943).

¹⁴ *North Dakota v. United States*, 495 U.S. 423, 435 (1990); *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010).

¹⁵ Cal. Health & Safety Code § 25359.20(a).

or is indistinguishable from contamination caused by federal activity. In addition, SB 990's legislative findings state that the Act is necessary in large part because of federal activity at the site and because "DOE declined to follow the 1995 Joint Policy [between EPA and DOE] and chose to instead rely on less protective cleanup standards."¹⁶

The federal Department of Energy has accepted responsibility for the cleanup of radioactive contamination, and it is actively conducting the cleanup through its cleanup contractor, Boeing. SB 990 affects nearly all of DOE's decisions with respect to the cleanup, including the environmental sampling that is required, the cleanup procedures to be used, and the money and time that will be spent. The state law requires an application of more stringent cleanup standards than federal laws and DOE's cleanup procedures do. Whether state law is better or worse does not affect state authority, just whether the state regulates federal activity.

The federal government's decision to hire Boeing to perform its cleanup work does not affect the legal analysis. In *Goodyear Atomic Corp. v. Miller*, the Supreme Court held that "a federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly authorizes such regulation."¹⁷ In *Gartrell Construction Inc. v. Aubry*, we held that California's licensing requirements for construction contractors were preempted to the extent that they applied to federal

¹⁶ SB 990 § 2(h).

¹⁷ 486 U.S. 174, 181 (1988).

contractors.¹⁸ California argues that Boeing must “stand in the government’s shoes” in order to assert immunity from state regulation. The cases that California cites to are inapposite as they discuss generally applicable state tax laws, which resulted in merely an increased economic burden on federal contractors as well as others. These tax laws did not regulate what the federal contractors had to do or how they did it pursuant to their contracts.

SB 990 directly interferes with the functions of the federal government. It mandates the ways in which Boeing renders services that the federal government hired Boeing to perform. The state law replaces the federal cleanup standards that Boeing has to meet to discharge its contractual obligations to DOE with the standards chosen by the state. It overrides federal decisions as to necessary decontamination measures. Unlike the tax cases, SB 990 regulates not only the federal contractor but the effective terms of federal contract itself.

Thus, SB 990 violates intergovernmental immunity unless Congress has clearly and unambiguously authorized California to exercise authority over the Department of Energy with respect to radioactive materials. “It is well settled that the activities of federal installations are shielded by the Supremacy Clause from direct state regulation unless Congress provides ‘clear and unambiguous’ authorization for such regulation.”¹⁹

¹⁸ 940 F.2d 437, 441 (9th Cir. 1991).

¹⁹ *Goodyear Atomic Corp.*, 486 U.S. at 180 (quoting *EPA v. State Water Res. Control Bd.*, 426 U.S. 200, 211 (1976)).

There is no clear congressional authorization in the Atomic Energy Act that would allow California to regulate DOE's cleanup of radioactive materials at Santa Susana. The agreement entered between California and the Atomic Energy Commission in 1962 does not affect the immunity analysis. The 1962 agreement was made pursuant to the 1959 amendment to the Atomic Energy Act that allowed the Atomic Energy Commission to transfer licensing authority over nuclear materials to states, pursuant to individual agreements with individual states.²⁰ Congress sought, among other things, "to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with the use of [nuclear material]."²¹ The Act provides that states "shall have authority to regulate the materials covered by [an] agreement for the protection of the public health and safety from radiation hazards."²² Under the 1962 agreement, California's Department of Public Health has licensed Boeing's *commercial* nuclear work at Santa Susana.

The 1962 agreement does not grant California any authority to regulate the federal government. The Atomic Energy Commission's regulations implementing the 1959 amendment explicitly state that exemptions from federal licensing authority under the agreement between states and the Commission "do not apply to agencies of the Federal

²⁰ 42 U.S.C. § 2021.

²¹ 42 U.S.C. § 2021(a)(2).

²² 42 U.S.C. § 2021(b).

government.”²³ So even within “Agreement States,” such as California, the federal agencies remain subject to the federal government’s exclusive regulatory authority. The 1962 agreement references these regulations, and no language under the agreement indicates that the AEC was ceding authority to regulate federal activities to state agencies. Subsequent administrative developments make this clear.²⁴

Our conclusion is consistent with the history of the Atomic Energy Act and Congress’s response to other attempts by states to regulate federal activities. Section 2018 of the Atomic Energy Act provides that nothing in the Act affects state regulatory authority over the “generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission.”²⁵ In 1965, Congress added the following to Section 2018: “*Provided, That this section shall not be deemed to confer upon any*

²³ 27 Fed. Reg. 1350, 1352 (1962) (codified at 10 C.F.R. § 150.10).

²⁴ The Atomic Energy Commission was abolished in 1974, and its duties divided between the Nuclear Regulatory Commission (“NRC”) and the Energy Research Development Administration, subsequently turned into the cabinet-level Department of Energy. The Nuclear Regulatory Commission, now with the authority to enter into agreements with states, makes it clear that the agreement with states “does not transfer regulatory authority to the States over . . . [a]ctivities of Federal Agencies located in Agreement States.” NRC Procedure SA-500, *Jurisdiction Determinations* 2 (Sept. 25, 2007). NRC also requires the Agreement States to provide exemptions for NRC’s and DOE’s prime contractors performing work on government-owned or controlled sites from licensing requirements. Statement of Policy, 46 Fed. Reg. 7543 (Jan. 23, 1981). *Cf.* 10 C.F.R. §§ 30.12, 40.11, 70.11 (exempting NRC’s and DOE’s prime contractors from licensing requirements under the Atomic Energy Act).

²⁵ 42 U.S.C. § 2018.

Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.”²⁶ Congress added this proviso to overrule a Ninth Circuit opinion, *Maun v. United States*, 347 F.2d 970 (9th Cir. 1965), which interpreted the section to allow a municipality to prohibit transmission lines that the Atomic Energy Commission sought to build in order to carry out its own activities.²⁷

The Resource Conservation and Recovery Act (“RCRA”)²⁸ does not authorize California to regulate DOE’s cleanup of radioactive contamination. RCRA allows states to operate a hazardous waste management plan applicable to federal facilities so long as the state regulates “in the same manner, and to the same extent, as any person is subject to such requirements.”²⁹ But RCRA excludes from its coverage radioactive materials regulated under the Atomic Energy Act.³⁰ So RCRA does not apply to the radioactive contamination in this case.

Nor does the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”)³¹ save SB

²⁶ Pub. L. No. 89-135, 79 Stat. 551.

²⁷ *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 210–11 (1983).

²⁸ 42 U.S.C. § 6901, *et seq.*

²⁹ 42 U.S.C. §§ 6926, 6961(a).

³⁰ 42 U.S.C. §§ 6903(5), (27), 6905(a).

³¹ 42 U.S.C. § 9601, *et seq.*

990. Under CERCLA, states may obtain authority to clean up certain hazardous waste sites by obtaining EPA approval and entering into a “cooperative agreement.”³² Unlike RCRA, some provisions of CERCLA cover nuclear materials. The definition of “release” includes releases of nuclear materials except in certain situations.³³ EPA includes “radionuclides” in the list of “hazardous substances.”³⁴ And CERCLA contains a federal immunity waiver clause with respect to state laws concerning removal and remedial of hazardous substances. However, the waiver does not apply “to the extent a State law would apply any standard or requirement to [federal] facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by [the federal government].”³⁵ SB 990 applies more stringent requirements to Santa Susana than to non-federal facilities because it requires cleanup to a standard suitable for subsistence farming, rather than for the site’s reasonably foreseeable future use. Under the state’s generally applicable process, the future use would be determined by considering a number of site-specific factors such as current use, county general plans, and topography. It is undisputed that the subsistence farming has not been so determined as a land use assumption for the Santa Susana site.

³² 42 U.S.C. § 9604(d)(1)(A).

³³ 42 U.S.C. § 9601(22)(C).

³⁴ 40 C.F.R. Part 302, Table 302.4. Under CERCLA, EPA has the authority to designate additional hazardous substances by regulations. 42 U.S.C. § 9602.

³⁵ 42 U.S.C. § 9620(a)(4).

Therefore, we conclude that SB 990 regulates the federal government directly in violation of the Supremacy Clause.

B. Discrimination Against the U.S. Government and Its Contractors

SB 990 also violates intergovernmental immunity because it discriminates against the federal government and Boeing as a federal contractor. “A state or local law discriminates against the federal government if it treats someone else better than it treats the government.”³⁶ California does not dispute that “SB 990 singles out Boeing, DOE, NASA and the [Santa Susana Field Laboratory] site for a substantially more stringent cleanup scheme than that which applies elsewhere in the State.” The fact that Santa Susana is especially contaminated does not render the law non-discriminatory because California’s generally-applicable environmental laws do not impose the SB 990 radioactive cleanup standards at the Santa Susana site.

The federal government’s decision to hire Boeing to perform the cleanup rather than using federal employees does not affect our immunity analysis on this ground. When the state law is discriminatory, a private entity with which the federal government deals can assert immunity.³⁷ In *Davis v. Michigan Department of Treasury*, a retired federal employee challenged Michigan’s taxation of his federal retirement

³⁶ *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010) (internal quotation marks omitted).

³⁷ *North Dakota v. United States*, 495 U.S. 423, 435 (1990).

benefits.³⁸ Michigan argued that only the federal government, not private entities or individuals, are immune from state laws.³⁹ The Supreme Court disagreed because the state law at issue discriminated against federal employees by exempting from state taxation retirement benefits paid to state employees, but not those paid to federal employees.⁴⁰ The Supreme Court held that

It is true that intergovernmental tax immunity is based on the need to protect each sovereign's governmental operations from undue interference by the other. But it does not follow that private entities or individuals who are subjected to discriminatory taxation on account of their dealings with a sovereign cannot themselves receive the protection of the constitutional doctrine. Indeed, all precedent is to the contrary.⁴¹

Likewise, Boeing cannot be subjected to discriminatory regulations because it contracted with the federal government for the nuclear research and now the cleanup of radioactive contamination.

SB 990 specifically targets Santa Susana because of the radioactive pollution created by federal activity on the site

³⁸ 489 U.S. 803, 814 (1989).

³⁹ *Id.*

⁴⁰ *Id.* at 814–15.

⁴¹ *Id.* at 814 (citations omitted).

and because “DOE declined to follow the 1995 Joint Policy [between EPA and DOE] and chose to instead rely on less protective cleanup standards.”⁴² SB 990 applies more stringent cleanup standards than generally applicable state environmental laws. By doing so, SB 990 discriminates against the federal government and against Boeing as a federal contractor. Therefore, it is invalid under the doctrine of intergovernmental immunity.

The 2010 Administrative Orders on Consent from the California Department of Toxic Substances Control that DOE and NASA agreed to do not affect the analysis of SB 990. Both Orders set a radioactive cleanup standard for the soil in certain areas of Santa Susana. They do not set cleanup standards for bedrock or groundwater, and SB 990 does. Any waiver clauses included in the Orders have no effect beyond the term of the Orders.

III. Severability

We agree with the district court that the terms of SB 990 are unseverable. California concedes that applying SB 990 only to chemical cleanup is impossible without gutting the Act because the Act sets cleanup standards in part by requiring that “the cumulative risk from radiological and chemical contaminants at the site shall be summed.”⁴³ We decline to construe SB 990 as limited to non-radioactive cleanup because it would “require us to examine and rewrite most of the statute in a vacuum as to how the various

⁴² SB 990 § 2(h).

⁴³ Cal. Health & Safety Code § 25359.20(c).

provisions were intended to intersect and in a way that would be at odds with the purpose of the statute.”⁴⁴

The judgment of the district court is **AFFIRMED**.

⁴⁴ *United States v. Manning*, 527 F.3d 828, 840 (9th Cir. 2008).



SANTA SUSANA FIELD LAB SITE

U.S. Environmental Protection Agency • Region 9 • San Francisco, CA • May 2012

EPA Radiation Investigation Update

The U.S. Environmental Protection Agency (EPA) has made significant progress in its investigation of radiological contamination at Area IV and the Northern Buffer Zone (NBZ) of the Santa Susana Field Laboratory (SSFL) Site, which borders Ventura and Los Angeles Counties.

The State of California Department of Toxic Substances Control (DTSC) has exclusive responsibility for overseeing cleanup for the entire SSFL Site. DTSC will make all cleanup decisions and will oversee the work that will be conducted by the parties responsible for the contamination. Cleanup agreements are in place with US Department of Energy (DOE), NASA and the Boeing Company (Boeing) for DTSC to manage the site work to its projected completion in 2017.

SSFL Open House

May 17, 2012
6:30pm to 8:30pm

Grande Vista Hotel
999 Enchanted Way
Simi Valley, CA

Summary

EPA fieldwork will be completed by the end of Summer 2012 with the final reports due in December. The on-going sampling results are provided to DTSC to inform its future cleanup decisions. To date, EPA has collected more than 2,500 soil samples and 233 groundwater, surface water and sediment samples. Each sample was analyzed for 56 radioactive contaminants. It is worth noting that of the more than 1,600 analyzed soil samples that were taken during Round One, less than one percent of radioactive contaminants analyzed exceeded screening tools, called the Radioactive Trigger Levels (RTLs), used to indicate areas of contamination.

So far, EPA has not found any unexpected radioactive contamination. Radiological contamination has primarily been limited to locations in the vicinity of the Sodium Reactor Experiment (SRE), the Radioactive Material Handling Facility (RMHF), and a few other locations, all onsite.

Site access is restricted and therefore, the public is not exposed to this contamination.

EPA's Radiological Investigation Update

EPA is nearing completion of its fieldwork. We divided Area IV into ten subareas based on the historic operations conducted at each location (see map). When completed, the work plans and reports for each of the individual investigations mentioned below can be accessed on EPA's SSFL webpage, at the Information Repositories, or EPA's Superfund Records Center (see Public Participation section about how to access each resource).

We used multiple lines of evidence (data) to pinpoint radiological contamination in Area IV and the NBZ

Field investigations completed:

Background Study – In order to determine the differences between ambient radiation levels and site contamination, we collected 149 soil samples from a geologically similar, but undisturbed open space area miles from SSFL.

EPA'S Role at SSFL

EPA's role is to conduct an investigation of radiological contamination at SSFL's Area IV and the Northern Buffer Zone, an area bounding the former Rocketdyne test facility, totaling about 470 acres of sometimes very treacherous terrain. Historically, ten small nuclear research reactors were operated on-site to support the Space Program and for commercial applications. EPA's challenge is to distinguish the difference between naturally occurring and man-made radiation, in order to advise DTSC about what and how much to clean up.

In 2009, at the request of the State and the community, EPA received \$41.5 million of DOE and Recovery Act Funds from the Federal government to conduct one of the most robust technical investigations ever undertaken for low-level radioactive contamination. The State has requested that we attempt to identify areas within the scope of our investigation which exceed natural soil background concentrations. EPA has taken advantage of the latest progress in analytical tools and techniques to address the State's objectives.

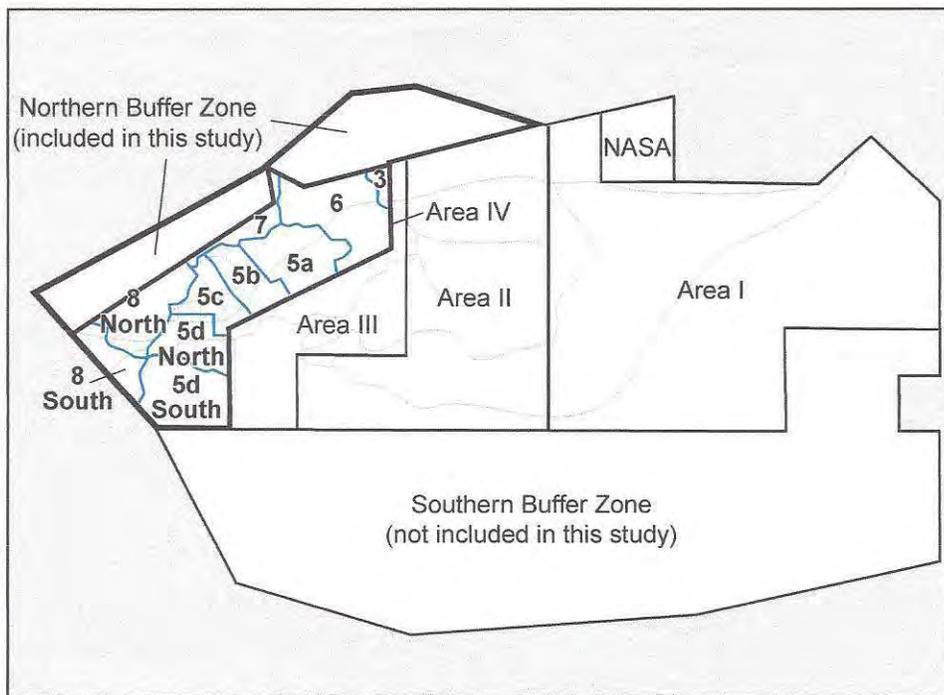


Figure 1: Santa Susana Field Laboratory Site

Historical Site Assessment (HSA) – In order to identify where releases, spills, leaks or dumping may have occurred in the past, EPA conducted a detailed study of the lab's operational history, based on existing documents, environmental data, aerial photographic analysis and former worker interviews. This document has been reviewed by our Technical Stakeholders and is expected to be finalized by mid-Summer.

Geophysical Survey – In order to follow up on areas identified in the HSA investigation, EPA used several different pieces of specialized equipment to survey the areas identified in the HSA investigation. We targeted areas with suspected underground objects including buried utilities, drums and scrap that give off unique magnetic signals. This document was reviewed by our Technical Stakeholders and the final is now available on EPA's SSFL webpage.

Groundwater, Surface Water and Sediments – In order to determine whether radionuclides were moving away from the original source areas, EPA collected 233 samples from existing monitoring wells, surface drainages or ponds and sediments in washes. In general, our results indicate that only tritium, a fission product of nuclear reactors, is present throughout the Site, but that other radioactive materials have not been observed. This document has been reviewed by our Technical Stakeholders and is expected to be finalized by late-Spring.

Who are the Technical Stakeholders?

In the spirit of transparency, EPA formed this group as an advisory body to consult about our investigation findings and to assist with planning upcoming sampling activities. The group is comprised of community leaders from the various affected neighborhoods bounding the Site, non-profit organizations, DTSC, DOE, and Boeing.

Gamma Survey – In order to determine the locations of elevated gamma radiation levels in the surface soil, EPA used several gamma survey devices, including a mule-mounted detector. EPA scanned more than 263 acres out of the total 470-acre SSFL Area IV and NBZ properties. EPA was unable to access some areas of steep terrain, which presented a health and safety issue to the workers. However, we were able to reach the vast majority of the areas of most interest in terms of where the radiological contamination likely traveled. Initial evaluations of the gamma scanning survey results reveal that there are isolated areas of elevated Cs-137 and Naturally Occurring Radioactive Materials (NORM) (uranium, thorium, and potassium-40) within Area IV. This document will be shared soon with our Technical Stakeholders and is expected to be finalized by mid-Summer.

Soil Sampling – The final step in characterizing areas of contamination consisted of surface and underground soil samples, collected generally down to 10 feet, or when the drill could no longer advance due to bedrock or debris. In several

locations, such as near the reactor vaults, we conducted deep borings which allowed us to cut through debris and gravel.

In general, EPA found elevated radiation levels in the areas where we expected to find them, isolated to a number of former process or disposal areas. Table 1 summarizes the preliminary soil data for Round One, which is subject to change after all quality control procedures are completed and will appear in a final report (Technical Memo).

The Background Threshold Values (BTVs) are our best estimate of naturally occurring and fallout radiation to be compared with samples from the Site. EPA developed Radiological Trigger Levels (RTLs) for purposes of conducting the on-site soil sampling for the large number of samples we had to collect to ensure that the analytical results could be reproduced with certainty. This is important when it comes time to clean up the Site. The State may elect to require the BTVs, the RTLs or other levels in deciding what is appropriate for the Site.

| Subarea | Radionuclide | Number of samples | Number of locations > RTL | Detected activity (range) | Rad Trigger Level | Background Threshold Value |
|---------|--------------|-------------------|---------------------------|---------------------------|-------------------|----------------------------|
| *5c | | 200 | | | | |
| | Cs-137 | | 1 | 0.818 | 0.207 | 0.193 |
| | Pu-239/240 | | 1 | 0.049 | 0.040 | 0.014 |
| 5b | | 466 | | | | |
| | Cs-137 | | 13 | 0.213 - 0.911 | 0.207 | 0.193 |
| | Sr-90 | | 1 | 0.563 | 0.485 | 0.075 |
| 6 | | 437 | | | | |
| | Cs-137 | | 59 | 0.21 - 196.0 | 0.207 | 0.193 |
| | Pu-239/240 | | 1 | 0.051 | 0.040 | 0.014 |
| 7 | | 254 | | | | |
| | Cs-137 | | 82 | 0.207 - 20.2 | 0.207 | 0.193 |
| | Pu-239/240 | | 2 | 0.05, 0.07 | 0.040 | 0.014 |
| 8 | | 284 | | | | |
| | Cs-137 | | 3 | 0.212 - 0.878 | 0.207 | 0.193 |
| | Pu-239/240 | | 2 | 0.07, 0.09 | 0.040 | 0.014 |
| | Sr-90 | | 21 | 0.5 - 2.7 | 0.485 | 0.075 |

Table 1: Round One Preliminary results. Pico Curies per gram (pCi/gram) is a measure of radioactivity. *With the exception of the 5c data, these results are not to be considered final until published in the Technical Memoranda.

The other radionuclides of concern and their values are presented in Table 1:

- Subarea 5c – this area includes Building 4100. Of 200 samples collected, EPA found two locations that slightly exceed our trigger levels.
- Subarea 5b – this area includes Building 4010 and the 17th St. Drainage. Of 466 samples collected, EPA found 15 locations that slightly exceed our trigger levels.
- Subarea 6 – this area includes the former Sodium Reactor Experiment Area and other work areas. Of 437 samples collected overall, EPA found a total of 59 locations of elevated cesium-137. Of the areas noted thus far, one is an area on a hill above the old Sodium Reactor Experiment area and another is located just east of that representing about one acre total. Both areas show data above background. EPA found one significantly elevated spot of cesium-137 beneath a road surface referred to as ‘G Street’, unrelated to the former SRE facility, measuring 196 pCi/gram. This spot is contained under pavement and is unlikely to travel in the environment before it is cleaned up.

Elevated Sr-90 was found in nine locations.

- Subarea 7- this area includes the former Radioactive Materials Handling Facility (RMHF). Of 254 samples collected, we found approximately 94 locations of elevated radiation. We found a total of 82 locations of elevated cesium-137 and 37 of strontium-90. Additionally, we found two locations of elevated plutonium 239/240.
- Subarea 8 – this area includes former Sodium Disposal Facility (aka Burn Pit) approximately 26 individual locations of elevated measurements, 21 of which were Sr-90, and three Cs-137.
- Subareas 3, 5a, 5d, 8 South and the Deep Borehole program – in these areas, samples have been collected, but the results are not yet available.

Based on these soil studies, we have not found any significant surprises in the soil data.

EPA’s remaining soil investigation:

Round One Northern Buffer Zone – EPA has completed randomized sampling in one portion of this area and is now moving into the other.

Round Two Soil Sampling – EPA’s “step out sampling” focuses on the man-made radioactive contaminants of concern remaining on-site, even after the radioactive decay process over the years. Our goal is to delineate the area of contamination adequately so that DTSC and DOE can efficiently proceed with cleanup. EPA began Round Two sampling March 5, in the sequence shown in the table, and is currently working in Subarea 6.

Public Participation at SSFL

As the lead regulatory agency for SSFL, DTSC has developed a public participation program that includes stakeholder technical meetings and a broader forum called the Public Participation Group (PPG). Membership in the PPG roughly mirrors the participants at the SSFL Interagency Work Group (IWG) and, like the SSFL IWG meetings, the PPG is open to the public.

For further information about DTSC’s overall site work and its public participation program, please contact Yvette LaDuke, Public Participation Specialist, 866-495-5651 or e-mail her at yladuke@dtsc.ca.gov.

Because the radiological investigation is technically challenging, EPA has created a technical stakeholder group to provide additional transparency and inclusiveness during the process. The technical stakeholders are a diverse group of approximately 40 neighborhood residents, activists, company and agency representatives with extensive technical and historic knowledge about the Site. One of the most significant ways they have assisted EPA has been through early sharing of preliminary information, which allows EPA to efficiently determine future sampling activities and include stakeholder comments in the process.

EPA also shares information with the general public, including public meetings the State holds. DTSC, with EPA and collaboration with SSFL responsible parties (including DOE, NASA and Boeing), will host an Open House session with multiple stations for the purpose of explaining our respective findings to date and the remaining work to be completed.

As we conclude our investigation, we want to share results from our radiological characterization study. EPA will hold a final meeting in Fall 2012 and will work with DTSC to coordinate this potential meeting within their public participation program.

If EPA finds any significant results in the future, we will coordinate with DTSC to notify the community of the findings after we have had a chance to review the materials thoroughly.

Historically, EPA provided support to the SSFL IWG meeting, most recently with funds provided by the DOE, which is responsible for the cleanup of Area IV and the Northern Buffer Zone. Once US EPA's radiological study is complete in 2012, DOE will not continue to fund the SSFL IWG. DTSC has taken over responsibility for the SSFL IWG due to its overall role as the lead regulatory agency at the site.

The SSFL responsible parties, DOE, NASA and Boeing have their own separate community engagement activities. Along with EPA, they provide site tours, training sessions, and maintain web sites with their agencies' cleanup documents.

EPA also has cleanup documents available – in hard copy at the Simi Valley and L.A. Platt Branch libraries, and DTSC's Chatsworth Office, and electronically at www.epa.gov/region09/SantaSusana.

EPA released an update and announced the postponement of the Winter 2012 SSFL IWG meeting using an e-Newsletter. EPA received a number of electronic returns when it sent these out. If you previously signed up to receive these electronic documents and have never received them, please send a follow up request via e-mail to cooper.david@epa.gov and we will correct our database and forward the information to DTSC.

EPA Points of Contact

Andy Bain

EPA Project Manager (SFD-8-1)
(415) 972-3167
Bain.Andrew@epa.gov

Shiann-Jang Chern

EPA Project Manager (SFD-8-1)
(415) 972-3268
Chern.Shiann-jang@epa.gov

David Cooper

Community Involvement
Coordinator (SFD-6-3)
(415) 972-3245
Cooper.David@epa.gov

Mary Aycock

EPA Project Manager (SFD-8-1)
(415) 972-3289
Aycock.Mary@epa.gov

Gregg Dempsey

Senior Science Advisor
(702) 784-8232
Dempsey.Gregg@epa.gov

U.S. EPA, Region 9

75 Hawthorne Street
San Francisco, CA 94105



EPA's toll-free message line (800) 231-3075. Please leave a message and your call will be returned.

SSFL Site Repositories

EPA has placed paper and/or CD copies of key radiological assessment documents at the following places:

Simi Valley Library

2969 Tapo Canyon Road
Simi Valley, California 93063
(805) 526-1735

Los Angeles Public Library

Platt Branch
23600 Victory Boulevard
Woodland Hills, California 91367
Attention: Janet Metzler
(818) 340-9386

Department of Toxic Substances Control Chatsworth Office

9211 Oakdale Avenue
Chatsworth, California 91311
Please contact Vivian Tutaan at
(818) 717-6520 for an appointment



EPA web address: <http://www.epa.gov/region09/SantaSusana>

MENU

Santa Susana Cleanup in Danger

CBG January 5, 2018 No Comments

by CBG President

Dan Hirsch

SEVENTY YEARS AGO, A facility for testing nuclear reactors and rockets too dangerous to be conducted near populated areas was established on the boundary of Los Angeles and Ventura Counties. Since then, the population has mushroomed, with half a million people now living within ten miles.

In 1979, Bridge the Gap brought to public attention a partial nuclear meltdown that had occurred at that Santa Susana Field Laboratory in 1959 but had been kept secret for decades. At



A candle-light vigil, led by local families of children with cancer, was held in March to stress the need for full cleanup at SSFL. Photo: Parents vs SSFL

least three other reactors suffered accidents there as well, along with numerous

radioactive fires, spills, and releases. Tens of thousands of rocket tests added to the widespread nuclear and toxic chemical contamination burdening the site, some of which migrates offsite. Government-funded studies found contaminants had migrated offsite in excess of EPA levels of concern, and a greater than 60% increase in incidence of key cancers associated with proximity to the site.

In 2010, Bridge the Gap was instrumental in getting legally binding agreements for full cleanup of the contamination, to be completed by 2017. As we approach the end of 2017, however, the cleanup not only hasn't been concluded, it hasn't even begun. The parties responsible for the pollution –the Department of Energy (DOE), NASA, and Boeing— and the regulatory agency, the California Department of Toxic Substances Control (DTSC) have all dragged their feet. And now they are trying to break out of the cleanup commitments and leave virtually all of the contamination not cleaned up. This would put at continued risk the people living nearby.

In January 2017, DOE released its draft Environmental Impact Statement for the cleanup. Every option proposed would breach the cleanup agreement it had signed in 2010. Rather than cleaning up all the contamination, as promised, DOE proposed to leave in place as much as 99%. Thousands of people submitted comments in protest. The Los Angeles City Council and the Los Angeles and Ventura County Boards of Supervisors passed resolutions in opposition. The Los Angeles City Attorney, Bridge the Gap, and the Natural Resources Defense Council submitted joint, extremely detailed critical comments. Fifteen years ago, CBG, LA City and NRDC successfully sued DOE when it tried to walk away from cleanup obligations, and the court retains jurisdiction. Now, we may have to return to the court to stop DOE all over again.

In September, DTSC released its draft Program Environmental Impact Report (EIR). It too breaches virtually every commitment DTSC had made to a full and protective cleanup. The agreements DTSC signed bar “leave in place”

alternatives. Now, however, in the EIR, it proposes to leave in place, not cleaned up, vast amount of contamination. Once again, CBG is spearheading public resistance to these broken promises.

The fight is really pretty simple: on the one hand, the power of the parties responsible for the pollution, particularly Boeing, and their captured regulatory agencies, and on the other hand, the innocent victims of the contamination for which they are responsible and the obligation to clean it up which they are attempting to evade. Recently, a group of families with children with rare pediatric cancers has become deeply and movingly involved in the fight for cleanup. Many met in the halls of Children's Hospital's oncology ward. Most lived in neighborhoods within ten miles of SSFL and became convinced that Santa Susana may have caused some of the cancers.

One of the children, 7-year-old Grace, first diagnosed in 2014, had gone into remission after months of grueling chemo. This summer, the cancer returned, and she is back in Children's Hospital, valiantly undergoing more chemo and a bone marrow transplant. This is all a fight between corporate greed and corrupt agencies on the one hand and the Graces of the world on the other. And Grace has taught us, among so many other things, that we can't ever give up.



 CBG News, Chemical Contamination, Main Page, Nuclear News, Nuclear Policy, Radiation, Radioactive Waste, SSFL  Boeing, california, cleanup, department of energy, DOE, DTSC, los angeles county, Santa Susana Field Laboratory, SSFL, toxic chemical, Ventura County



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

September 30, 2013

Allen Elliott
National Aeronautics and Space Administration
MSFC AS01, Building 4494
Huntsville, Alabama 35812

Subject: Draft Environmental Impact Statement for Proposed Demolition and Environmental Cleanup Activities at the Santa Susana Field Laboratory, Ventura and Los Angeles Counties, California. (CEQ# 20130227)

Dear Mr. Elliott:

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for Proposed Demolition and Environmental Cleanup Activities at the Santa Susana Field Laboratory in Ventura and Los Angeles Counties, California. Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), our NEPA review authority under Section 309 of the Clean Air Act, and the provisions of the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act.

We acknowledge the complexity of the cleanup of NASA administered federal land at the Santa Susana Field Lab. The proposed action has three major components: demolition of buildings and structures; soil removal, including multiple treatment options; and groundwater cleanup, which also includes treatment options. The DEIS explains that NASA must satisfy the requirements of the Agreement on Consent it signed in 2010 with the California Department of Toxic Substances Control, which includes a requirement to remove contaminated soil that exceeds soil concentration limits based on factors such as background values and detection limits. The Proposed Alternative represents that action, and we understand that the Council on Environmental Quality has advised that NASA is not obligated, under NEPA, to consider other alternatives, given NASA's commitment in the AOC to cleanup chemical and/or radiological contaminants to local background levels.

We agree that cleanup of radioactively contaminated soil to background is imperative. EPA and DTSC have cooperatively overseen the cleanup of radioactive contamination to background at, for example, Hunter's Point Naval Shipyard and McClellan Air Force Base. For chemical contamination sites, EPA, as well as DTSC, typically performs soil cleanups to health-based levels, unless background concentrations exceed those health-based levels.

We are concerned about the impacts associated with NASA's proposed removal, transport, and disposal of the large volume of soil that is chemically contaminated at levels below risk-based thresholds. At other cleanup sites, including adjacent non-federal portions of the Santa Susana site, nearly two-thirds of the soil with comparable levels of chemical contamination would be left in place. The increase in traffic and associated air emissions that would result from this action

would create an unnecessary added burden to communities with environmental justice concerns near the potential receiving facilities, such as Kettleman City and Buttonwillow, as well as to the local community at the cleanup site. Based on the information provided in the Draft EIS, NASA proposed soil removal would require 52,000 (one-way) truck trips, compared to the 19,000 truck trips that would be required for cleanup to residential standards. As the Draft EIS also notes, this would be in addition to the 40,000 truck trips that Boeing and the Department of Energy will need to haul waste to disposal facilities from their portions of the Santa Susana site. Additionally, the total volume of soil would consume a notable portion of the hazardous waste landfill capacity in the State of California. DTSC has announced a commitment to reduce by half the amount of hazardous waste disposed in the State by the year 2025, and EPA supports that effort.

Based on the above concerns, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2). We recommend that the Final Environmental Impact Statement offer a specific preferred treatment option for soil removal and groundwater cleanup. The enclosed Detailed Comments elaborate on our concerns and include additional recommendations regarding contaminated soil, water resources, air quality, traffic, cumulative impacts, cost, preservation of historic resources, and greener cleanups.

As you know, NASA has trust responsibilities to the Santa Ynez Band of Chumash Mission Indians. We encourage NASA to continue to consult with the tribe and address their concerns about the archaeological investigation performed to date. If NASA determines that any part of the federal land is a Sacred Site or Traditional Cultural Property, we also encourage you work proactively with the California Department of Toxic Substances Control and tribal representatives to mitigate the project’s impacts.

EPA appreciates the opportunity to comment on the DEIS. When the FEIS is released, please send one electronic and one hard copy to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3311, or have your staff contact Tom Kelly, the lead reviewer for this project. Tom can be reached at (415) 972-3856 or kelly.thomas@epa.gov.

Sincerely,

/s/

Kathleen Martyn Goforth, Manager
Environmental Review Office

Enclosures: EPA’s Detailed Comments
Summary of the EPA Rating System

cc (via email): John Jones, Department of Energy
Ray Leclerc, Department of Toxic Substances Control
Cassandra Owens, Los Angeles Regional Water Quality Control Board
Susan Nakamura, South Coast Air Quality Management District
(continued on next page)

cc (continued):

Sam Cohen, Santa Ynez Band of Chumash Mission Indians
David Dasler, Boeing
Dan Hirsch, Committee to Bridge the Gap

Contaminated Soil

Landfills

The proposed alternative would remove or treat contaminated soil above the Look Up Table values (p. 2-14), which are based on factors such as background concentrations and detection limits. In its notice of intent to prepare an EIS, NASA proposed several alternatives based on various health-based cleanup levels (e.g. residential, industrial and recreational scenarios), in addition to the proposed alternative (p. 2-34 to 36). These alternatives would have affected the soil removal action, but not the demolition or groundwater cleanup actions. Based on comments received, NASA decided to limit its evaluation of alternatives to the proposed alternative and the no action alternative, since only the proposed alternative would fulfill NASA's obligations under its 2010 Agreement on Consent (AOC) with the California Department of Toxic Substance Control to clean up the site to background (p.1-7).

While there are merits to remediating contaminated soil to background, such an approach inevitably involves trade-offs. For example, Table 2-4-2 in the DEIS indicates that a health-based alternative, sufficient to allow residential reuse of NASA administered federal property, would require removal of just over a third as much of the contaminated soil volume as would the proposed alternative. Correspondingly, such an alternative would only need just over one third of the 52,000 (one-way) truck trips, greatly reducing traffic and air quality impacts to the surrounding community and those along the disposal transportation routes. It is reasonable to expect that it might also reduce the significant impacts, acknowledged in the DEIS, to native vegetation communities and high-priority conservation habitats.

In the proposed alternative, the amount of soil to be removed from the NASA property (320,000 to 500,000 cubic yards per Table 2.2-5 and 2.2-6) is not only a large quantity for one site to generate, but large relative to the total volume of hazardous waste generated in California. Annually, about 300,000 cubic yards of contaminated soil and 600,000 cubic yards of waste are placed in California landfills.¹ While Table 2.2-4 indicates that 80% of the contaminated soil will be placed in hazardous waste landfills, another 10% of the total may not be hazardous waste, but could still be transported to a hazardous waste landfill. In addition, demolition will generate 43,152 tons of hazardous concrete for transport to a hazardous waste landfill.

The California Department of Toxic Substances Control recently committed to reducing disposal by 50% at both of the state's hazardous waste landfills -- Clean Harbors

¹ Department of Toxic Substances News Release, July 2, 2013, <http://www.dtsc.ca.gov/PressRoom/upload/News_Release_T-12-13.pdf>

Buttonwillow and Chemical Waste Management Kettleman Hills Facility -- by 2025.² NASA's soil removal could consume as much as 4% of the permitted capacity at CH Buttonwillow or 8% of the volume at CWM Kettleman Hills pending expansion of that facility.³ NASA's contaminated soil could increase total annual disposal at these facilities collectively by more than 60% for two years. These estimates do not include contaminated non-hazardous soil, nor concrete contaminated with hazardous waste, from demolition.

The DEIS does not discuss coordination with these facilities or with U.S. Ecology in Beatty Nevada, the other hazardous waste landfill identified in the DEIS. While all three facilities have large permitted capacities, NASA should verify that they have current landfill space available to accept such large quantities of waste. If CH Buttonwillow is selected for both hazardous and nonhazardous waste, NASA would consume nearly 50% of the facility's current 950,000 cubic yard capacity. For U.S. Ecology, which has approximately 1.1 million cubic yards of capacity, NASA waste would consume nearly 36% of the facility's landfill volume.⁴ To accept waste on the schedule proposed in the DEIS, the facility may need to speed the construction of additional landfill space.

Please note that the discussion above does not consider waste generation by the Department of Energy (DOE) or Boeing at the other portions of the Santa Susana Field Laboratory site. Boeing and DOE are expected to increase the quantity of contaminated soil to be removed by more than 65% (387,585 cubic yards per Table 4-13.1). The DEIS does not identify the disposal location for that waste.

Recommendation:

The FEIS should summarize NASA's discussions with receiving facilities regarding their ability to handle the potential volumes of contaminated soil from the proposed alternative. NASA should consider shipment to multiple facilities as a means to reduce impacts at the receiving facilities. To the extent possible, NASA should coordinate with Boeing and the Department of Energy on their remediation projects (e.g. schedules, disposal facilities and changes in soil volumes), so that its FEIS may contain as comprehensive a discussion of cumulative impacts as possible.

Treatment Options

The soil removal action, a component of the proposed alternative, includes many treatment options (Section 2.2.2.3). While we understand the urgency to complete soil removal by 2017 to comply with NASA's Agreement on Consent with DTSC (p. 1-7), the options of the DEIS create substantial uncertainty regarding the impacts of the proposed action, which should be avoided in the FEIS.

² Department of Toxic Substances News Release, July 2, 2013, <http://www.dtsc.ca.gov/PressRoom/upload/News_Release_T-12-13.pdf>

³ According to DTSC July 2 News Release, the CWM Kettleman expansion is 5 million cubic yards, according to Clean Harbor's Fact Sheet (http://clark.cleanharbors.com/ttServerRoot/Download/12381_FINAL_Buttonwillow_CA_Facility_FS_030108.pdf), the Buttonwillow facility has a 10 million cubic yard permitted capacity. See Table 2.4-5 for the volume that could be sent to these facilities as part of the proposed alternative.

⁴ Per the estimate of EPA's permitting staff familiar with U.S. Ecology

Recommendation:

The FEIS should identify one preferred treatment option for contaminated soil.

Environmental Justice

While the DEIS considers environmental justice impacts near the Santa Susana Field Lab, it specifically eliminated consideration of the effects around designated landfills and disposal facilities (Table 2.5-1). The DEIS states that “siting and licensing of these facilities includes consideration of the potential effects of bringing designated and permitted waste to the sites.” In view of the burden imposed on the communities near receiving facilities, particularly in light of the cleanup to background, a more detailed evaluation of environmental justice impacts would be valuable for those communities. Additionally, a facility permit could be many years old, offering NASA an opportunity to implement more recently developed mitigation measures. DTSC’s proposed permit for CWM Kettleman Hills, for example, would require trucks hauling waste to the facility to meet 2007 emissions standards immediately, and meet 2010 emissions standards by 2018.⁵

Recommendation:

The FEIS should consider impacts to communities with environmental justice concerns near facilities receiving substantial quantities of waste from demolition and soil removal. The FEIS should also commit to using on-road heavy duty diesel trucks that meet or exceed EPA’s emissions standard for 2010.

Radioactive Waste

The DEIS estimates that the proposed action will generate 50,000 cubic yards of mixed waste, both low level radioactive and hazardous waste (Table 2.4-2), but does not indicate the source of radioactive contamination. While the DEIS mentions the potential for mixed waste from contaminated industrial or research waste, it also mentions that NASA operations did not use or generate radioactive waste (p. 2-12). Demolition wastes appear to contain minor amounts of radioactive waste, such as smoke detectors, batteries in emergency lighting, exit signs, electric control panels, and building surfaces, equipment and or debris (radiological materials) (p. 3-48). The list of demolition wastes (Table 2.2-2), however, does not include large quantities of radioactive waste and the amount of demolition waste is shown as a separate quantity from that of contaminated soil estimated in Table 2.4-2.

Recommendation:

The FEIS should clarify the composition of the material that NASA expects to comprise the 50,000 cubic yards of mixed waste (Class A low-level radioactive waste and hazardous waste).

⁵ Community Notice regarding the Kettleman Hills Facility, DTSC, July 2013 <http://dtsc.ca.gov/HazardousWaste/Projects/upload/Kettleman_FS_ExpansionDecision_0713.pdf>

Waste Management

NASA's Santa Susana Field Lab website discusses a past waste shipment from the site that was halted due to concerns that the receiving facility was not appropriate for the waste.⁶ Based on our historic involvement with the site, we are aware that this was not an isolated incident. We recommend as much transparency in the matter of waste composition and management as possible. NASA would be better served to hear concerns regarding receiving facilities following publication of the FEIS or the public release of BMPs, than much later in the soil removal process, when delays may hinder NASA's ability to meet its commitment under the 2010 AOC.

Recommendations:

The FEIS should include, or commit NASA to develop and publicly release, best management practices that include the following:

- a description of debris and soil screening or testing procedures for radiation and chemical contamination
- a decision matrix that identifies specific facilities or types of facilities (e.g. solid waste landfill, hazardous waste landfill) for debris and soil based on the screening or testing protocol. Particular focus should be given to debris and waste that may be contaminated, but not regulated by EPA or the Nuclear Regulatory Commission (e.g. hazardous waste exceeding background levels of radionuclides, soil exceeding the Look-up Table values that is not considered hazardous waste etc.).

Water Resources

Groundwater Cleanup

The DEIS does not describe groundwater cleanup in the same level of detail as it does demolition and soil removal. The description of the no action alternative for groundwater cleanup, described as a "groundwater interim measure and interim source removal," (p. 2-33) does not show the location of the current extraction well, the lateral or vertical volume the well is intended to capture, the volume of water removed from the aquifer, or the weight of trichloroethylene (TCE) removed from groundwater over time; nor does it describe the treatment method for extracted groundwater or identify its discharge location.

The DEIS includes one figure showing the two-dimensional extent of trichloroethylene (TCE) in groundwater (Figure 2.2-4). Even though other contaminants are mentioned, such as TCE degradation products and n-nitrosodimethylamine (p. 2-27), none are mapped. The DEIS does not discuss the thickness of groundwater contaminant plumes. It mentions treatment of metals as an advantage of pump and treat technology but does not indicate elsewhere that groundwater is contaminated by metals. From the reports cited by the DEIS, such as RCRA Facility Investigation reports (p. 3-42), we presume that a considerable

⁶ See email from James Elliott, NASA to Cassandra Owens, Los Angeles Regional Water Quality Control Board at http://ssfl.msfc.nasa.gov/documents/comm/Elliott_to_Owens.pdf

amount of additional information that would be useful for disclosure and decision making could have been summarized in the DEIS.

The DEIS does not discuss criteria for selecting a groundwater cleanup remedy. What factors will NASA or DTSC consider in deciding between the technologies described in the DEIS (e.g. short and long term effectiveness; reduction in contaminant mobility, toxicity or volume; implementability; community acceptance)? The timeframe for treatment technologies is discussed (e.g. pump and treat technology would take “decades to centuries” achieve groundwater cleanup levels, p. 2-28), but further refinement of the estimates would increase the value of this information. While the DEIS discusses the advantages of each technology, it does not consider disadvantages. At some VOC sites, depending on the geochemistry, In-Situ Chemical Oxidation and Enhanced Bioremediation can break down TCE to form vinyl chloride, which is more toxic (i.e. has a lower Maximum Contaminant Level) than TCE.

The DEIS does not include actual or preliminary groundwater cleanup levels. It does clarify that the values will be based on a standardized risk assessment methodology (p. 2-27), but provides little additional information. For example, it is not clear whether the methodology only considers groundwater as a potential source of drinking water, or also considers vapor intrusion into buildings where contaminated groundwater contains volatile organic compounds at shallow elevations.

The DEIS does not discuss contamination of the vadose zone (soil and bedrock above the saturated zone or water table) below the depth of soil removal. Contaminated vadose zone soil may pose a continuing source of groundwater contamination. We note that some of the technologies considered, such as soil vapor extraction, may be capable of effectively removing vadose zone contamination, depending on the local geology.

Energy use can be a major cost and environmental impact of the operation and maintenance of a groundwater remedy. The document appears to recognize this, as the description of remedy options includes alternative energy, such as solar arrays (p. 2-28); however, the DEIS does not provide the energy use of the existing groundwater treatment system or an estimate for the proposed alternatives. The DEIS does state, “groundwater response actions should occur in 2016 and 2017, with long-term groundwater O&M [Operation and Maintenance] following” (p. 2-44), but it does not estimate the associated priority pollutants or greenhouse gas emissions. As noted in our air quality comments, below, NASA’s conformity determination should consider the groundwater cleanup emissions in 2016 and 2017.

Recommendations:

The Final Environmental Impact Statement (FEIS) should include:

- a thorough discussion of the no action alternative that includes the current groundwater extraction and treatment system, its energy use and a discussion of its effectiveness;
- an expanded discussion of the site’s geology;
- an explanation of three-dimensional groundwater flow and contaminant migration at the site;

- a more thorough description of source areas (e.g., test stands, evaporation ponds, landfills, leach fields, etc.) and vadose zone contamination;
- a description of the interaction of groundwater and surface water, including the location of surface seeps;
- an estimate of air emissions (priority pollutants and GHGs) associated with each treatment technology;
- a map of conceptual well networks necessary to implement potential groundwater cleanup technologies;
- the groundwater cleanup levels, based on a standardized risk assessment methodology. NASA should ensure that the methodology includes consideration of vapor intrusion into buildings where contaminated groundwater contains volatile organic compounds at shallow elevations;
- the goals or criteria that will be used in evaluating the vadose zone and groundwater cleanup technologies,
- a brief summary comparison of the advantages and disadvantages of each technology; and
- identification of NASA's preferred groundwater cleanup technology.

For purposes of presenting groundwater information in the DEIS more effectively, we suggest that NASA consider, as an example, a presentation that is posted on the Department of Energy (DOE) website, at:

http://etec.energy.gov/Library/Main/GWU--May_5_Beth_Parker_Final_Handout--Full_Page.pdf. EPA cannot speak to the accuracy of the presentation; we note only that it provides a detailed discussion of the site's groundwater contamination in an easy to understand format. While the presentation does not include any information about options for groundwater cleanup, we encourage NASA to consider its format and level of detail as guides for providing more detailed groundwater concepts.

Surface Water

As the DEIS discusses, the entire site, not just the NASA property, is covered by the Los Angeles Regional Water Quality Control Board's permit for the facility.⁷ The DEIS notes permit violations occurring from 2006 to 2009 at NASA outfalls due to contaminants in soil and sediment, such as dioxins (p. 3-42). It mentions an Interim Source Removal Action, conducted at the direction of the Regional Board for Outfalls 8 and 9, as a cumulative impact (p. 4-155 to 156). Interim Source Removal Action reports indicate that NASA and Boeing are using an expert panel to prioritize the need for Best Management Practices (BMPs) in areas draining to these outfalls, to assist in development of BMPs, and to evaluate the success of BMP implementation.⁸

NASA has excavated 4,800 cubic yards of contaminated soil, and expected to remove another 7,580 cubic yards by the end of this year at the Expendable Launch Vehicle area,

⁷ Waste Discharge Requirements for the Boeing Company, Santa Susana Field Lab, Order No. R4-2010-0090, NPDES No. CA0001309, California Regional Waste Quality Control Board, Los Angeles, Region, April 6, 2010, Revised May 20, 2010 and June 3, 2010.

⁸ See http://www.boeing.com/boeing/aboutus/environment/santa_susana/isra.page.

the Sewage Treatment Plant, the former Liquid Oxygen Plant and an area identified as A2LF (p. 4-156). The DEIS notes that the cleanup levels are consistent with DTSC's values, except for dioxins which are elevated in the area due to past wildfires. It does not provide a map of these areas nor indicate whether additional soil removal is required for NASA property in the Northern Drainage, which leads to Outfall 9.

Some of NASA's property in the Southwestern Drainage drains through Boeing-owned property back onto NASA property where it flows to Outfall 18 (Figure 3.6-1). (See *NASA-Boeing Cross Contamination* below.) The Regional Board's Stormwater Permit describes a sophisticated temporary treatment system at the Silvernale Pond, upstream of Outfall 18, which includes filtration, metals precipitation, and activated carbon treatment prior to discharge. The DEIS does not include a description of this system.

Based on discussions with the Regional Board, our review of their permit, and our limited review of the Interim Source Removal Action reports, surface water appears to be a subject of substantial focus for the entire Santa Susana Field Lab. This focus is not apparent from the DEIS. While the DEIS includes a mitigation measure (Water BMP-1, p. 4-80) to develop a Stormwater Pollution Prevention Plan and Erosion Control Plan (i.e. collections of BMPs), it provides no specific information on current or past BMPs.

Recommendations:

The FEIS should include

- a more comprehensive description of the interim source removal action, including BMPs developed through that process;
- a discussion of coordination between the interim source removal, demolition, and soil removal actions, including a map showing remaining demolition and soil removal actions in the Northern Drainage;
- a summary of BMPs currently in place, outside the Northern Drainage, to control the movement of contaminated sediment as well as any planned BMPs that will be used during demolition and soil removal; and
- a more recent description of compliance with the Regional Board's permit. NASA should consider engaging the expert panel on additional BMPs (if necessary) to control its stormwater discharges from active demolition and soil removal for the Northern and Southwest Drainages. EPA has an interest in the facility's BMPs and the description of these measures in the FEIS. Please contact Cindy Lin, at 213-244-1803 lin.cindy@epa.gov, if you would like our assistance.

NASA-Boeing Cross Property Contamination

Boeing and NASA appear to be using different standards for soil remediation. As risk-based standards may allow more contamination to remain at the site than the Look-Up Table values, post-cleanup concentrations of soil contamination will differ between Boeing-owned property and NASA-administered federal property. Figure 3.6-1 appears to show that federal property drainages extend into Boeing property, and Boeing drainages extend into federal property.

The DEIS does not describe the timing of cleanup for the two properties. If Boeing completes soil removal prior to NASA, contamination from the NASA property might migrate to Boeing property. While the same is true for Boeing contamination to migrate onto federal land, we are particularly concerned that, following the remediation of both properties, Boeing's property may still pose a risk of contamination to federal property.

Recommendation:

The FEIS should discuss the timing of the cleanup for the Boeing and NASA properties, as well as measures to prevent cross-contamination (pre-and post remediation) to Boeing and federal property.

Wetlands and Waters of the U.S.

The extent of jurisdictional waters of the U.S. (waters) is unclear in the DEIS. Figure 4.10-1 shows the potential impacts of the project to streams and ponds from the estimated soil cleanup activities. Several of these features are not identified in the Appendix G Wetlands Delineation Report or Figure 3.4-5 (Wetlands). In addition, Figure 3.4-5 identifies many of the features as man-made, which, according to the discussion in Section 3.4.5, are not considered as part of the impacts analysis. Also, the discussion of wetlands in section 3.4.5.1 appears to only consider aquatic features, such as palustrine and riverine wetlands that meet the three parameter wetlands test. Based on the information provided, it is difficult to determine the extent of jurisdictional features at the project site and whether the features are wetlands or non-wetland waters.

Additionally, the DEIS does not sufficiently describe the condition and functions of the wetland and non-wetland waters on the project site. An approved assessment method, such as the California Rapid Assessment Method (CRAM), should be used to measure baseline conditions as this type of information will be needed as part of the 404 permit application to the Corps.

We also note that the DEIS does not include potential mitigation measures to offset unavoidable impacts to jurisdictional waters of the U.S. Mitigation measures in the DEIS are limited to Table 6.1-1, which includes best management practices such as erosion control, revegetation, and permits from the Corps and the Regional Water Quality Control Board. The DEIS does not address how lost functions of jurisdictional waters could be offset through on-site restoration or through the purchase of credits at an approved mitigation bank or in-lieu fee program. As part of the 404 permit application, and to comply with the Corps/EPA 2008 Compensatory Mitigation Rule, NASA will be required to submit a detailed draft compensatory mitigation plan for approval by the Corps.

Recommendations:

The FEIS should:

- clarify the extent of features, by wetland and non-wetland waters, including any that are manmade, and include a figure that identifies areas of permanent and temporary impacts; (If possible, this information should be based on an

approved jurisdictional determination from the U.S. Army Corps of Engineers.)

- describe the condition and function of jurisdictional waters and other waters at the site;
- include an assessment of the conditions and functions of the waters using an approved assessment method;
- identify potential compensatory mitigation measures that NASA may propose in the CWA 404 permit application to offset unavoidable impacts.

Air Quality

General Conformity is intended to ensure that actions taken by federal agencies in nonattainment and maintenance areas do not interfere with the state's plans to meet the national standards for air quality. The DEIS concludes that the proposed alternative may exceed General Conformity de minimis thresholds in several counties (p. 4-110), so a general conformity analysis is required for the proposed alternative. The DEIS continues on to state, "the quantity of NOx offsets purchased by NASA would equal the quantity by which the General Conformity de minimis threshold values were exceeded." Please note that a project using offsets to demonstrate conformity must fully offset its emissions (i.e. to 0), not offset the emissions to the de minimis thresholds.^{9,10}

The DEIS also states that "Groundwater response actions should occur in 2016 and 2017, with long-term O&M [Operation and Maintenance] following." (p. 2-44). If peak emissions occur in 2016 and 2017, per Tables 4.7-3 and 4, then the General Conformity analysis should consider the emissions from groundwater cleanup response actions along with soil removal. The DEIS states, "the impacts to air quality and climate change from the groundwater remedial technologies are described qualitatively in the following text..." (p. 4-107). Additionally, the General Conformity Table of Appendix H includes demolition, excavation, and offsite disposal, but not groundwater response actions (p. H-17).

The DEIS discusses but does not commit to a mitigation measure to use newer model year trucks to reduce local criteria pollutants and GHGs (Air Quality Mitigation Measure – 2, p. 4-111). The DEIS also discusses the use of offsets to comply with General Conformity. NASA is likely to find cleaner trucks a cost effective project element to reduce the amount of offsets required by Air Districts.

Recommendation:

If NASA plans to use offsets to demonstrate compliance with General Conformity: the FEIS should commit to fully offset emissions (i.e. to zero) of any pollutants for which the projected emissions would exceed the de minimis thresholds. NASA should begin discussions with the appropriate air quality management districts on the emission offsets as soon as practical. The FEIS should include emissions from groundwater response actions in 2016 and 2017 in the General Conformity analysis,

⁹ 40 CFR 93.158

¹⁰ See Question 27, General Conformity Guidance: Questions and Answers, U.S. EPA, July 13, 1994

in addition to emissions from demolition and soil removal actions. The FEIS should also commit to using on-road heavy duty diesel trucks that meet or exceed EPA's emissions standard for 2010 and raise awareness of California's anti-idling rule among drivers (<http://www.arb.ca.gov/msprog/truck-idling/factsheet.pdf>).

Traffic

Reasonably Expected Route

The DEIS shows a truck route leaving the facility. Trucks would travel primarily on Woolsey Canyon, Valley Circle Boulevard, and Roscoe Boulevard and either split between routes that travel north and south on Topanga Canyon Boulevard (Figures 4.5-1 and 3) or favor a southern route (on Topanga Canyon Boulevard) by a 4 to 3 ratio for the maximum soil removal (Figure 4.5-2). We are concerned that the truck routes described for soil removal may not represent a reasonably expected route.

The majority of the waste generated during soil removal would be hazardous waste (80% per Table 2.4-2). Two of the three hazardous waste facilities that could accept hazardous waste are northeast of the site. To reach these sites, a route traveling south on Topanga Canyon Boulevard to I-101 and I-405 would appear to take trucks several miles further on highways likely to be as crowded or more so than I-118. Even for waste traveling to U.S. Ecology in Beatty, Nevada, or Energy Solutions Landfill in Clive, Utah, the route suggested by Google Maps would travel north on Topanga Canyon to I-118.¹¹ The DEIS does not explain whether there are overriding considerations that would warrant selection of a less direct route. For hazardous waste, only trucks destined for DeMenno Kerdoon would likely travel south on Topanga Canyon Boulevard, per the Google Maps suggested route, and that facility accepts only petroleum contaminated soil, which may not even be hazardous waste.

Closer to the Santa Susana Field Lab, the DEIS identifies several possible routes as Region of Influence Roadways. Although Box Canyon Road and Plummer Street appear to offer a slightly shorter route to I-118, the DEIS does not clarify the reason for assuming that all trucks will use Roscoe.

Recommendations:

The FEIS should:

- designate truck routes, particularly for the largest (Class VIII) trucks;
- explain the reason(s) more trucks would not travel North on Topanga Canyon Boulevard;
- evaluate the possible effects of landfill selection (or other receiving facility) on the truck route to ensure that all reasonably foreseeable traffic analyses are considered;

¹¹ The Initial recommendation for a route to Beatty Nevada would travel through Death Valley National Park. The recommended southern route, through Barstow, would be on I-118 rather than I-405.

- to the extent possible, based on coordination with Boeing and the Department of Energy, NASA should update its traffic analysis to consider the cumulative impacts; and
- offer rideshare or carpool program for construction workers to further reduce traffic impacts.

Effects and Potential Safety of School Children

We commend NASA for its consideration of the impact of truck traffic on school children. As the analysis is novel, we offer some recommendations for improvement. We noted that the DEIS did not include childcare centers, preschools, parks nor recreation centers in its evaluation of truck traffic and children. While fewer children may walk to these facilities than to schools, their safety is relevant for consideration. Additionally, the DEIS does not consider the role of crossing guards at intersections near schools, nor educational outreach to schools, childcare centers and residents.

Recommendation:

The FEIS should:

- consider childcare centers, preschools, parks and recreation centers as well as schools in the evaluation of truck traffic and potential exposure to children;
- provide additional funding for crossing guards, if busy intersections near schools are not currently staffed;
- target outreach material about the construction schedule and truck routes to schools and childcare centers and residents.

Cumulative Impacts

As the Cumulative Impacts Section (4.13) mentions, DOE and Boeing are also actively cleaning up soil and groundwater at their portions of the Santa Susana Field Lab. While the DEIS provides additional waste volumes and trucks for the Boeing and DOE cleanup, it does not model the cumulative impacts to children, traffic, and air quality. A cumulative model of these impacts is likely to be of much more interest and value to the public than the individual analysis of impacts from NASA, Boeing, or DOE.

Recommendation:

To the extent possible, in coordination with Boeing and the DOE, NASA should update its analysis to consider the cumulative impacts (including Boeing and DOE soil removal) on traffic, children and air quality.

Cost

Many factors should be considered in making a remedy selection for soil removal. For example, EPA uses nine criteria to evaluate cleanup alternatives under the Comprehensive

Environmental Response, Compensation, and Liability Act, commonly known as Superfund.¹² For the most part, the DEIS and the public comment period address these factors, except cost. The cost of a cleanup should play an important role in screening and selection of alternatives.¹³ The DEIS contains no information on the cost or cost-effectiveness of the treatment technologies for soil removal.

Recommendation:

The FEIS should include an estimate of the cost for each element of the cleanup (i.e. demolition, soil remedial activities and groundwater remedial activities), as well as the options within each element (e.g. soil excavation and off-site disposal, soil excavation and ex-situ treatment, soil vapor extraction etc.

Preservation of Cultural Resources

The proposed alternative would include retention of one test stand (Cultural Mitigation Measure-1, p. 4-25). The DEIS describes potential hazardous material that may be encountered during demolition of structures, such as lead painted surfaces, asbestos insulation and ceiling material, and polychlorinated biphenyl (PCBs) contained in caulk and paint (Table 3.8-1). The DEIS does not appear discuss the removal, encapsulation or other methods to minimize hazards associated with retained historic resources.

Recommendation:

To enable broader access to the retained historic resources, Cultural Mitigation Measure-1 should include a commitment to remove, encapsulate or otherwise prevent visitor exposure to, potential hazards, such as lead paint, asbestos and PCBs.

Greener Cleanups

Greener Cleanups refers to an approach at remediation sites in which EPA seeks to understand the environmental footprint resulting from site activities and identify opportunities to reduce that footprint. EPA has developed Principles for Greener Cleanups,¹⁴ Best Management Practices (BMPs) for greener cleanups,¹⁵ and a Methodology for quantifying the environmental footprint of a cleanup.¹⁶ Each of these resources may be

¹² See A Guide to Preparing Superfund Proposed Plans, Records of Decisions, and Other Remedy Selection Decision Documents, U.S. EPA July 1999.

¹³ The Role of Cost in the Superfund Remedy Selection Process, U.S. EPA, September 1996
<http://www.epa.gov/superfund/policy/cost_dir/cost_dir.pdf>.

¹⁴ see http://www.epa.gov/oswer/greenercleanups/pdfs/oswer_greencleanup_principles.pdf

¹⁵ BMPs are listed at <http://www.clu-in.org/greenremediation/>.

¹⁶ Methodology for Understanding and Reducing a Project's Environmental Footprint, U.S. EPA, February 2012 (EPA-542-R-12-002

<http://www.clu-in.org/greenremediation/methodology/docs/GC_Footprint_Methodology_Feb2012.pdf>

and Overview of EPA's Methodology to Address the Environmental Footprint of Site Cleanup, U.S. EPA, March 2012, EPA-542-F-12-023,

<http://www.clu-in.org/greenremediation/methodology/docs/GR_Overview_of_Footprint_Methodology_FS_3-29-12.pdf>

http://www.clu-in.org/greenremediation/methodology/docs/GR_Overview_of_Footprint_Methodology_FS_3-29-12.pdf>

of use for the activities at the Santa Susana Field Laboratory. Broadly speaking, the resources address the following aspects of a cleanup:

- Total Energy Use and Renewable Energy Use
- Air Pollutants and Greenhouse Gas Emissions
- Water Use and Impacts to Water Resources
- Materials Management and Waste Reduction
- Land Management and Ecosystems Protection

The DEIS already addresses many aspects of Greener Cleanups. These include estimated greenhouse gas emissions (for demolition and soil removal), and estimated waste generation volumes, as well as measures to be taken for fugitive dust control, stormwater management, and reuse of demolition debris.

We offer the Principles, BMPs, and Methodology for use at remediation sites on a voluntary basis, but we also note that these resources may help to identify additional topics that should have been included in the DEIS, and should be included in the FEIS, depending on the potential significance of the impact [40 CFR 1502.2(b)]. For example, the DEIS does not consider: quantifying certain aspects of the remedy such as the amount of water and materials used; extending the scope to off-site support activities, such as laboratory analysis and waste management; and identifying opportunities for reduction for these aspects of the remedy. Karen Scheuermann is available to assist NASA in understanding and applying the Greener Cleanups approach at the Santa Susana Field Laboratory. Ms. Scheuermann can be contacted at (415) 972-3356 or scheuermann.karen@epa.gov. We also note that DTSC's *Advisory for Green Remediation*¹⁷ is compatible with EPA's Principles for Greener Cleanups.

Recommendation:

NASA should consider EPA and DTSC resources for Greener Cleanups and take advantage of any aspects of these resources that may be beneficial in the cleanup of the Santa Susana Field Lab.

¹⁷ Interim Advisory for Green Remediation, California Department of Toxic Substances Control, December 2009 < http://www.dtsc.ca.gov/OMF/upload/GRT_Draft_Advisory_-20091217_ac1.pdf >



SANTA SUSANA FIELD LAB SITE

U.S. Environmental Protection Agency • Region 9 • San Francisco, CA • May 2012

EPA Radiation Investigation Update

The U.S. Environmental Protection Agency (EPA) has made significant progress in its investigation of radiological contamination at Area IV and the Northern Buffer Zone (NBZ) of the Santa Susana Field Laboratory (SSFL) Site, which borders Ventura and Los Angeles Counties.

The State of California Department of Toxic Substances Control (DTSC) has exclusive responsibility for overseeing cleanup for the entire SSFL Site. DTSC will make all cleanup decisions and will oversee the work that will be conducted by the parties responsible for the contamination. Cleanup agreements are in place with US Department of Energy (DOE), NASA and the Boeing Company (Boeing) for DTSC to manage the site work to its projected completion in 2017.

SSFL Open House

May 17, 2012
6:30pm to 8:30pm

Grande Vista Hotel
999 Enchanted Way
Simi Valley, CA

Summary

EPA fieldwork will be completed by the end of Summer 2012 with the final reports due in December. The on-going sampling results are provided to DTSC to inform its future cleanup decisions. To date, EPA has collected more than 2,500 soil samples and 233 groundwater, surface water and sediment samples. Each sample was analyzed for 56 radioactive contaminants. It is worth noting that of the more than 1,600 analyzed soil samples that were taken during Round One, less than one percent of radioactive contaminants analyzed exceeded screening tools, called the Radioactive Trigger Levels (RTLs), used to indicate areas of contamination.

So far, EPA has not found any unexpected radioactive contamination. Radiological contamination has primarily been limited to locations in the vicinity of the Sodium Reactor Experiment (SRE), the Radioactive Material Handling Facility (RMHF), and a few other locations, all onsite.

Site access is restricted and therefore, the public is not exposed to this contamination.

EPA's Radiological Investigation Update

EPA is nearing completion of its fieldwork. We divided Area IV into ten subareas based on the historic operations conducted at each location (see map). When completed, the work plans and reports for each of the individual investigations mentioned below can be accessed on EPA's SSFL webpage, at the Information Repositories, or EPA's Superfund Records Center (see Public Participation section about how to access each resource).

We used multiple lines of evidence (data) to pinpoint radiological contamination in Area IV and the NBZ

Field investigations completed:

Background Study – In order to determine the differences between ambient radiation levels and site contamination, we collected 149 soil samples from a geologically similar, but undisturbed open space area miles from SSFL.

EPA'S Role at SSFL

EPA's role is to conduct an investigation of radiological contamination at SSFL's Area IV and the Northern Buffer Zone, an area bounding the former Rocketdyne test facility, totaling about 470 acres of sometimes very treacherous terrain. Historically, ten small nuclear research reactors were operated on-site to support the Space Program and for commercial applications. EPA's challenge is to distinguish the difference between naturally occurring and man-made radiation, in order to advise DTSC about what and how much to clean up.

In 2009, at the request of the State and the community, EPA received \$41.5 million of DOE and Recovery Act Funds from the Federal government to conduct one of the most robust technical investigations ever undertaken for low-level radioactive contamination. The State has requested that we attempt to identify areas within the scope of our investigation which exceed natural soil background concentrations. EPA has taken advantage of the latest progress in analytical tools and techniques to address the State's objectives.

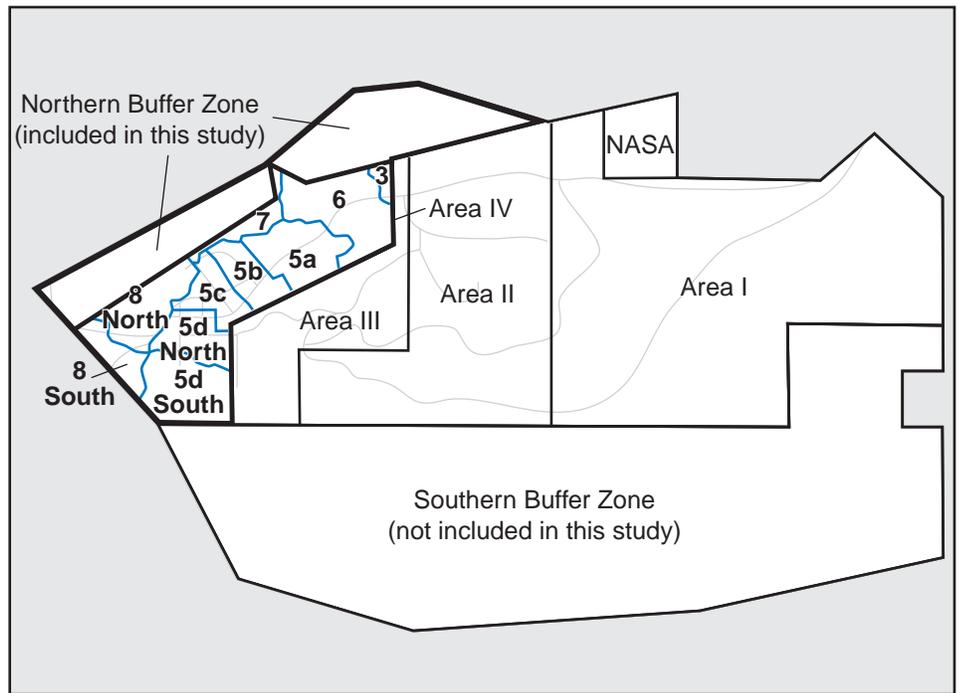


Figure 1: Santa Susana Field Laboratory Site

Historical Site Assessment (HSA) – In order to identify where releases, spills, leaks or dumping may have occurred in the past, EPA conducted a detailed study of the lab's operational history, based on existing documents, environmental data, aerial photographic analysis and former worker interviews. This document has been reviewed by our Technical Stakeholders and is expected to be finalized by mid-Summer.

Geophysical Survey – In order to follow up on areas identified in the HSA investigation, EPA used several different pieces of specialized equipment to survey the areas identified in the HSA investigation. We targeted areas with suspected underground objects including buried utilities, drums and scrap that give off unique magnetic signals. This document was reviewed by our Technical Stakeholders and the final is now available on EPA's SSFL webpage.

Groundwater, Surface Water and Sediments – In order to determine whether radionuclides were moving away from the original source areas, EPA collected 233 samples from existing monitoring wells, surface drainages or ponds and sediments in washes. In general, our results indicate that only tritium, a fission product of nuclear reactors, is present throughout the Site, but that other radioactive materials have not been observed. This document has been reviewed by our Technical Stakeholders and is expected to be finalized by late-Spring.

Who are the Technical Stakeholders?

In the spirit of transparency, EPA formed this group as an advisory body to consult about our investigation findings and to assist with planning upcoming sampling activities. The group is comprised of community leaders from the various affected neighborhoods bounding the Site, non-profit organizations, DTSC, DOE, and Boeing.

Gamma Survey – In order to determine the locations of elevated gamma radiation levels in the surface soil, EPA used several gamma survey devices, including a mule-mounted detector. EPA scanned more than 263 acres out of the total 470-acre SSFL Area IV and NBZ properties. EPA was unable to access some areas of steep terrain, which presented a health and safety issue to the workers. However, we were able to reach the vast majority of the areas of most interest in terms of where the radiological contamination likely traveled. Initial evaluations of the gamma scanning survey results reveal that there are isolated areas of elevated Cs-137 and Naturally Occurring Radioactive Materials (NORM) (uranium, thorium, and potassium-40) within Area IV. This document will be shared soon with our Technical Stakeholders and is expected to be finalized by mid-Summer.

Soil Sampling – The final step in characterizing areas of contamination consisted of surface and underground soil samples, collected generally down to 10 feet, or when the drill could no longer advance due to bedrock or debris. In several

locations, such as near the reactor vaults, we conducted deep borings which allowed us to cut through debris and gravel.

In general, EPA found elevated radiation levels in the areas where we expected to find them, isolated to a number of former process or disposal areas. Table 1 summarizes the **preliminary** soil data for Round One, which is subject to change after all quality control procedures are completed and will appear in a final report (Technical Memo).

The Background Threshold Values (BTVs) are our best estimate of naturally occurring and fallout radiation to be compared with samples from the Site. EPA developed Radiological Trigger Levels (RTLs) for purposes of conducting the on-site soil sampling for the large number of samples we had to collect to ensure that the analytical results could be reproduced with certainty. This is important when it comes time to clean up the Site. The State may elect to require the BTVs, the RTLs or other levels in deciding what is appropriate for the Site.

| Subarea | Radionuclide | Number of samples | Number of locations > RTL | Detected activity (range) | Rad Trigger Level | Background Threshold Value |
|---------|--------------|-------------------|---------------------------|---------------------------|-------------------|----------------------------|
| *5c | | 200 | | | | |
| | Cs-137 | | 1 | 0.818 | 0.207 | 0.193 |
| | Pu-239/240 | | 1 | 0.049 | 0.040 | 0.014 |
| 5b | | 466 | | | | |
| | Cs-137 | | 13 | 0.213 - 0.911 | 0.207 | 0.193 |
| | Sr-90 | | 1 | 0.563 | 0.485 | 0.075 |
| | Eu-152 | 1 | 0.078 | 0.057 | 0.017 | |
| 6 | | 437 | | | | |
| | Cs-137 | | 59 | 0.21 - 196.0 | 0.207 | 0.193 |
| | Pu-239/240 | | 1 | 0.051 | 0.040 | 0.014 |
| | Sr-90 | 9 | 0.523 - 21.3 | 0.485 | 0.075 | |
| 7 | | 254 | | | | |
| | Cs-137 | | 82 | 0.207 - 20.2 | 0.207 | 0.193 |
| | Pu-239/240 | | 2 | 0.05, 0.07 | 0.040 | 0.014 |
| | Sr-90 | 37 | 0.489 - 14.3 | 0.485 | 0.075 | |
| 8 | | 284 | | | | |
| | Cs-137 | | 3 | 0.212 - 0.878 | 0.207 | 0.193 |
| | Pu-239/240 | | 2 | 0.07, 0.09 | 0.040 | 0.014 |
| | Sr-90 | 21 | 0.5 - 2.7 | 0.485 | 0.075 | |

Table 1: Round One Preliminary results. Pico Curies per gram (pCi/gram) is a measure of radioactivity. *With the exception of the 5c data, these results are not to be considered final until published in the Technical Memoranda.

The other radionuclides of concern and their values are presented in Table 1:

- Subarea 5c – this area includes Building 4100. Of 200 samples collected, EPA found two locations that slightly exceed our trigger levels.
- Subarea 5b – this area includes Building 4010 and the 17th St. Drainage. Of 466 samples collected, EPA found 15 locations that slightly exceed our trigger levels.
- Subarea 6 – this area includes the former Sodium Reactor Experiment Area and other work areas. Of 437 samples collected overall, EPA found a total of 59 locations of elevated cesium-137. Of the areas noted thus far, one is an area on a hill above the old Sodium Reactor Experiment area and another is located just east of that representing about one acre total. Both areas show data above background. EPA found one significantly elevated spot of cesium-137 beneath a road surface referred to as ‘G Street’, unrelated to the former SRE facility, measuring 196 pCi/gram. This spot is contained under pavement and is unlikely to travel in the environment before it is cleaned up.

Elevated Sr-90 was found in nine locations.

- Subarea 7- this area includes the former Radioactive Materials Handling Facility (RMHF). Of 254 samples collected, we found approximately 94 locations of elevated radiation. We found a total of 82 locations of elevated cesium-137 and 37 of strontium-90. Additionally, we found two locations of elevated plutonium 239/240.
- Subarea 8 – this area includes former Sodium Disposal Facility (aka Burn Pit) approximately 26 individual locations of elevated measurements, 21 of which were Sr-90, and three Cs-137.
- Subareas 3, 5a, 5d, 8 South and the Deep Borehole program – in these areas, samples have been collected, but the results are not yet available.

Based on these soil studies, we have not found any significant surprises in the soil data.

EPA’s remaining soil investigation:

Round One Northern Buffer Zone – EPA has completed randomized sampling in one portion of this area and is now moving into the other.

Round Two Soil Sampling – EPA’s “step out sampling” focuses on the man-made radioactive contaminants of concern remaining on-site, even after the radioactive decay process over the years. Our goal is to delineate the area of contamination adequately so that DTSC and DOE can efficiently proceed with cleanup. EPA began Round Two sampling March 5, in the sequence shown in the table, and is currently working in Subarea 6.

Public Participation at SSFL

As the lead regulatory agency for SSFL, DTSC has developed a public participation program that includes stakeholder technical meetings and a broader forum called the Public Participation Group (PPG). Membership in the PPG roughly mirrors the participants at the SSFL Interagency Work Group (IWG) and, like the SSFL IWG meetings, the PPG is open to the public.

For further information about DTSC’s overall site work and its public participation program, please contact Yvette LaDuke, Public Participation Specialist, 866-495-5651 or e-mail her at yladuke@dtsc.ca.gov.

Because the radiological investigation is technically challenging, EPA has created a technical stakeholder group to provide additional transparency and inclusiveness during the process. The technical stakeholders are a diverse group of approximately 40 neighborhood residents, activists, company and agency representatives with extensive technical and historic knowledge about the Site. One of the most significant ways they have assisted EPA has been through early sharing of preliminary information, which allows EPA to efficiently determine future sampling activities and include stakeholder comments in the process.

EPA also shares information with the general public, including public meetings the State holds. DTSC, with EPA and collaboration with SSFL responsible parties (including DOE, NASA and Boeing), will host an Open House session with multiple stations for the purpose of explaining our respective findings to date and the remaining work to be completed.

As we conclude our investigation, we want to share results from our radiological characterization study. EPA will hold a final meeting in Fall 2012 and will work with DTSC to coordinate this potential meeting within their public participation program.

If EPA finds any significant results in the future, we will coordinate with DTSC to notify the community of the findings after we have had a chance to review the materials thoroughly.

Historically, EPA provided support to the SSFL IWG meeting, most recently with funds provided by the DOE, which is responsible for the cleanup of Area IV and the Northern Buffer Zone. Once US EPA's radiological study is complete in 2012, DOE will not continue to fund the SSFL IWG. DTSC has taken over responsibility for the SSFL IWG due to its overall role as the lead regulatory agency at the site.

The SSFL responsible parties, DOE, NASA and Boeing have their own separate community engagement activities. Along with EPA, they provide site tours, training sessions, and maintain web sites with their agencies' cleanup documents.

EPA also has cleanup documents available – in hard copy at the Simi Valley and L.A. Platt Branch libraries, and DTSC's Chatsworth Office, and electronically at www.epa.gov/region09/SantaSusana.

EPA released an update and announced the postponement of the Winter 2012 SSFL IWG meeting using an e-Newsletter. EPA received a number of electronic returns when it sent these out. If you previously signed up to receive these electronic documents and have never received them, please send a follow up request via e-mail to cooper.david@epa.gov and we will correct our database and forward the information to DTSC.

EPA Points of Contact

Andy Bain

EPA Project Manager (SFD-8-1)
(415) 972-3167
Bain.Andrew@epa.gov

Shiann-Jang Chern

EPA Project Manager (SFD-8-1)
(415) 972-3268
Chern.Shiann-jang@epa.gov

David Cooper

Community Involvement
Coordinator (SFD-6-3)
(415) 972-3245
Cooper.David@epa.gov

Mary Aycock

EPA Project Manager (SFD-8-1)
(415) 972-3289
Aycock.Mary@epa.gov

Gregg Dempsey

Senior Science Advisor
(702) 784-8232
Dempsey.Gregg@epa.gov

U.S. EPA, Region 9

75 Hawthorne Street
San Francisco, CA 94105



EPA's toll-free message line **(800) 231-3075**. Please leave a message and your call will be returned.

SSFL Site Repositories

EPA has placed paper and/or CD copies of key radiological assessment documents at the following places:

Simi Valley Library

2969 Tapo Canyon Road
Simi Valley, California 93063
(805) 526-1735

Los Angeles Public Library

Platt Branch
23600 Victory Boulevard
Woodland Hills, California 91367
Attention: Janet Metzler
(818) 340-9386

Department of Toxic Substances Control Chatsworth Office

9211 Oakdale Avenue
Chatsworth, California 91311
Please contact Vivian Tutaan at
(818) 717-6520 for an appointment



EPA web address: <http://www.epa.gov/region09/SantaSusana>



Santa Susana Field Lab Site

EPA Radiation Investigation Update

SSFL Open House

May 17, 2012, 6:30pm to 8:30pm

Grande Vista Hotel
999 Enchanted Way
Simi Valley, CA



Printed on 30% Postconsumer  Recycled/Recyclable Paper

United States Environmental Protection Agency, Region 9
75 Hawthorne Street (SFD-6-3)
San Francisco, CA 94105
Attn: David Cooper (SSFL 5/12)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

September 30, 2013

Allen Elliott
National Aeronautics and Space Administration
MSFC AS01, Building 4494
Huntsville, Alabama 35812

Subject: Draft Environmental Impact Statement for Proposed Demolition and Environmental Cleanup Activities at the Santa Susana Field Laboratory, Ventura and Los Angeles Counties, California. (CEQ# 20130227)

Dear Mr. Elliott:

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for Proposed Demolition and Environmental Cleanup Activities at the Santa Susana Field Laboratory in Ventura and Los Angeles Counties, California. Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), our NEPA review authority under Section 309 of the Clean Air Act, and the provisions of the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act.

We acknowledge the complexity of the cleanup of NASA administered federal land at the Santa Susana Field Lab. The proposed action has three major components: demolition of buildings and structures; soil removal, including multiple treatment options; and groundwater cleanup, which also includes treatment options. The DEIS explains that NASA must satisfy the requirements of the Agreement on Consent it signed in 2010 with the California Department of Toxic Substances Control, which includes a requirement to remove contaminated soil that exceeds soil concentration limits based on factors such as background values and detection limits. The Proposed Alternative represents that action, and we understand that the Council on Environmental Quality has advised that NASA is not obligated, under NEPA, to consider other alternatives, given NASA's commitment in the AOC to cleanup chemical and/or radiological contaminants to local background levels.

We agree that cleanup of radioactively contaminated soil to background is imperative. EPA and DTSC have cooperatively overseen the cleanup of radioactive contamination to background at, for example, Hunter's Point Naval Shipyard and McClellan Air Force Base. For chemical contamination sites, EPA, as well as DTSC, typically performs soil cleanups to health-based levels, unless background concentrations exceed those health-based levels.

We are concerned about the impacts associated with NASA's proposed removal, transport, and disposal of the large volume of soil that is chemically contaminated at levels below risk-based thresholds. At other cleanup sites, including adjacent non-federal portions of the Santa Susana site, nearly two-thirds of the soil with comparable levels of chemical contamination would be left in place. The increase in traffic and associated air emissions that would result from this action

would create an unnecessary added burden to communities with environmental justice concerns near the potential receiving facilities, such as Kettleman City and Buttonwillow, as well as to the local community at the cleanup site. Based on the information provided in the Draft EIS, NASA proposed soil removal would require 52,000 (one-way) truck trips, compared to the 19,000 truck trips that would be required for cleanup to residential standards. As the Draft EIS also notes, this would be in addition to the 40,000 truck trips that Boeing and the Department of Energy will need to haul waste to disposal facilities from their portions of the Santa Susana site. Additionally, the total volume of soil would consume a notable portion of the hazardous waste landfill capacity in the State of California. DTSC has announced a commitment to reduce by half the amount of hazardous waste disposed in the State by the year 2025, and EPA supports that effort.

Based on the above concerns, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2). We recommend that the Final Environmental Impact Statement offer a specific preferred treatment option for soil removal and groundwater cleanup. The enclosed Detailed Comments elaborate on our concerns and include additional recommendations regarding contaminated soil, water resources, air quality, traffic, cumulative impacts, cost, preservation of historic resources, and greener cleanups.

As you know, NASA has trust responsibilities to the Santa Ynez Band of Chumash Mission Indians. We encourage NASA to continue to consult with the tribe and address their concerns about the archaeological investigation performed to date. If NASA determines that any part of the federal land is a Sacred Site or Traditional Cultural Property, we also encourage you work proactively with the California Department of Toxic Substances Control and tribal representatives to mitigate the project's impacts.

EPA appreciates the opportunity to comment on the DEIS. When the FEIS is released, please send one electronic and one hard copy to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3311, or have your staff contact Tom Kelly, the lead reviewer for this project. Tom can be reached at (415) 972-3856 or kelly.thomasp@epa.gov.

Sincerely,

/s/

Kathleen Martyn Goforth, Manager
Environmental Review Office

Enclosures: EPA's Detailed Comments
Summary of the EPA Rating System

cc (via email): John Jones, Department of Energy
Ray Leclerc, Department of Toxic Substances Control
Cassandra Owens, Los Angeles Regional Water Quality Control Board
Susan Nakamura, South Coast Air Quality Management District
(continued on next page)

cc (continued):

Sam Cohen, Santa Ynez Band of Chumash Mission Indians
David Dasler, Boeing
Dan Hirsch, Committee to Bridge the Gap

Contaminated Soil

Landfills

The proposed alternative would remove or treat contaminated soil above the Look Up Table values (p. 2-14), which are based on factors such as background concentrations and detection limits. In its notice of intent to prepare an EIS, NASA proposed several alternatives based on various health-based cleanup levels (e.g. residential, industrial and recreational scenarios), in addition to the proposed alternative (p. 2-34 to 36). These alternatives would have affected the soil removal action, but not the demolition or groundwater cleanup actions. Based on comments received, NASA decided to limit its evaluation of alternatives to the proposed alternative and the no action alternative, since only the proposed alternative would fulfill NASA's obligations under its 2010 Agreement on Consent (AOC) with the California Department of Toxic Substance Control to clean up the site to background (p.1-7).

While there are merits to remediating contaminated soil to background, such an approach inevitably involves trade-offs. For example, Table 2-4-2 in the DEIS indicates that a health-based alternative, sufficient to allow residential reuse of NASA administered federal property, would require removal of just over a third as much of the contaminated soil volume as would the proposed alternative. Correspondingly, such an alternative would only need just over one third of the 52,000 (one-way) truck trips, greatly reducing traffic and air quality impacts to the surrounding community and those along the disposal transportation routes. It is reasonable to expect that it might also reduce the significant impacts, acknowledged in the DEIS, to native vegetation communities and high-priority conservation habitats.

In the proposed alternative, the amount of soil to be removed from the NASA property (320,000 to 500,000 cubic yards per Table 2.2-5 and 2.2-6) is not only a large quantity for one site to generate, but large relative to the total volume of hazardous waste generated in California. Annually, about 300,000 cubic yards of contaminated soil and 600,000 cubic yards of waste are placed in California landfills.¹ While Table 2.2-4 indicates that 80% of the contaminated soil will be placed in hazardous waste landfills, another 10% of the total may not be hazardous waste, but could still be transported to a hazardous waste landfill. In addition, demolition will generate 43,152 tons of hazardous concrete for transport to a hazardous waste landfill.

The California Department of Toxic Substances Control recently committed to reducing disposal by 50% at both of the state's hazardous waste landfills -- Clean Harbors

¹ Department of Toxic Substances News Release, July 2, 2013, <http://www.dtsc.ca.gov/PressRoom/upload/News_Release_T-12-13.pdf>

Buttonwillow and Chemical Waste Management Kettleman Hills Facility -- by 2025.² NASA's soil removal could consume as much as 4% of the permitted capacity at CH Buttonwillow or 8% of the volume at CWM Kettleman Hills pending expansion of that facility.³ NASA's contaminated soil could increase total annual disposal at these facilities collectively by more than 60% for two years. These estimates do not include contaminated non-hazardous soil, nor concrete contaminated with hazardous waste, from demolition.

The DEIS does not discuss coordination with these facilities or with U.S. Ecology in Beatty Nevada, the other hazardous waste landfill identified in the DEIS. While all three facilities have large permitted capacities, NASA should verify that they have current landfill space available to accept such large quantities of waste. If CH Buttonwillow is selected for both hazardous and nonhazardous waste, NASA would consume nearly 50% of the facility's current 950,000 cubic yard capacity. For U.S. Ecology, which has approximately 1.1 million cubic yards of capacity, NASA waste would consume nearly 36% of the facility's landfill volume.⁴ To accept waste on the schedule proposed in the DEIS, the facility may need to speed the construction of additional landfill space.

Please note that the discussion above does not consider waste generation by the Department of Energy (DOE) or Boeing at the other portions of the Santa Susana Field Laboratory site. Boeing and DOE are expected to increase the quantity of contaminated soil to be removed by more than 65% (387,585 cubic yards per Table 4-13.1). The DEIS does not identify the disposal location for that waste.

Recommendation:

The FEIS should summarize NASA's discussions with receiving facilities regarding their ability to handle the potential volumes of contaminated soil from the proposed alternative. NASA should consider shipment to multiple facilities as a means to reduce impacts at the receiving facilities. To the extent possible, NASA should coordinate with Boeing and the Department of Energy on their remediation projects (e.g. schedules, disposal facilities and changes in soil volumes), so that its FEIS may contain as comprehensive a discussion of cumulative impacts as possible.

Treatment Options

The soil removal action, a component of the proposed alternative, includes many treatment options (Section 2.2.2.3). While we understand the urgency to complete soil removal by 2017 to comply with NASA's Agreement on Consent with DTSC (p. 1-7), the options of the DEIS create substantial uncertainty regarding the impacts of the proposed action, which should be avoided in the FEIS.

² Department of Toxic Substances News Release, July 2, 2013, <http://www.dtsc.ca.gov/PressRoom/upload/News_Release_T-12-13.pdf>

³ According to DTSC July 2 News Release, the CWM Kettleman expansion is 5 million cubic yards, according to Clean Harbor's Fact Sheet (http://clark.cleanharbors.com/ttServerRoot/Download/12381_FINAL_Buttonwillow_CA_Facility_FS_030108.pdf), the Buttonwillow facility has a 10 million cubic yard permitted capacity. See Table 2.4-5 for the volume that could be sent to these facilities as part of the proposed alternative.

⁴ Per the estimate of EPA's permitting staff familiar with U.S. Ecology

Recommendation:

The FEIS should identify one preferred treatment option for contaminated soil.

Environmental Justice

While the DEIS considers environmental justice impacts near the Santa Susana Field Lab, it specifically eliminated consideration of the effects around designated landfills and disposal facilities (Table 2.5-1). The DEIS states that “siting and licensing of these facilities includes consideration of the potential effects of bringing designated and permitted waste to the sites.” In view of the burden imposed on the communities near receiving facilities, particularly in light of the cleanup to background, a more detailed evaluation of environmental justice impacts would be valuable for those communities. Additionally, a facility permit could be many years old, offering NASA an opportunity to implement more recently developed mitigation measures. DTSC’s proposed permit for CWM Kettleman Hills, for example, would require trucks hauling waste to the facility to meet 2007 emissions standards immediately, and meet 2010 emissions standards by 2018.⁵

Recommendation:

The FEIS should consider impacts to communities with environmental justice concerns near facilities receiving substantial quantities of waste from demolition and soil removal. The FEIS should also commit to using on-road heavy duty diesel trucks that meet or exceed EPA’s emissions standard for 2010.

Radioactive Waste

The DEIS estimates that the proposed action will generate 50,000 cubic yards of mixed waste, both low level radioactive and hazardous waste (Table 2.4-2), but does not indicate the source of radioactive contamination. While the DEIS mentions the potential for mixed waste from contaminated industrial or research waste, it also mentions that NASA operations did not use or generate radioactive waste (p. 2-12). Demolition wastes appear to contain minor amounts of radioactive waste, such as smoke detectors, batteries in emergency lighting, exit signs, electric control panels, and building surfaces, equipment and or debris (radiological materials) (p. 3-48). The list of demolition wastes (Table 2.2-2), however, does not include large quantities of radioactive waste and the amount of demolition waste is shown as a separate quantity from that of contaminated soil estimated in Table 2.4-2.

Recommendation:

The FEIS should clarify the composition of the material that NASA expects to comprise the 50,000 cubic yards of mixed waste (Class A low-level radioactive waste and hazardous waste).

⁵ Community Notice regarding the Kettleman Hills Facility, DTSC, July 2013 <
http://dtsc.ca.gov/HazardousWaste/Projects/upload/Kettleman_FS_ExpansionDecision_0713.pdf>

Waste Management

NASA's Santa Susana Field Lab website discusses a past waste shipment from the site that was halted due to concerns that the receiving facility was not appropriate for the waste.⁶ Based on our historic involvement with the site, we are aware that this was not an isolated incident. We recommend as much transparency in the matter of waste composition and management as possible. NASA would be better served to hear concerns regarding receiving facilities following publication of the FEIS or the public release of BMPs, than much later in the soil removal process, when delays may hinder NASA's ability to meet its commitment under the 2010 AOC.

Recommendations:

The FEIS should include, or commit NASA to develop and publicly release, best management practices that include the following:

- a description of debris and soil screening or testing procedures for radiation and chemical contamination
- a decision matrix that identifies specific facilities or types of facilities (e.g. solid waste landfill, hazardous waste landfill) for debris and soil based on the screening or testing protocol. Particular focus should be given to debris and waste that may be contaminated, but not regulated by EPA or the Nuclear Regulatory Commission (e.g. hazardous waste exceeding background levels of radionuclides, soil exceeding the Look-up Table values that is not considered hazardous waste etc.).

Water Resources

Groundwater Cleanup

The DEIS does not describe groundwater cleanup in the same level of detail as it does demolition and soil removal. The description of the no action alternative for groundwater cleanup, described as a "groundwater interim measure and interim source removal," (p. 2-33) does not show the location of the current extraction well, the lateral or vertical volume the well is intended to capture, the volume of water removed from the aquifer, or the weight of trichloroethylene (TCE) removed from groundwater over time; nor does it describe the treatment method for extracted groundwater or identify its discharge location.

The DEIS includes one figure showing the two-dimensional extent of trichloroethylene (TCE) in groundwater (Figure 2.2-4). Even though other contaminants are mentioned, such as TCE degradation products and n-nitrosodimethylamine (p. 2-27), none are mapped. The DEIS does not discuss the thickness of groundwater contaminant plumes. It mentions treatment of metals as an advantage of pump and treat technology but does not indicate elsewhere that groundwater is contaminated by metals. From the reports cited by the DEIS, such as RCRA Facility Investigation reports (p. 3-42), we presume that a considerable

⁶ See email from James Elliott, NASA to Cassandra Owens, Los Angeles Regional Water Quality Control Board at http://ssfl.msfc.nasa.gov/documents/comm/Elliott_to_Owens.pdf

amount of additional information that would be useful for disclosure and decision making could have been summarized in the DEIS.

The DEIS does not discuss criteria for selecting a groundwater cleanup remedy. What factors will NASA or DTSC consider in deciding between the technologies described in the DEIS (e.g. short and long term effectiveness; reduction in contaminant mobility, toxicity or volume; implementability; community acceptance)? The timeframe for treatment technologies is discussed (e.g. pump and treat technology would take “decades to centuries” achieve groundwater cleanup levels, p. 2-28), but further refinement of the estimates would increase the value of this information. While the DEIS discusses the advantages of each technology, it does not consider disadvantages. At some VOC sites, depending on the geochemistry, In-Situ Chemical Oxidation and Enhanced Bioremediation can break down TCE to form vinyl chloride, which is more toxic (i.e. has a lower Maximum Contaminant Level) than TCE.

The DEIS does not include actual or preliminary groundwater cleanup levels. It does clarify that the values will be based on a standardized risk assessment methodology (p. 2-27), but provides little additional information. For example, it is not clear whether the methodology only considers groundwater as a potential source of drinking water, or also considers vapor intrusion into buildings where contaminated groundwater contains volatile organic compounds at shallow elevations.

The DEIS does not discuss contamination of the vadose zone (soil and bedrock above the saturated zone or water table) below the depth of soil removal. Contaminated vadose zone soil may pose a continuing source of groundwater contamination. We note that some of the technologies considered, such as soil vapor extraction, may be capable of effectively removing vadose zone contamination, depending on the local geology.

Energy use can be a major cost and environmental impact of the operation and maintenance of a groundwater remedy. The document appears to recognize this, as the description of remedy options includes alternative energy, such as solar arrays (p. 2-28); however, the DEIS does not provide the energy use of the existing groundwater treatment system or an estimate for the proposed alternatives. The DEIS does state, “groundwater response actions should occur in 2016 and 2017, with long-term groundwater O&M [Operation and Maintenance] following” (p. 2-44), but it does not estimate the associated priority pollutants or greenhouse gas emissions. As noted in our air quality comments, below, NASA’s conformity determination should consider the groundwater cleanup emissions in 2016 and 2017.

Recommendations:

The Final Environmental Impact Statement (FEIS) should include:

- a thorough discussion of the no action alternative that includes the current groundwater extraction and treatment system, its energy use and a discussion of its effectiveness;
- an expanded discussion of the site’s geology;
- an explanation of three-dimensional groundwater flow and contaminant migration at the site;

- a more thorough description of source areas (e.g., test stands, evaporation ponds, landfills, leach fields, etc.) and vadose zone contamination;
- a description of the interaction of groundwater and surface water, including the location of surface seeps;
- an estimate of air emissions (priority pollutants and GHGs) associated with each treatment technology;
- a map of conceptual well networks necessary to implement potential groundwater cleanup technologies;
- the groundwater cleanup levels, based on a standardized risk assessment methodology. NASA should ensure that the methodology includes consideration of vapor intrusion into buildings where contaminated groundwater contains volatile organic compounds at shallow elevations;
- the goals or criteria that will be used in evaluating the vadose zone and groundwater cleanup technologies,
- a brief summary comparison of the advantages and disadvantages of each technology; and
- identification of NASA's preferred groundwater cleanup technology.

For purposes of presenting groundwater information in the DEIS more effectively, we suggest that NASA consider, as an example, a presentation that is posted on the Department of Energy (DOE) website, at:

http://etec.energy.gov/Library/Main/GWU--May_5_Beth_Parker_Final_Handout--Full_Page.pdf. EPA cannot speak to the accuracy of the presentation; we note only that it provides a detailed discussion of the site's groundwater contamination in an easy to understand format. While the presentation does not include any information about options for groundwater cleanup, we encourage NASA to consider its format and level of detail as guides for providing more detailed groundwater concepts.

Surface Water

As the DEIS discusses, the entire site, not just the NASA property, is covered by the Los Angeles Regional Water Quality Control Board's permit for the facility.⁷ The DEIS notes permit violations occurring from 2006 to 2009 at NASA outfalls due to contaminants in soil and sediment, such as dioxins (p. 3-42). It mentions an Interim Source Removal Action, conducted at the direction of the Regional Board for Outfalls 8 and 9, as a cumulative impact (p. 4-155 to 156). Interim Source Removal Action reports indicate that NASA and Boeing are using an expert panel to prioritize the need for Best Management Practices (BMPs) in areas draining to these outfalls, to assist in development of BMPs, and to evaluate the success of BMP implementation.⁸

NASA has excavated 4,800 cubic yards of contaminated soil, and expected to remove another 7,580 cubic yards by the end of this year at the Expendable Launch Vehicle area,

⁷ Waste Discharge Requirements for the Boeing Company, Santa Susana Field Lab, Order No. R4-2010-0090, NPDES No. CA0001309, California Regional Waste Quality Control Board, Los Angeles, Region, April 6, 2010, Revised May 20, 2010 and June 3, 2010.

⁸ See http://www.boeing.com/boeing/aboutus/environment/santa_susana/isra.page.

the Sewage Treatment Plant, the former Liquid Oxygen Plant and an area identified as A2LF (p. 4-156). The DEIS notes that the cleanup levels are consistent with DTSC's values, except for dioxins which are elevated in the area due to past wildfires. It does not provide a map of these areas nor indicate whether additional soil removal is required for NASA property in the Northern Drainage, which leads to Outfall 9.

Some of NASA's property in the Southwestern Drainage drains through Boeing-owned property back onto NASA property where it flows to Outfall 18 (Figure 3.6-1). (*See NASA-Boeing Cross Contamination* below.) The Regional Board's Stormwater Permit describes a sophisticated temporary treatment system at the Silvernale Pond, upstream of Outfall 18, which includes filtration, metals precipitation, and activated carbon treatment prior to discharge. The DEIS does not include a description of this system.

Based on discussions with the Regional Board, our review of their permit, and our limited review of the Interim Source Removal Action reports, surface water appears to be a subject of substantial focus for the entire Santa Susana Field Lab. This focus is not apparent from the DEIS. While the DEIS includes a mitigation measure (Water BMP-1, p. 4-80) to develop a Stormwater Pollution Prevention Plan and Erosion Control Plan (i.e. collections of BMPs), it provides no specific information on current or past BMPs.

Recommendations:

The FEIS should include

- a more comprehensive description of the interim source removal action, including BMPs developed through that process;
- a discussion of coordination between the interim source removal, demolition, and soil removal actions, including a map showing remaining demolition and soil removal actions in the Northern Drainage;
- a summary of BMPs currently in place, outside the Northern Drainage, to control the movement of contaminated sediment as well as any planned BMPs that will be used during demolition and soil removal; and
- a more recent description of compliance with the Regional Board's permit. NASA should consider engaging the expert panel on additional BMPs (if necessary) to control its stormwater discharges from active demolition and soil removal for the Northern and Southwest Drainages. EPA has an interest in the facility's BMPs and the description of these measures in the FEIS. Please contact Cindy Lin, at 213-244-1803 lin.cindy@epa.gov, if you would like our assistance.

NASA-Boeing Cross Property Contamination

Boeing and NASA appear to be using different standards for soil remediation. As risk-based standards may allow more contamination to remain at the site than the Look-Up Table values, post-cleanup concentrations of soil contamination will differ between Boeing-owned property and NASA-administered federal property. Figure 3.6-1 appears to show that federal property drainages extend into Boeing property, and Boeing drainages extend into federal property.

The DEIS does not describe the timing of cleanup for the two properties. If Boeing completes soil removal prior to NASA, contamination from the NASA property might migrate to Boeing property. While the same is true for Boeing contamination to migrate onto federal land, we are particularly concerned that, following the remediation of both properties, Boeing's property may still pose a risk of contamination to federal property.

Recommendation:

The FEIS should discuss the timing of the cleanup for the Boeing and NASA properties, as well as measures to prevent cross-contamination (pre-and post remediation) to Boeing and federal property.

Wetlands and Waters of the U.S.

The extent of jurisdictional waters of the U.S. (waters) is unclear in the DEIS. Figure 4.10-1 shows the potential impacts of the project to streams and ponds from the estimated soil cleanup activities. Several of these features are not identified in the Appendix G Wetlands Delineation Report or Figure 3.4-5 (Wetlands). In addition, Figure 3.4-5 identifies many of the features as man-made, which, according to the discussion in Section 3.4.5, are not considered as part of the impacts analysis. Also, the discussion of wetlands in section 3.4.5.1 appears to only consider aquatic features, such as palustrine and riverine wetlands that meet the three parameter wetlands test. Based on the information provided, it is difficult to determine the extent of jurisdictional features at the project site and whether the features are wetlands or non-wetland waters.

Additionally, the DEIS does not sufficiently describe the condition and functions of the wetland and non-wetland waters on the project site. An approved assessment method, such as the California Rapid Assessment Method (CRAM), should be used to measure baseline conditions as this type of information will be needed as part of the 404 permit application to the Corps.

We also note that the DEIS does not include potential mitigation measures to offset unavoidable impacts to jurisdictional waters of the U.S. Mitigation measures in the DEIS are limited to Table 6.1-1, which includes best management practices such as erosion control, revegetation, and permits from the Corps and the Regional Water Quality Control Board. The DEIS does not address how lost functions of jurisdictional waters could be offset through on-site restoration or through the purchase of credits at an approved mitigation bank or in-lieu fee program. As part of the 404 permit application, and to comply with the Corps/EPA 2008 Compensatory Mitigation Rule, NASA will be required to submit a detailed draft compensatory mitigation plan for approval by the Corps.

Recommendations:

The FEIS should:

- clarify the extent of features, by wetland and non-wetland waters, including any that are manmade, and include a figure that identifies areas of permanent and temporary impacts; (If possible, this information should be based on an

approved jurisdictional determination from the U.S. Army Corps of Engineers.)

- describe the condition and function of jurisdictional waters and other waters at the site;
- include an assessment of the conditions and functions of the waters using an approved assessment method;
- identify potential compensatory mitigation measures that NASA may propose in the CWA 404 permit application to offset unavoidable impacts.

Air Quality

General Conformity is intended to ensure that actions taken by federal agencies in nonattainment and maintenance areas do not interfere with the state's plans to meet the national standards for air quality. The DEIS concludes that the proposed alternative may exceed General Conformity de minimis thresholds in several counties (p. 4-110), so a general conformity analysis is required for the proposed alternative. The DEIS continues on to state, "the quantity of NOx offsets purchased by NASA would equal the quantity by which the General Conformity de minimis threshold values were exceeded." Please note that a project using offsets to demonstrate conformity must fully offset its emissions (i.e. to 0), not offset the emissions to the de minimis thresholds.^{9,10}

The DEIS also states that "Groundwater response actions should occur in 2016 and 2017, with long-term O&M [Operation and Maintenance] following." (p. 2-44). If peak emissions occur in 2016 and 2017, per Tables 4.7-3 and 4, then the General Conformity analysis should consider the emissions from groundwater cleanup response actions along with soil removal. The DEIS states, "the impacts to air quality and climate change from the groundwater remedial technologies are described qualitatively in the following text..." (p. 4-107). Additionally, the General Conformity Table of Appendix H includes demolition, excavation, and offsite disposal, but not groundwater response actions (p. H-17).

The DEIS discusses but does not commit to a mitigation measure to use newer model year trucks to reduce local criteria pollutants and GHGs (Air Quality Mitigation Measure – 2, p. 4-111). The DEIS also discusses the use of offsets to comply with General Conformity. NASA is likely to find cleaner trucks a cost effective project element to reduce the amount of offsets required by Air Districts.

Recommendation:

If NASA plans to use offsets to demonstrate compliance with General Conformity: the FEIS should commit to fully offset emissions (i.e. to zero) of any pollutants for which the projected emissions would exceed the de minimis thresholds. NASA should begin discussions with the appropriate air quality management districts on the emission offsets as soon as practical. The FEIS should include emissions from groundwater response actions in 2016 and 2017 in the General Conformity analysis,

⁹ 40 CFR 93.158

¹⁰ See Question 27, General Conformity Guidance: Questions and Answers, U.S. EPA, July 13, 1994

in addition to emissions from demolition and soil removal actions. The FEIS should also commit to using on-road heavy duty diesel trucks that meet or exceed EPA's emissions standard for 2010 and raise awareness of California's anti-idling rule among drivers (<http://www.arb.ca.gov/msprog/truck-idling/factsheet.pdf>).

Traffic

Reasonably Expected Route

The DEIS shows a truck route leaving the facility. Trucks would travel primarily on Woolsey Canyon, Valley Circle Boulevard, and Roscoe Boulevard and either split between routes that travel north and south on Topanga Canyon Boulevard (Figures 4.5-1 and 3) or favor a southern route (on Topanga Canyon Boulevard) by a 4 to 3 ratio for the maximum soil removal (Figure 4.5-2). We are concerned that the truck routes described for soil removal may not represent a reasonably expected route.

The majority of the waste generated during soil removal would be hazardous waste (80% per Table 2.4-2). Two of the three hazardous waste facilities that could accept hazardous waste are northeast of the site. To reach these sites, a route traveling south on Topanga Canyon Boulevard to I-101 and I-405 would appear to take trucks several miles further on highways likely to be as crowded or more so than I-118. Even for waste traveling to U.S. Ecology in Beatty, Nevada, or Energy Solutions Landfill in Clive, Utah, the route suggested by Google Maps would travel north on Topanga Canyon to I-118.¹¹ The DEIS does not explain whether there are overriding considerations that would warrant selection of a less direct route. For hazardous waste, only trucks destined for DeMenno Kerdoon would likely travel south on Topanga Canyon Boulevard, per the Google Maps suggested route, and that facility accepts only petroleum contaminated soil, which may not even be hazardous waste.

Closer to the Santa Susana Field Lab, the DEIS identifies several possible routes as Region of Influence Roadways. Although Box Canyon Road and Plummer Street appear to offer a slightly shorter route to I-118, the DEIS does not clarify the reason for assuming that all trucks will use Roscoe.

Recommendations:

The FEIS should:

- designate truck routes, particularly for the largest (Class VIII) trucks;
- explain the reason(s) more trucks would not travel North on Topanga Canyon Boulevard;
- evaluate the possible effects of landfill selection (or other receiving facility) on the truck route to ensure that all reasonably foreseeable traffic analyses are considered;

¹¹ The Initial recommendation for a route to Beatty Nevada would travel through Death Valley National Park. The recommended southern route, through Barstow, would be on I-118 rather than I-405.

- to the extent possible, based on coordination with Boeing and the Department of Energy, NASA should update its traffic analysis to consider the cumulative impacts; and
- offer rideshare or carpool program for construction workers to further reduce traffic impacts.

Effects and Potential Safety of School Children

We commend NASA for its consideration of the impact of truck traffic on school children. As the analysis is novel, we offer some recommendations for improvement. We noted that the DEIS did not include childcare centers, preschools, parks nor recreation centers in its evaluation of truck traffic and children. While fewer children may walk to these facilities than to schools, their safety is relevant for consideration. Additionally, the DEIS does not consider the role of crossing guards at intersections near schools, nor educational outreach to schools, childcare centers and residents.

Recommendation:

The FEIS should:

- consider childcare centers, preschools, parks and recreation centers as well as schools in the evaluation of truck traffic and potential exposure to children;
- provide additional funding for crossing guards, if busy intersections near schools are not currently staffed;
- target outreach material about the construction schedule and truck routes to schools and childcare centers and residents.

Cumulative Impacts

As the Cumulative Impacts Section (4.13) mentions, DOE and Boeing are also actively cleaning up soil and groundwater at their portions of the Santa Susana Field Lab. While the DEIS provides additional waste volumes and trucks for the Boeing and DOE cleanup, it does not model the cumulative impacts to children, traffic, and air quality. A cumulative model of these impacts is likely to be of much more interest and value to the public than the individual analysis of impacts from NASA, Boeing, or DOE.

Recommendation:

To the extent possible, in coordination with Boeing and the DOE, NASA should update its analysis to consider the cumulative impacts (including Boeing and DOE soil removal) on traffic, children and air quality.

Cost

Many factors should be considered in making a remedy selection for soil removal. For example, EPA uses nine criteria to evaluate cleanup alternatives under the Comprehensive

Environmental Response, Compensation, and Liability Act, commonly known as Superfund.¹² For the most part, the DEIS and the public comment period address these factors, except cost. The cost of a cleanup should play an important role in screening and selection of alternatives.¹³ The DEIS contains no information on the cost or cost-effectiveness of the treatment technologies for soil removal.

Recommendation:

The FEIS should include an estimate of the cost for each element of the cleanup (i.e. demolition, soil remedial activities and groundwater remedial activities), as well as the options within each element (e.g. soil excavation and off-site disposal, soil excavation and ex-situ treatment, soil vapor extraction etc.

Preservation of Cultural Resources

The proposed alternative would include retention of one test stand (Cultural Mitigation Measure-1, p. 4-25). The DEIS describes potential hazardous material that may be encountered during demolition of structures, such as lead painted surfaces, asbestos insulation and ceiling material, and polychlorinated biphenyl (PCBs) contained in caulk and paint (Table 3.8-1). The DEIS does not appear discuss the removal, encapsulation or other methods to minimize hazards associated with retained historic resources.

Recommendation:

To enable broader access to the retained historic resources, Cultural Mitigation Measure-1 should include a commitment to remove, encapsulate or otherwise prevent visitor exposure to, potential hazards, such as lead paint, asbestos and PCBs.

Greener Cleanups

Greener Cleanups refers to an approach at remediation sites in which EPA seeks to understand the environmental footprint resulting from site activities and identify opportunities to reduce that footprint. EPA has developed Principles for Greener Cleanups,¹⁴ Best Management Practices (BMPs) for greener cleanups,¹⁵ and a Methodology for quantifying the environmental footprint of a cleanup.¹⁶ Each of these resources may be

¹² See A Guide to Preparing Superfund Proposed Plans, Records of Decisions, and Other Remedy Selection Decision Documents, U.S. EPA July 1999.

¹³ The Role of Cost in the Superfund Remedy Selection Process, U.S. EPA, September 1996

<http://www.epa.gov/superfund/policy/cost_dir/cost_dir.pdf>.

¹⁴ see http://www.epa.gov/oswer/greenercleanups/pdfs/oswer_greenecleanup_principles.pdf

¹⁵ BMPs are listed at <http://www.clu-in.org/greenremediation/>.

¹⁶ Methodology for Understanding and Reducing a Project's Environmental Footprint, U.S. EPA, February 2012 (EPA-542-R-12-002

<http://www.clu-in.org/greenremediation/methodology/docs/GC_Footprint_Methodology_Feb2012.pdf>

and Overview of EPA's Methodology to Address the Environmental Footprint of Site Cleanup, U.S. EPA, March 2012, EPA-542-F-12-023,

<[http://www.clu-](http://www.clu-in.org/greenremediation/methodology/docs/GR_Overview_of_Footprint_Methodology_FS_3-29-12.pdf)

[in.org/greenremediation/methodology/docs/GR_Overview_of_Footprint_Methodology_FS_3-29-12.pdf](http://www.clu-in.org/greenremediation/methodology/docs/GR_Overview_of_Footprint_Methodology_FS_3-29-12.pdf)>

of use for the activities at the Santa Susana Field Laboratory. Broadly speaking, the resources address the following aspects of a cleanup:

- Total Energy Use and Renewable Energy Use
- Air Pollutants and Greenhouse Gas Emissions
- Water Use and Impacts to Water Resources
- Materials Management and Waste Reduction
- Land Management and Ecosystems Protection

The DEIS already addresses many aspects of Greener Cleanups. These include estimated greenhouse gas emissions (for demolition and soil removal), and estimated waste generation volumes, as well as measures to be taken for fugitive dust control, stormwater management, and reuse of demolition debris.

We offer the Principles, BMPs, and Methodology for use at remediation sites on a voluntary basis, but we also note that these resources may help to identify additional topics that should have been included in the DEIS, and should be included in the FEIS, depending on the potential significance of the impact [40 CFR 1502.2(b)]. For example, the DEIS does not consider: quantifying certain aspects of the remedy such as the amount of water and materials used; extending the scope to off-site support activities, such as laboratory analysis and waste management; and identifying opportunities for reduction for these aspects of the remedy. Karen Scheuermann is available to assist NASA in understanding and applying the Greener Cleanups approach at the Santa Susana Field Laboratory. Ms. Scheuermann can be contacted at (415) 972-3356 or scheuermann.karen@epa.gov. We also note that DTSC's *Advisory for Green Remediation*¹⁷ is compatible with EPA's Principles for Greener Cleanups.

Recommendation:

NASA should consider EPA and DTSC resources for Greener Cleanups and take advantage of any aspects of these resources that may be beneficial in the cleanup of the Santa Susana Field Lab.

¹⁷ Interim Advisory for Green Remediation, California Department of Toxic Substances Control, December 2009 < http://www.dtsc.ca.gov/OMF/upload/GRT_Draft_Advisory_-20091217_ac1.pdf>

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE BOEING COMPANY,
Plaintiff-Appellee,

v.

MAZIAR MOVASSAGHI, in his official
capacity as the Acting Director of
the California Dept. Of Toxic
Substances Control; LEONARD
ROBINSON, in his official capacity as
the Acting Director of the California
Dept. Of Toxic Substances Control,
Defendants,

and

DEBBIE RAPHAEL, in her official
capacity as the Acting Director of
the California Dept. Of Toxic
Substances Control,
Defendant-Appellant.

No. 11-55903

D.C. No.
2:10-cv-04839-
JFW-MAN

OPINION

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted May 31, 2013*
Pasadena, California

Filed September 19, 2014

Before: Alfred T. Goodwin, Andrew J. Kleinfeld,
and Barry G. Silverman, Circuit Judges.

Opinion by Judge Kleinfeld

SUMMARY**

Environmental Law

The panel affirmed the district court's decision that a California law governing cleanup of a federal nuclear site violated the doctrine of intergovernmental immunity.

The Boeing Co. challenged the validity of California's Senate Bill 990, which prescribes cleanup standards for radioactive contamination at Santa Susana Field Laboratory. SB 990 requires that the site be made suitable for subsistence farming, a more demanding standard than that imposed by a plan adopted by the federal Department of Energy.

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel held that Boeing had standing because as landowner, it established injury in fact.

The panel held that SB 990 violated the doctrine of intergovernmental immunity because it regulated DOE's cleanup activities directly in violation of the Supremacy Clause. In addition, SB 990 discriminated against the federal government and Boeing as a federal contractor hired to perform the cleanup of the Santa Susana site.

The panel did not reach the question of whether the federal laws governing nuclear materials and cleanup of hazardous substances preempted the state law. It also did not reach Boeing's claim under 42 U.S.C. § 1983 for a declaratory judgment and an injunction.

COUNSEL

Brian W. Hembacher, Supervising Deputy Attorney General, Los Angeles, California, for Defendant-Appellant.

Randolph D. Moss, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, D.C., for Plaintiff-Appellee.

Daniel P. Selmi, Los Angeles, California, for Amici Curiae Southern California Federation of Scientists, Los Angeles Chapter of Physicians for Social Responsibility, Rocketdyne Cleanup Coalition, and Committee to Bridge the Gap.

David C. Shilton, United States Department of Justice, Washington, D.C., for Amicus Curiae United States.

OPINION

KLEINFELD, Senior Circuit Judge:

We affirm the district court's decision that a California law governing cleanup of a federal nuclear site violates the doctrine of intergovernmental immunity. Because we decide that the state law impermissibly regulates and discriminates against the federal government and its contractor, we do not reach the question of whether the federal laws governing nuclear materials and cleanup of hazardous substances preempted the state law. We need not reach Boeing's Section 1983 claim for a declaratory judgment and an injunction.

FACTS

The federal government made and tested rockets, nuclear reactors, and various nuclear applications for war and peace at the Santa Susana Field Laboratory beginning shortly after World War II. When built in the 1940s, this lab was far from people, thirty miles from Los Angeles in Ventura County. Los Angeles grew, though, and now over 150,000 people live within five miles of the site and half a million people live within ten miles.

When the state law challenged in this case was promulgated, 452 acres of the 2,850 acre lab site were federally owned and managed by the National Aeronautics and Space Association ("NASA"). Most of the site, the remainder, was owned by Boeing, a defense contractor, which acquired the land from another defense contractor, Rockwell International Corporation, in 1996. Rockwell International and its predecessor, North American Aviation, had occupied or owned the land since 1947. (For

convenience, we refer to Boeing and its predecessors, Rockwell International and North American Aviation, as “Boeing.”) Since the 1950s, the federal Department of Energy (“DOE”) and its predecessor agencies have leased 90 acres of the site from Boeing, where it built and operated 16 nuclear reactors of various sorts and over 200 facilities for nuclear research.

These two federal agencies, DOE and NASA, hired Boeing to assist in the nuclear research and rocket testing. Most of Boeing’s work was as a contractor on behalf of the federal government, though it also did some commercial work on its own account at the site. Boeing operated one commercial nuclear reactor under a license from the Atomic Energy Commission. It also handled what the California statute calls “radiological contaminants” under licenses from the State of California to perform activities involving the use of x-ray machines, calibration devices, gas chromatographs, smoke detectors, and various gauges.

All this work created a terrible environmental mess. It also created tremendous benefits, for war and peace, but the government’s work unarguably imposed tremendous harm to the environment. The soil, ground water, and bedrock were seriously contaminated. Disasters and foolishness added to the environmental harm.

In 1959, one of the reactors experienced a partial meltdown that released radioactive gases into the atmosphere for three weeks. This partial meltdown accounts for about 90% of the radioactive contamination. Much of the rest came from other nuclear reactor accidents, an open burn pit for sodium-coated materials, and numerous fires and accidents at the “Hot Lab.” The “Hot Lab” was used for cutting up spent

nuclear fuel from the site's reactors and spent fuel shipped to the lab from elsewhere in the United States. Radioactive material was also dumped at various locations around the site. One disposal procedure consisted of shooting barrels of toxic substances with shotguns to make them explode and burn.

The federal government, not Boeing, appears from the record to be responsible for the radioactive pollution. Though Boeing conducted some commercial nuclear work at the site, no radioactive contamination has been traced to Boeing's private activity. It is undisputed in this case that the site's radioactive contamination either resulted from federal activity or is indistinguishable from federal contamination.

That is not to suggest that the pollution was merely wanton. The United States Air Force and NASA used the site to test rocket engines for ballistic missiles and space exploration. In the 1940s, the Air Force hired Boeing to help develop the Navaho guided missile system. The Air Force and NASA also used Boeing to test liquid-propellant rocket engines, many of which were used in the space program. But over 500,000 gallons of the solvent used to clean rocket engines and launch sites, trichloroethylene, contaminated the soil, along with heavy metals and other toxins. A trichloroethylene containment system was implemented in 1961, after which Boeing did its private commercial testing, but the damage was already done. California concedes that it cannot identify any chemical contamination that resulted from non-federal activity and that, to the extent that there is any contamination from Boeing's private activity, it cannot be distinguished from federal contamination.

All this nuclear and rocket research is over now. DOE ended its nuclear research at Santa Susana in the 1980s. In

1996, DOE decided to close its research center and removed many of the facilities. The Air Force's and NASA's rocket research ended in 2006. Operations at the site now are limited to trying to clean it up. Different aspects of the cleanup are carried out under different federal and state authorities. The federal government supervised the cleanup of radioactive contamination, and the California Department of Toxic Substances Control supervised the cleanup of chemical contamination under generally applicable state law.

The subject of this litigation is a state's authority, as opposed to the federal government's authority, to regulate the cleanup of radioactive pollution. The issue is whether the state may mandate more stringent cleanup procedures, not generally applicable within the state, to a particular site where the federal government undertook to clean up nuclear contamination it created. In the circumstances of this case, the answer is no.

So far, the federal Department of Energy, as successor to the Atomic Energy Commission, has supervised and implemented the cleanup of radioactive material. Under the Atomic Energy Act, DOE is responsible for establishing a comprehensive health, safety, and environmental program for managing DOE's nuclear facilities nationwide.¹ DOE has implemented that authority by issuing orders that set health and safety limits for radioactive releases and cleanup and site-closure procedures.²

¹ 42 U.S.C. §§ 2121(a)(3), 2201.

² See DOE Orders 435.1, 458.1, 5400.1, 5400.5, available at <https://www.directives.doe.gov/directives>. DOE Order 435.1, *Radioactive Waste Management*, and its accompanying manuals set forth requirements

To clean up the radioactive contamination, DOE hired Boeing. Boeing conducted a study of the contamination at Santa Susana. The soil, bedrock, and groundwater contamination has been extensively sampled and analyzed. Different parts of the site have different sorts of pollutants, since rocket testing was done in some areas, and nuclear research in others. In 2003, DOE adopted an environmental assessment for cleaning up radioactive waste in the area where nuclear research was performed. This federal plan proposed to clean it up to standards suitable for industrial, recreational, and even suburban residential use. As a cleanup contractor, Boeing is actively cleaning up the Santa Susana site on behalf of DOE. Boeing pays a portion of the cleanup costs and will bear the portion of costs not paid by or recovered from the federal government. The federal government sets the standard for the entire cleanup of radioactive materials (the only waste at issue in this case) and directs Boeing's conduct.

Not everyone was satisfied with the DOE plan. The federal Environmental Protection Agency ("EPA"), the State of California, and various advocacy groups have challenged both the plan and DOE's decision to prepare an environmental assessment as opposed to an environmental impact statement. The question whether an environmental impact statement should be prepared is not before us in this litigation. A federal district court injunction in another case prohibits DOE from transferring ownership, possession, or

for managing radioactive waste including characterization, treatment, disposal, and monitoring. DOE Order 5400.5, *Radiation Protection of the Public and the Environment*, addresses cleanup standards that DOE contractors are required to implement during decontamination and decommissioning activities.

control over anything in the primary area of radioactive contamination until it prepares an environmental impact statement.³

Non-radioactive chemical pollutants are regulated differently from radioactive pollutants.⁴ The California Department of Toxic Substances Control regulates the cleanup of chemical contamination, pursuant to an agreement with EPA authorizing state control, under a different federal statute from the one applicable to radioactive materials.⁵ The various state and federal agencies involved, and Boeing, agreed upon an order from California's Department of Toxic Substances Control to clean up the chemical contamination to a level adequate for suburban residential use. That order does not address the cleanup of radioactive materials.

This case arises from the State of California's decision to extend its control to cleanup of radioactive pollutants. In October 2007, California passed Senate Bill 990, "Cleanup of Santa Susana Field Laboratory," prescribing cleanup standards for both radioactive and chemical contamination.⁶ The statutory standard requires that the site be made suitable for "suburban residential or rural residential (agricultural)

³ *Natural Res. Def. Council, Inc. v. Dep't of Energy*, No. C-04-04448 SC, 2007 WL 1302498, at *22 (N.D. Cal. May 2, 2007).

⁴ *United States v. Manning*, 527 F.3d 828, 833 (9th Cir. 2008).

⁵ California operates a federally approved hazardous waste management plan pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6926. This plan covers only chemical contamination, not radioactive materials. 42 U.S.C. §§ 6903(5), (27), 6905(a).

⁶ S.B. 990, 2007 Reg. Sess., ch. 729 (Cal. 2007).

[use], whichever produces the lower permissible residual concentration” for each contaminant found at the site.⁷ The state statute does not further define the “rural residential (agricultural)” standard, but the federal EPA “agricultural” standard apparently intended by the state statute assumes “consumption of farm products for a subsistence farmer,” getting all his or her vegetables, fruit, meat, fish, and milk from the land, along with incidental consumption of soil and inhalation of dust.⁸ In effect, Senate Bill 990 (“SB 900”) would require that hypothetical subsistence farmers could live safely on their farms eating nothing but their chickens, eggs, crops, and cheese and drinking their milk from their cows eating the grass, in this patch of nuclear and chemical toxic waste in the Los Angeles suburbs.

Boeing and the federal agencies contend that this standard is more demanding than the usual practice under state and federal law of setting a cleanup level commensurate with a site’s reasonably foreseeable use.⁹ It may well be

⁷ Cal. Health & Safety Code § 25359.20(c).

⁸ EPA, *Preliminary Remediation Goals for Radionuclides: Agricultural Biota, Soil and Water Graphic and Supporting Text*, available at <http://epa-prgs.ornl.gov/radionuclides/agsoilimage.html>.

⁹ See Cal. Health & Safety Code § 25356.1.5(d) (“The exposure assessment of any risk assessment . . . shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.”); EPA, OSWER Directive No. 9355.7-19, *Considering Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites* (2010); EPA, OSWER Directive No. 9355.7-04, *Land Use in the CERCLA Remedy Selection Process* (1995); EPA, Publ’n No. 9285.7-01B, *Risk Assessment Guidance for Superfund (RAGS) Part B*, ch. 2.3 (1991).

unreasonable to foresee subsistence farming at the site. The record does not show why this standard was adopted, or whether subsistence farming of this sort was contemplated for the Los Angeles suburbs. The subsistence farming standard is more stringent than the suburban residential standard required by the agreed-upon order governing the cleanup of non-radioactive chemicals. DOE's cleanup procedures specifically rejected the state law's standard as "not a reasonable scenario for the site." Boeing has made a public commitment to dedicate the site for public use as open space parkland, not subsistence farming. But reasonable foreseeability of subsistence farming is not the controlling issue in this case. The relevant tension in this case is the state's authority to impose its subsistence farming standard as against the less stringent federal industrial, recreational, and residential standard.

Until SB 990's cleanup standard is met, the state law makes it a crime for "[any] person or entity [to] sell, lease, sublease, or otherwise transfer" the land.¹⁰ The "Statement of Uncontroverted Facts," not disputed by the California Department of Toxic Substances Control, says that remediating the groundwater to the California standard "could take as long as 50,000 years."

Boeing filed this lawsuit in federal district court challenging the validity of the California statute, SB 990, controlling cleanup of the Santa Susana Laboratory grounds. Boeing argued, and the district court agreed, that the federal government had preempted the field of regulation of nuclear safety, and alternatively that cleanup of radioactive materials at the Santa Susanna site is a federal activity, so state

¹⁰ Cal. Health & Safety Code §§ 25359.20(d); 25190.

regulation of how the federal government cleans it up violates the Supremacy Clause and the doctrine of intergovernmental immunity.

The California Department of Toxic Substances Control (“California”) appeals. We vacated oral argument to give the government an opportunity to file an amicus brief, which it did. The federal government agrees with the district court that the state law, SB 990, is unconstitutional under the Supremacy Clause and alternatively, because Congress has preempted the field.

ANALYSIS

The case was decided on summary judgment, so we review de novo.¹¹

I. Standing

California does not challenge Boeing’s standing, but some advocacy groups as amici curiae do. Their argument is that Boeing suffers no injury in fact from SB 990 because as a federal contractor, it will be paid for its work and bears no other costs. We disagree. The law prohibits Boeing from transferring its own real property, injury enough.¹² Even if the federal government does pay for all the cleanup work, the estimated 50,000 year delay in transferability (based on estimated time for cleanup of groundwater to be completed)

¹¹ *United States v. Manning*, 527 F.3d 828, 836 (9th Cir. 2008).

¹² *Andrus v. Allard*, 444 U.S. 51, 64 n.21 (1979) (“Because the regulation they challenge restricts their ability to dispose of their property, appellees have a personal, concrete, live interest in the controversy.”).

is indeed an injury in fact to Boeing as landowner. Nor has the federal government agreed to cleanup the entire site at its own expense to SB 990's standards. California concedes that Boeing will pay the portion of the cleanup expenses not borne by the federal government. Injury in fact is clear.

II. Intergovernmental Immunity

Under the Supremacy Clause, "the activities of the Federal Government are free from regulation by any state."¹³ Accordingly, state laws are invalid if they "regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals."¹⁴ SB 990 is invalid on both grounds.

A. Direct Regulation of the U.S. Government

SB 990 regulates the Department of Energy's cleanup activities directly. SB 990 authorizes California's Department of Toxic Substances Control to "use any legal remedies available" under the State's hazardous waste laws "to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site."¹⁵ DOE is a "responsible party" with respect to radioactive contamination. All of the contamination at Santa Susana is the result of federal activity

¹³ *Mayo v. United States*, 319 U.S. 441, 445 (1943).

¹⁴ *North Dakota v. United States*, 495 U.S. 423, 435 (1990); *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010).

¹⁵ Cal. Health & Safety Code § 25359.20(a).

or is indistinguishable from contamination caused by federal activity. In addition, SB 990's legislative findings state that the Act is necessary in large part because of federal activity at the site and because "DOE declined to follow the 1995 Joint Policy [between EPA and DOE] and chose to instead rely on less protective cleanup standards."¹⁶

The federal Department of Energy has accepted responsibility for the cleanup of radioactive contamination, and it is actively conducting the cleanup through its cleanup contractor, Boeing. SB 990 affects nearly all of DOE's decisions with respect to the cleanup, including the environmental sampling that is required, the cleanup procedures to be used, and the money and time that will be spent. The state law requires an application of more stringent cleanup standards than federal laws and DOE's cleanup procedures do. Whether state law is better or worse does not affect state authority, just whether the state regulates federal activity.

The federal government's decision to hire Boeing to perform its cleanup work does not affect the legal analysis. In *Goodyear Atomic Corp. v. Miller*, the Supreme Court held that "a federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly authorizes such regulation."¹⁷ In *Gartrell Construction Inc. v. Aubry*, we held that California's licensing requirements for construction contractors were preempted to the extent that they applied to federal

¹⁶ SB 990 § 2(h).

¹⁷ 486 U.S. 174, 181 (1988).

contractors.¹⁸ California argues that Boeing must “stand in the government’s shoes” in order to assert immunity from state regulation. The cases that California cites to are inapposite as they discuss generally applicable state tax laws, which resulted in merely an increased economic burden on federal contractors as well as others. These tax laws did not regulate what the federal contractors had to do or how they did it pursuant to their contracts.

SB 990 directly interferes with the functions of the federal government. It mandates the ways in which Boeing renders services that the federal government hired Boeing to perform. The state law replaces the federal cleanup standards that Boeing has to meet to discharge its contractual obligations to DOE with the standards chosen by the state. It overrides federal decisions as to necessary decontamination measures. Unlike the tax cases, SB 990 regulates not only the federal contractor but the effective terms of federal contract itself.

Thus, SB 990 violates intergovernmental immunity unless Congress has clearly and unambiguously authorized California to exercise authority over the Department of Energy with respect to radioactive materials. “It is well settled that the activities of federal installations are shielded by the Supremacy Clause from direct state regulation unless Congress provides ‘clear and unambiguous’ authorization for such regulation.”¹⁹

¹⁸ 940 F.2d 437, 441 (9th Cir. 1991).

¹⁹ *Goodyear Atomic Corp.*, 486 U.S. at 180 (quoting *EPA v. State Water Res. Control Bd.*, 426 U.S. 200, 211 (1976)).

There is no clear congressional authorization in the Atomic Energy Act that would allow California to regulate DOE's cleanup of radioactive materials at Santa Susana. The agreement entered between California and the Atomic Energy Commission in 1962 does not affect the immunity analysis. The 1962 agreement was made pursuant to the 1959 amendment to the Atomic Energy Act that allowed the Atomic Energy Commission to transfer licensing authority over nuclear materials to states, pursuant to individual agreements with individual states.²⁰ Congress sought, among other things, "to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with the use of [nuclear material]."²¹ The Act provides that states "shall have authority to regulate the materials covered by [an] agreement for the protection of the public health and safety from radiation hazards."²² Under the 1962 agreement, California's Department of Public Health has licensed Boeing's *commercial* nuclear work at Santa Susana.

The 1962 agreement does not grant California any authority to regulate the federal government. The Atomic Energy Commission's regulations implementing the 1959 amendment explicitly state that exemptions from federal licensing authority under the agreement between states and the Commission "do not apply to agencies of the Federal

²⁰ 42 U.S.C. § 2021.

²¹ 42 U.S.C. § 2021(a)(2).

²² 42 U.S.C. § 2021(b).

government.”²³ So even within “Agreement States,” such as California, the federal agencies remain subject to the federal government’s exclusive regulatory authority. The 1962 agreement references these regulations, and no language under the agreement indicates that the AEC was ceding authority to regulate federal activities to state agencies. Subsequent administrative developments make this clear.²⁴

Our conclusion is consistent with the history of the Atomic Energy Act and Congress’s response to other attempts by states to regulate federal activities. Section 2018 of the Atomic Energy Act provides that nothing in the Act affects state regulatory authority over the “generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission.”²⁵ In 1965, Congress added the following to Section 2018: “*Provided*, That this section shall not be deemed to confer upon any

²³ 27 Fed. Reg. 1350, 1352 (1962) (codified at 10 C.F.R. § 150.10).

²⁴ The Atomic Energy Commission was abolished in 1974, and its duties divided between the Nuclear Regulatory Commission (“NRC”) and the Energy Research Development Administration, subsequently turned into the cabinet-level Department of Energy. The Nuclear Regulatory Commission, now with the authority to enter into agreements with states, makes it clear that the agreement with states “does not transfer regulatory authority to the States over . . . [a]ctivities of Federal Agencies located in Agreement States.” NRC Procedure SA-500, *Jurisdiction Determinations* 2 (Sept. 25, 2007). NRC also requires the Agreement States to provide exemptions for NRC’s and DOE’s prime contractors performing work on government-owned or controlled sites from licensing requirements. Statement of Policy, 46 Fed. Reg. 7543 (Jan. 23, 1981). *Cf.* 10 C.F.R. §§ 30.12, 40.11, 70.11 (exempting NRC’s and DOE’s prime contractors from licensing requirements under the Atomic Energy Act).

²⁵ 42 U.S.C. § 2018.

Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.”²⁶ Congress added this proviso to overrule a Ninth Circuit opinion, *Maun v. United States*, 347 F.2d 970 (9th Cir. 1965), which interpreted the section to allow a municipality to prohibit transmission lines that the Atomic Energy Commission sought to build in order to carry out its own activities.²⁷

The Resource Conservation and Recovery Act (“RCRA”)²⁸ does not authorize California to regulate DOE’s cleanup of radioactive contamination. RCRA allows states to operate a hazardous waste management plan applicable to federal facilities so long as the state regulates “in the same manner, and to the same extent, as any person is subject to such requirements.”²⁹ But RCRA excludes from its coverage radioactive materials regulated under the Atomic Energy Act.³⁰ So RCRA does not apply to the radioactive contamination in this case.

Nor does the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”)³¹ save SB

²⁶ Pub. L. No. 89-135, 79 Stat. 551.

²⁷ *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 210–11 (1983).

²⁸ 42 U.S.C. § 6901, *et seq.*

²⁹ 42 U.S.C. §§ 6926, 6961(a).

³⁰ 42 U.S.C. §§ 6903(5), (27), 6905(a).

³¹ 42 U.S.C. § 9601, *et seq.*

990. Under CERCLA, states may obtain authority to clean up certain hazardous waste sites by obtaining EPA approval and entering into a “cooperative agreement.”³² Unlike RCRA, some provisions of CERCLA cover nuclear materials. The definition of “release” includes releases of nuclear materials except in certain situations.³³ EPA includes “radionuclides” in the list of “hazardous substances.”³⁴ And CERCLA contains a federal immunity waiver clause with respect to state laws concerning removal and remedial of hazardous substances. However, the waiver does not apply “to the extent a State law would apply any standard or requirement to [federal] facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by [the federal government].”³⁵ SB 990 applies more stringent requirements to Santa Susana than to non-federal facilities because it requires cleanup to a standard suitable for subsistence farming, rather than for the site’s reasonably foreseeable future use. Under the state’s generally applicable process, the future use would be determined by considering a number of site-specific factors such as current use, county general plans, and topography. It is undisputed that the subsistence farming has not been so determined as a land use assumption for the Santa Susana site.

³² 42 U.S.C. § 9604(d)(1)(A).

³³ 42 U.S.C. § 9601(22)(C).

³⁴ 40 C.F.R. Part 302, Table 302.4. Under CERCLA, EPA has the authority to designate additional hazardous substances by regulations. 42 U.S.C. § 9602.

³⁵ 42 U.S.C. § 9620(a)(4).

Therefore, we conclude that SB 990 regulates the federal government directly in violation of the Supremacy Clause.

B. Discrimination Against the U.S. Government and Its Contractors

SB 990 also violates intergovernmental immunity because it discriminates against the federal government and Boeing as a federal contractor. “A state or local law discriminates against the federal government if it treats someone else better than it treats the government.”³⁶ California does not dispute that “SB 990 singles out Boeing, DOE, NASA and the [Santa Susana Field Laboratory] site for a substantially more stringent cleanup scheme than that which applies elsewhere in the State.” The fact that Santa Susana is especially contaminated does not render the law non-discriminatory because California’s generally-applicable environmental laws do not impose the SB 990 radioactive cleanup standards at the Santa Susana site.

The federal government’s decision to hire Boeing to perform the cleanup rather than using federal employees does not affect our immunity analysis on this ground. When the state law is discriminatory, a private entity with which the federal government deals can assert immunity.³⁷ In *Davis v. Michigan Department of Treasury*, a retired federal employee challenged Michigan’s taxation of his federal retirement

³⁶ *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010) (internal quotation marks omitted).

³⁷ *North Dakota v. United States*, 495 U.S. 423, 435 (1990).

benefits.³⁸ Michigan argued that only the federal government, not private entities or individuals, are immune from state laws.³⁹ The Supreme Court disagreed because the state law at issue discriminated against federal employees by exempting from state taxation retirement benefits paid to state employees, but not those paid to federal employees.⁴⁰ The Supreme Court held that

It is true that intergovernmental tax immunity is based on the need to protect each sovereign's governmental operations from undue interference by the other. But it does not follow that private entities or individuals who are subjected to discriminatory taxation on account of their dealings with a sovereign cannot themselves receive the protection of the constitutional doctrine. Indeed, all precedent is to the contrary.⁴¹

Likewise, Boeing cannot be subjected to discriminatory regulations because it contracted with the federal government for the nuclear research and now the cleanup of radioactive contamination.

SB 990 specifically targets Santa Susana because of the radioactive pollution created by federal activity on the site

³⁸ 489 U.S. 803, 814 (1989).

³⁹ *Id.*

⁴⁰ *Id.* at 814–15.

⁴¹ *Id.* at 814 (citations omitted).

and because “DOE declined to follow the 1995 Joint Policy [between EPA and DOE] and chose to instead rely on less protective cleanup standards.”⁴² SB 990 applies more stringent cleanup standards than generally applicable state environmental laws. By doing so, SB 990 discriminates against the federal government and against Boeing as a federal contractor. Therefore, it is invalid under the doctrine of intergovernmental immunity.

The 2010 Administrative Orders on Consent from the California Department of Toxic Substances Control that DOE and NASA agreed to do not affect the analysis of SB 990. Both Orders set a radioactive cleanup standard for the soil in certain areas of Santa Susana. They do not set cleanup standards for bedrock or groundwater, and SB 990 does. Any waiver clauses included in the Orders have no effect beyond the term of the Orders.

III. Severability

We agree with the district court that the terms of SB 990 are unseverable. California concedes that applying SB 990 only to chemical cleanup is impossible without gutting the Act because the Act sets cleanup standards in part by requiring that “the cumulative risk from radiological and chemical contaminants at the site shall be summed.”⁴³ We decline to construe SB 990 as limited to non-radioactive cleanup because it would “require us to examine and rewrite most of the statute in a vacuum as to how the various

⁴² SB 990 § 2(h).

⁴³ Cal. Health & Safety Code § 25359.20(c).

provisions were intended to intersect and in a way that would be at odds with the purpose of the statute.”⁴⁴

The judgment of the district court is **AFFIRMED**.

⁴⁴ *United States v. Manning*, 527 F.3d 828, 840 (9th Cir. 2008).