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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

BY FAX

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 Party In Interest.

Case No.:

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF (Public Resources Code, § 21168.5; Code Civ. Proc., §§ 525, 1060, 1085, 1097)
CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") ACTION

DEPARTMENT 14

INTRODUCTION

1. Petitioners and Plaintiffs Physicians for Social Responsibility - Los Angeles, the Southern California Federation of Scientists, the Committee to Bridge the Gap, and Consumer Watchdog (collectively, "Petitioners") bring this action to challenge the authorizations issued by the Respondents and Defendants Department of Toxic Substances Control ("DTSC") and the Department of Public Health ("DPH") (collectively, "Respondents") to Real Party in Interest The Boeing Company ("Boeing") to demolish and dispose of radioactive structures at Area IV of the Santa Susana Field Laboratory ("SSFL"), an area used for decades for the development, fabrication, and disassembly of nuclear reactors, reactor fuel, and other radioactive and highly toxic materials. Area IV is the site of widespread radiological and chemical contamination from a range of sources, including the burning of radioactive and toxic wastes in open pits, reckless disposal practices, at least two nuclear accidents involving serious fuel damage, and, in 1959, a partial reactor meltdown that was concealed from the public for twenty years. As a result, Area IV itself is heavily contaminated, laden with both radioactive and chemical waste products, posing substantial health risks to the public and the natural environment, including contamination of surface and groundwater. The structures on Area IV are likewise contaminated, due in part to the materials handled in these structures and in part due to the widespread radiation throughout Area IV. Pending before Respondents are Boeing's requests for approval of the demolition and disposal of one of the most dangerous structures at the site: the plutonium fuel fabrication building (Building 4055), as well as several other radiological facilities.

2. This action challenges the continuing violation of the California Environmental Quality Act ("CEQA") by Respondents because they have entirely failed to perform any of the required environmental review for the demolition of structures at Area IV prior to authorizing their demolition and disposal. Respondents have approved, without environmental review, the demolition and disposal of structures that are, by Boeing's own measurements, radiologically contaminated. Worse, Respondents are expressly approving Boeing's disposal of this radiologically contaminated waste offsite to toxic waste facilities that are neither licensed, nor designed, to accept radiologic material. Many tons of these materials have even been sent to recycling facilities so that these radiologically active materials enter the commercial metal supply

3. Respondent DTSC has not only failed to conduct any environmental review pursuant to CEQA prior to authorizing Boeing's demolition activities, nor has it issued a Notice of Exemption or any other document in compliance with CEQA. At the same time, however, while buildings are already being demolished and shipped off to landfills, Respondent DTSC has announced that it will prepare a Program Environmental Impact Report ("EIR") for the remediation of the SSFL site, and has issued a public request for a consultant to prepare the EIR, anticipating completion no earlier than 2015. While DTSC and Boeing are in the process of identifying a consultant to prepare an EIR for the remediation of the site, Respondents are authorizing some of the remedial work that should be reviewed in that very EIR: the demolition and disposal of the radiologically contaminated structures.

4. Moreover, in authorizing the offsite disposal of the demolition debris in sites not licensed to receive radioactive waste, DTSC and DPH are relying on a standard never adopted by rulemaking or in compliance with CEQA. There is no existing legally valid health-based risk standard that permits the disposal of *any* level of radioactively contaminated material to a facility that is not licensed to receive radioactive waste. The standards that DPH and DTSC are relying on to state that radiologically contaminated material is acceptable for off-site disposal in municipal landfills or to be recycled were never intended to be used for such purposes. These standards were developed 40 years ago to facilitate the *reuse* of former radiological facilities, *not their demolition and disposal*. The standard reflects merely the capability of 40-year-old detection technology, does not account for contamination present below the surface of material, and was never intended to govern the off-site disposal of contaminated materials in unlicensed facilities.

5. In 2000, without environmental review under CEQA, Respondent DPH attempted to promulgate regulations setting forth acceptable levels of radioactivity for license termination, which it subsequently stated it would also use to permit disposal of radiologically contaminated materials in other than licensed radioactive waste sites. This Court overturned these regulations in 2002, requiring the preparation of an EIR prior to adopting the proposed standard or any other release standard. In the more than decade since, no such rulemaking has been undertaken and no EIR has ever been produced. Respondents have not complied with CEQA or the public notice and hearing requirements of the California Administrative Procedures Act ("APA") prior to adopting what amount to underground

regulations setting release standards for approving demolition of radioactive structures and permitting offsite disposal of their contaminated debris at facilities that are not licensed to receive low-level radioactive waste.

6. Petitioners seek a determination from this Court that Respondents have not met their obligations under CEQA to ensure that the environmental consequences of agency actions are reviewed *before* decisions are made and irreversible actions undertaken. Petitioners also seek a determination that Respondent DPH has violated the Peremptory Writ issued by the Sacramento Superior Court by failing to conduct environmental review before establishing clean-up standards, and that Respondents have failed to comply with the California Administrative Procedures Act by utilizing standards of general applicability that have not been promulgated as regulations. Petitioners seek a ruling that all of Respondents' actions authorizing the demolition and disposal activities are void and contrary to law. Petitioners ask this Court to issue peremptory and alternative writs of mandate to prevent DTSC, DPH and/or Real Party in Interest from taking actions based on the faulty approvals.

7. Petitioners also seek a preliminary injunction to prevent any further authorizations by Respondents of Boeing's demolition activities in Area IV,and to halt the demolition and imminent shipments of radioactive material to facilities not licensed to receive low level radioactive waste. This injunction is necessary both to preserve the Court's ability to rule on the merits of Petitioners' action and to prevent grave public harm inherent in the improper handling and disposal of radioactive material.

PARTIES

8. Petitioner and Plaintiff Physicians for Social Responsibility- Los Angeles ("Physicians") is the Los Angeles chapter of the international physicians' organization that won the Nobel Peace Prize in 1985 for its work on the nuclear threat. Physicians represents over 4,000 physicians, health professionals, and concerned residents in Southern California, a number of whom live within five miles of SSFL. Physicians works to reduce public health threats, with a special focus on nuclear matters and environmental toxins. Physicians has been involved with the SSFL matter since at least 1979, when it intervened in the administrative proceeding for the relicensing of the SSFL "Hot Lab." It has continued its involvement ever since, pushing for effective cleanup of the site.

9. Petitioner and Plaintiff Southern California Scientists ("Scientists") was organized in the early 1950s as the Los Angeles chapter of the Federation of American Scientists (originally the Federation of Atomic Scientists). The latter was an organization of the former Manhattan Project and other scientists concerned with the nuclear threat. Scientists is an interdisciplinary organization of scientists, engineers, technicians, scholars, and concerned citizens dedicated to providing independent scientific and technical analyses and expertise on issues affecting science, society, and public policy. It has a special focus on matters related to nuclear safety, waste, and contamination. Scientists has been involved in matters related to the SSFL since 1979, when it provided technical assistance related to disclosures of the partial nuclear meltdown that had occurred in 1959 at SSFL. A decade later, Scientists intervened in the relicensing proceeding for the "Hot Lab" at SSFL. Since that time, it has been involved in providing technical assistance to the communities near the site on matters related to SSFL cleanup. Executive Board member Dr. Sheldon C. Plotkin has served for approximately two decades as a community representative on the SSFL Inter-Agency Work Group overseeing the cleanup of the site and on the SSFL Advisory Panel that oversees health studies of the affected workers and neighboring communities.

10. Petitioner and Plaintiff Committee to Bridge the Gap ("the Committee") is a forty-three-year-old organization that focuses on reducing risks from nuclear technology. In 1979 it helped bring to public attention documents about the partial meltdown of a nuclear reactor at SSFL that occurred twenty years earlier. The Committee has been involved in efforts to get effective cleanup at SSFL ever since, in part on behalf of members who reside within five miles of the site. The Committee's President has served on the SSFL InterAgency Work Group and the SSFL Advisory Panel since their inception. Petitioner and Plaintiff Consumer Watchdog was established in 1985 as a non-profit citizen education and advocacy organization. Consumer Watchdog advocates for the rights of consumers and taxpayers, holds corporations and government officials accountable in the Legislature and the courts, and protects citizens from corporate assault on their rights and pocketbooks. Consumer Watchdog's advocacy, organizing, and litigation have stopped and changed unfair and illegal practices in the healthcare, insurance, technology, automotive, oil, energy, and telecommunications industries. These efforts have helped consumers recover billions in overcharges and have held companies accountable for breaking

promises to their customers. Consumer Watchdog advocates field complaints from consumers nationwide and work with regulators, policymakers, and consumer protection agencies to improve laws and regulations to better protect consumers from deceptive corporate conduct and to protect the public's health and safety. A year ago, Consumer Watchdog launched a project to force environmental regulators to live up to their mission to protect the public from toxic harm. A six-month investigation led to a report called *Golden Wasteland* documenting instances in which state regulators have failed to enforce laws against serial toxic polluters. Consumer Watchdog advocates for enforcing the state's stringent laws on hazardous waste, materials, and substances.

11. Respondent and Defendant DTSC is the lead regulatory agency responsible for ensuring that the Boeing Company (Boeing) complies with all Resource Conservation and Recovery Act (RCRA) and response action requirements at the SSFL. In 2007, DTSC issued a consent order to Boeing requiring it to remediate the toxic contamination at the site. DTSC is the agency charged with overseeing and authorizing any demolition activities located in areas where hazardous wastes were managed or releases of hazardous wastes or materials occurred. As part of this authority, DTSC oversees and authorizes the demolition and disposal of each building at the SSFL site.

12. Respondent and Defendant Department of Public Health has regulatory authority over most radioactive materials in California pursuant to a 1962 federal Atomic Energy Act delegation to the State of California. The Radiologic Health Branch (RHB) of the Department of Public Health regulates radioactive materials in California pursuant to the California Radiation Control Act. It issues Radioactive Materials Licenses and regulates the licensees. DPH is responsible for approving cleanup plans for radioactive materials licensees such as Boeing, and under its regulations, is not to approve cleanup unless a reasonable effort has been made to "eliminate contamination." DPH is subject to a peremptory writ requiring it to prepare an Environmental Impact Report prior to adopting cleanup standards.

13. Respondents and Defendants Does 1 through 100 are or were the agents, employees, contractors, and/or entities acting under the authority of each other respondent or real party in interest, and each performed acts on which this action is based within the cause and scope of such agency and/or employment. Petitioner does not know the true names and capacities, whether individual, corporate, or

otherwise, of real parties in interest Does 1 through 100, inclusive, and therefore sues said respondents and defendants under fictitious names. Petitioner will amend its Petition and Complaint to show their true names and capacities when they have been ascertained.

14. Real Party in Interest Boeing owns Area IV, the portion of the SSFL where demolition is occurring, and is the entity that is undertaking the demolition and disposal after approval from Respondents. Additionally, Boeing owns the structures that it is demolishing on the site.

15. Real Parties in Interest Roes 1 through 100 are or were the agents, employees, contractors, and/or entities acting under the authority of each other respondent or real party in interest, and each performed acts on which this action is based within the cause and scope of such agency and/or employment. Petitioner does not know the true names and capacities, whether individual, corporate, or otherwise, of real parties in interest Roes 1 through 10, inclusive, and therefore sues said real parties in interest under fictitious names. Petitioner will amend its Petition and Complaint to show their true names and capacities when they have been ascertained.

VENUE

16. Venue is proper with this Court as this is an action against a state agency filed in a County in which the Attorney General maintains offices pursuant to Code of Civil Procedure section 401.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. There have been no formal public proceedings or public notifications regarding DTSC's and DPH's approvals of Boeing's demolition activities. The DTSC posts some information and documents on its website and it is through such information that Petitioners learned of the demolition activities now taking place in Area IV. The information is posted several layers deep in the online library, under a heading regarding "RCRA Facility Investigation –Soils." The DTSC has not solicited public comment on its review of Boeing's proposed demolition activities.

18. Nevertheless, Petitioners have attempted to convey to DTSC their legal objections to the DTSC's approval of demolition of radioactively contaminated structures and disposal of radioactively contaminated debris not licensed to receive it. On August 5, 2013, Petitioners submitted to Respondents a letter detailing these objections, attaching a 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 California Department of Public Health," prepared by Daniel O. Hirsch, President of Committee to Bridge the Gap, analyzing the various documents submitted by Boeing and approvals by Respondents concerning the structures at Area IV. Although Petitioners had no administrative remedies and therefore no duty to exhaust such remedies, Petitioners submitted the letter and report in good faith to Respondents in an effort to avoid this litigation by providing Respondents with notice of their grave concerns.

19. On August 6, 2013, as required by Public Resources Code section 21167.5, Petitioners notified Respondents that Petitioners intended to file suit to enforce the requirements of CEQA. Proof of service of that notification is attached as Exhibit A.

20. On August 6, 2013, as required by Public Resources Code section 21167.7, Petitioners informed the Attorney General that they intended to file this action. Proof of service of this letter is attached as Exhibit B.

21. Petitioners file with this Verified Petition a notice of Election to Prepare Administrative Record, to the extent that any administrative record exists in an action in which an agency has failed to taken any actions in compliance with CEQA.

STATUTORY AND REGULATORY BACKGROUND

22. CEQA requires environmental review and analysis prior to the approval of discretionary projects by state agencies. The Legislature has declared that CEQA supports numerous state policies for "the maintenance of a quality environment for the people of this state now and in the future. . . ." (Pub. Resources Code, § 21000, subd. (a).) Moreover, the Legislature has declared that "the interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and control environmental pollution." (*Id.*, subd. (f).) Finally, "[i]t is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and

satisfying living environment for every Californian." (*Id.*, subd. (g).) Long-term protection of the environment is a fundamental criterion of CEQA. (Pub. Resources Code, § 21001, subd. (g).)

23. The basic purposes of CEQA are to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities, identify ways that environmental damage can be avoided or significantly reduced, prevent such damage by the imposition of mitigation measures or the adoption of alternative activities that avoid such damage, and disclosure to the public of the reasons for approving an activity with significant, unmitigable environmental effect. (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15002(a).)

24. CEQA defines "project" as any activity which may cause either a direct physical change or a reasonably foreseeable indirect change in the environment, and which involves the issuance by one or more public agencies of a lease, permit, license, certificate, or other entitlement for use. (Pub. Resources Code, § 21065.) CEQA applies to all discretionary projects proposed to be carried out or approved by public agencies. (Pub. Resources Code, § 20180.)

25. CEQA applies when a public agency proposes to "approve" a project. (Pub. Resources Code, § 21080, subd. (a).) The term "approval" refers to a public agency decision that commits the agency to a definite course of action in regard to a project. (Cal. Code Regs., tit. 14, § 15352(a).) CEQA applies to "discretionary projects." (Pub. Resources Code ,§ 21080, subd. (a); Cal. Code Regs., tit. 14, § 15357.) Projects with elements both discretionary and ministerial must be treated as discretionary. (Cal. Code Regs., tit. 14, § 15268(d).)

26. Agencies may not undertake actions that could have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (Cal. Code Regs., tit. 14, § 15004(b)(2). The "lead agency," which is the public agency which has the principal responsibility for carrying out the project, is responsible for determining, in consultation with other relevant state agencies, whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be prepared for a project. (Pub. Resources Code, §§ 21067; 21080.1, subd. (a); 21080.3, subd. (a).)

27. The CEQA Guidelines, codified in title 14 of the California Code of Regulations, set forth the procedure that a lead agency must follow when it commences consideration of a project. If an

agency determines that a discretionary activity may result in a reasonably foreseeable direct or indirect physical change to the environment, it must begin CEQA review by considering whether a project is exempt pursuant to a categorical or statutory exemption. (Cal. Code Regs., tit. 14, § 15061.) If an agency determines that a project is exempt, it must file a Notice of Exemption setting forth for the public the basis of a claimed exemption. (Cal. Code Regs., tit. 14, § 15062.) If a project is not found to be exempt, the agency may prepare an Initial Study to determine if the project may have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15063.) If there is substantial evidence that *any* aspect of a project may cause a significant effect on the environment, the agency must prepare an EIR analyzing the potential impacts, individually and cumulatively, of the project on the environment.

28. A number of state and federal laws govern the use, remediation, and disposal of low-level radioactive waste. Not one of these laws permits the disposal of such waste in anything other than a facility licensed by the state or federal government to receive low-level radioactive waste.

The Nuclear Regulatory Commission (NRC) regulates aspects of the use and disposal of radioactive materials, except where a state has, by agreement, committed to assume such responsibility. (42 USC § 2021.) California agreed to accept responsibility for the regulation of radioactive materials in the state in 1962. (27 Fed. Reg. 3864, Health & Saf. Code, § 115230 *et seq.*) . Where a state has accepted this responsibility, it generally must regulate the use and disposal of such materials to at least as stringent a degree as the NRC requires, but it may impose more stringent standards. In other words, the NRC standards serve as a floor for the clean-up of radioactive materials. (NRC Directive 5.9, "Adequacy and Compatibility of Agreement State Programs.")

29. California's laws prohibit the disposal of low-level radioactive waste at any facility other than a facility specifically licensed to receive such materials. State law defines low-level radioactive waste as all regulated radioactive material that not is not high-level radioactive waste or subject to other exceptions not applicable here; there is no floor, beneath which radioactive material is not subject to regulation as a low-level radioactive waste. (Health & Safety Code, § 115255, subd. I; see also Health & Safety Code, § 114985, subd. (m) [defining low-level radioactive waste as all radioactive waste not classified as high-level radioactive waste].) By regulation, the Department of Health Services (now known as DPH) expressly adopted 10 CFR 61.3 governing the disposal of low-level radioactive waste.

(See Cal. Code Regs., tit. 17, § 30470.) The Legislature has enacted statutes that set forth the requirements for a facility to receive a license to accept low-level radioactive waste, which include a prohibition on shallow land burial, required use of multiple engineered barriers capable of isolating the waste for at least 500 years, and a capability for visual inspection or remote monitoring of the waste to detect leakage. (Health & Safety Code, § 115261.)

30. Similarly, the NRC does not permit the disposal of radiologically contaminated materials at a facility that is not licensed to receive low-level radioactive waste. (10 CFR 61.3.) In the late 1980s and early 1990s, the NRC published "policy statements" attempting to establish what was called "Below Regulatory Concern" standards setting a level of contamination below which materials could be disposed in non-licensed facilities. (See, e.g., 55 Fed. Reg. 27522.) Shortly thereafter, in the Energy Policy Act of 1992, Congress expressly overturned the NRC's actions and stated that NRC's policy statements were to have no further effect after the enactment of the Act. (Pub.L. No. 102-486 (Oct. 24, 1992) 106 Stat 2776, § 2901.) This legislation also expressly affirmed that the states have the ability to regulate any radioactive waste that the NRC might deregulate. (See 42 U.S.C. § 2023, subd. (a).) NRC has not since attempted to adopt any BRC regulation that would deregulate specified levels of low-level radioactive waste and permit their disposal in any facility other than one specifically licensed to receive such waste.

31. In 2000 the DPH, then known as the Department of Health Services, attempted to adopt a standard of the NRC applying to termination of licenses as a regulatory standard for clean-up and license termination. Although the notice of proposed rulemaking did not state this, the agency subsequently disclosed that it intended to use this standard to determine when radiologically contaminated materials could be disposed in non-LLRW licensed facilities. The Department of Health Services did not prepare an EIR in support of its regulation but rather relied upon an exemption for CEQA for purportedly environmentally protective regulations.

32. This regulation and its CEQA exemption were challenged in the Superior Court of Sacramento County by Petitioners the Committee to Bridge the Gap, Physicians for Social Responsibility, Los Angeles Chapter, and Southern California Federation of Scientists. In 2002, the Honorable Gail Ohanesian overturned the regulations for failure to comply with CEQA and the APA,

issuing a writ of mandate prohibiting DPH from adopting its regulations or any similar clean-up standards without first preparing an EIR. DPH has not since promulgated any clearance standards, nor has it prepared an EIR for any such standards.

33. Moreover, in response to the court's ruling, then-Governor Gray Davis issued Executive Order D-62-02, which prohibits the disposal of *any* waste from decommissioned facilities, radiologically contaminated or not, in any Class III landfills (municipal waste landfills). That Executive Order remains in effect, so the disposal of *any* materials from a decommissioned facility at a Class III landfill is contrary to law.

34. DPH and its predecessor agency have in the past repeatedly stated that low-level radioactive waste may not be disposed in California's Class I hazardous waste landfills. In September 2011, DPH informed officials tasked with remediating the McClellan Air Force Base that its plan to ship radium 226 contaminated waste from McClellan to the DTSC-permitted Class I Buttonwillow facility for disposal was illegal under California law, because that facility is not licensed to receive low-level radioactive waste. The Department of Health Services similarly wrote to the operators of the Buttonwillow facility that attempts to dispose low-level radioactive materials from out of state at Buttonwillow in 1999 were not permissible under California law.

STATEMENT OF FACTS

Background Regarding the Santa Susana Field Laboratory and Area IV

35. The Santa Susana Field Laboratory (SSFL) is a former nuclear meltdown site located in the Simi Hills of Ventura County, about 30 miles from downtown Los Angeles, in Southern California. Beginning in the 1940s, the company North American Aviation developed the area to engineer and test rocket engines, and in the 1950s its Atomics International division developed Area IV of the site for nuclear development and testing. The site is divided generally into four areas, denominated Areas I through IV. The nuclear work took place in the 290-acre Area IV, sometimes referred to as the Nuclear Development Field Laboratory.

36. At its peak, Area IV was the site of ten nuclear reactors, seven criticality test facilities, the "Hot Laboratory," the "Nuclear Materials Development Facility," the plutonium fuel fabrication facility and various test and nuclear material storage areas. The Hot Laboratory suffered a number of

fires involving radioactive materials and at least four of the ten nuclear reactors suffered accidents. Rocketdyne also used large volumes of chemicals within Area IV. For example, Rocketdyne used trichloroethylene ("TCE") and other chemicals in connection with work on the nuclear reactors. This work resulted in accidental spills and releases of radioactive and chemical contaminants within Area IV.

37. In 1959, the SSFL experienced the most significant of these accidents when a Sodium Reactor experimental unit located in Area IV suffered a partial nuclear meltdown. The reactor, like all those at SSFL, had no containment structures, and radioactivity was intentionally vented into the atmosphere for weeks. Decades of nuclear experiments and unsafe practices such as the onsite open-air burning of nuclear waste also contributed to the widespread radioactive contamination throughout Area IV.

38. Radioactive contamination found by EPA at the site includes cesium-137, strontium-90, plutonium-238, plutonium-239/240, americium-241, curium-243/244, tritium, and europiuim-152 and -154. According to EPA, human exposure to these radioactive substances at the site can cause cancer, leukemia, and genetic effects. In fact, a 1997 study by UCLA researchers found that workers at the site had significantly higher incidences of dying from cancer of the blood, lungs, and lymph system. Other studies have pointed to the conclusion that frequencies of various cancers increase with proximity to SSFL.

39. The site's operations closed permanently in the 1990s due to community efforts and a DOE investigation revealing the site's extensive chemical and radiological contamination. In 1996, the Boeing Company acquired Rocketdyne, the then-owner, including all of the contaminated SSFL Area IV.

40. When SSFL was established, it was chosen as a remote field laboratory for work too dangerous to perform in more populated areas. Today, over half a million people live within 10 miles of the facility. Nearby communities include Simi Valley, Chatsworth, Canoga Park, Moorpark, Bell Canyon, Thousand Oaks, Agoura Hills, and Calabasas. The site is also directly bordered by a park, the Sage Ranch facility managed by the Santa Monica Mountains Conservancy; and by a youth camp.

41. In 2012, EPA released a soil study. The study revealed that radioactive contamination still pervades the site, with concentrations as much as a thousand times background levels. EPA's 2012

study of soils in Area IV found extensive radiological contamination pervading Area IV, including the areas around the various structures. Of 3,750 samples taken, 500 were found to have radioactivity above background.

DTSC and DPHApproval Of Boeing's Actions In Area IV

42. On March 28, 2000, DTSC announced that it had entered into a Memorandum of Understanding (MOU) for the preparation of a draft Environmental Impact Report (EIR) to identify the significant environmental impacts which must be considered by DTSC prior to approving a hazardous waste remediation (cleanup) for the SSFL site. The MOU established that work on the EIR would begin later that year and the final document completed by the end of 2002. DTSC did not prepare the EIR.

43. On September 10, 2012, DTSC again announced that it had entered into a Memorandum of Understanding with Boeing. In this MOU, the parties agreed that Boeing would enter into a contract with a consultant to advise DTSC on whether an EIR is required for subsequent future cleanup actions at the SSFL, and if so, whether the EIR should be a program level EIR, a single project-level EIR, individual project-level EIRs, or some combination of these options.

44. DTSC also announced the recommendation that DTSC develop a single EIR that would address all levels of the cleanup for SSFL contamination at a program level, and would include project specific information for components of the remediation program that are refined enough to support a project-specific level of analysis and approval.

45. In July 2013 DTSC issued a Request for Qualifications for a contractor to perform a Program EIR for cleanup of the full SSFL site. It has estimated the Program EIR will not be complete before 2015.

46. DTSC has yet to begin preparing any CEQA document for the site cleanup.

47. On or about April 2010, DTSC approved Standard Operating Procedures for Building Demolition Debris Characterization and Management (hereafter "2010 SOP"). According to DTSC this document 1) formalized screening and management procedures to assure that building demolitions will not result in the removal and uncontrolled release of potentially contaminated debris from the facility; 2) required limits on the scope of demolitions to assure that proposed activities will not adversely affect the ongoing site investigation and remediation, and 3) ensured that the review, approval, documentation,

and administrative record of proposed building demolitions at a minimum meet federal Resources Conservation and Recovery Act (RCRA) and state Hazardous Waste Control Law requirements.

48. The SOPs were publically noticed and comment was solicited. According to the public notice for announcing the 2010 SOPs and soliciting comment, "[t]he SOP is not applicable to building demolitions at SSFL in areas where known radiological contaminant releases are documented or suspected (such as Area IV). *Demolition in these areas is not planned.*" (Emphasis added, parenthetical in original.)

49. On April 19, 2013, Boeing submitted for DTSC approval a revision of the 2010 SOP (hereinafter "2013 SOP") to specifically apply to Boeing-owned former radiological buildings in Area IV. DTSC did not notify the public or solicit public comment on its proposed adoption of the 2013 SOP or assess the potential environmental impacts of its approval pursuant to CEQA. DTSC posted the document in its online document repository regarding SSFL. The April 2013 SOP states that it applies to radiological buildings at Area IV, specifically identifying the following six structures:

a. Building 4005, Uranium Carbide Manufacturing Facility (remaining slab only)

b. Building 4009, OMR/SGR Facility

c. Building 4011 (low bay), Instrument Calibration Laboratory

d. Building 4055 (including 4155), Nuclear Materials Development Facility

e. Building 4093 (including 4074, 4083, 4453, 4523), L-85 (AE-6) Research Reactor (remaining slab and west wall)

f. Building 4100, Fast Critical Experiment Laboratory/ Advanced Epithermal Thorium Reactor

50. The amendments submitted in April 2013 reflect that Boeing and DTSC had been making significant decisions regarding demolition and disposal of debris from Area IV without *any* public notice and comment. In fact, the document shows that the SOPs had been revised by Boeing in November 2012 at DTSC's request to include the non-radiologic buildings in Area IV, but these revisions were never posted to the document library until they were posted along with the April 2013 revisions. The public did not have any means to become aware that Boeing and DTSC were contemplating the systematic demolition of all extant Boeing-owned Area IV structures at that time.

51. Moreover, the April 2013 SOP reveals that critical information concerning the manner in which DTSC would evaluate the demolitions and approve of the disposal of debris was determined in private consultations and not subject to any public review or even disclosure. For instance, the April 2013 SOP governing demolition of radiologic buildings in Area IV states that Boeing would provide to DTSC and DPH "a summary of release criteria used for all former radiological buildings. This is designed to facilitate expedited review of release documentation by CDPH." In a footnote, the April 2013 SOP indicates that "Release Criteria for Boeing Radiological Buildings in Area IV" were emailed from Boeing to DTSC on February 15, 2013. This email was not made available to the public on the SSFL document library. Similarly, the April 2013 SOP provides that DTSC informed Boeing via email on February 13, 2013, that "DTSC concurs that Class I landfill disposal of former radiological building contents is acceptable, and agrees that this method of disposal does not merit additional radiological screening." Again, this email was not posted in the on-line document library and the only manner in which the public could learn of DTSC's concurrence in this approach is by footnote in the April 2013 SOP, on the 26th page of a 28 page document.

52. The April 2013 SOP demonstrates that Respondents exercise discretion over Boeing's demolition and disposal activities at Area IV in manner that would permit Respondents to address the potentially significant environmental impacts of demolition and disposal of the radiological buildings. The cover letter to the April 2013 SOP indicates that the document was prepared at DTSC's request. DTSC apparently approved the manner of disposal for all waste from the Area IV radiological structures. The April 2013 SOP states that "if features of radiological interest" are found, DTSC may require "additional evaluation before disposal." The April 2013 SOP also states that DTSC has required Boeing to conduct post-demolition radiological surveys of inaccessible materials, and requires Boeing to halt work if radiation exceeding the unspecified "release criteria" is identified.

53. Petitioners have attempted, by means of the information made available on DTSC's SSFL on-line document library, to ascertain the status of all non-radiologic and radiologic Boeing-owned structures in Area IV. As of the date this complaint was filed, from the information made publically available, Boeing has submitted to DTSC requests to approve the demolition and disposal of four radiologic structures: L-85, Building 4005, Building 4011 low bay, and, most recently, Building

4055, the plutonium facility. As far as the documents made available to the public indicate, on July 22, 2013, Respondents approved the remaining demolition and off-site disposal of the L-85 debris. There is no indication in the document library that Respondents have yet finalized review and or approval ofthe requests to demolish Building 4005 4055, or 4011 low bay. DTSC's July 2013 Monthly Status Report for the SSFL site, released on August 5, 2013, states that its reviews of Boeing's request to demolish Buildings 4055, 4005, and 4011 will be complete in late July or early August 2013.

54. According to DTSC's online SSFL document library, the demolition of the six non-radiologic structures in Area IV has been approved by Respondents and demolition and disposal of these structures is underway and may have been completed. Petitioners have extensively reviewed Boeing's submittals and Respondent's approvals for all Area IV structures, as well as publically available shipping manifests and other information regarding the disposal of demolition debris. Based upon this review, Petitioners conclude that Respondents have permitted Boeing to demolish Area IV structures and dispose of radiologically-contaminated debris in facilities that are not licensed under state law to receive such debris. Even structures that Boeing has denominated "non-radiological" have, by Boeing's own measurements, contained debris with level of radiologic activity that exceeds background levels. Under California law, all such waste must be disposed of in a facility specifically licensed to receive low-level radioactive waste. Respondents have approved Boeing's disposal of waste in non-licensed facilities under the premise that the radioactivity levels of debris do not exceed "release standards" under DPH documents DECON-1 and IPM-88-2 and US NRC Regulatory Guidance 1.86 ("Reg. Guide 1.86"); however those standards have nothing to do with the permissibility of *disposing* waste from released sites. And Boeing's own data reveals that even facilities in which debris with activity levels *exceeding* these levels have been disposed in facilities not licensed to receive low-level radioactive waste.

55. Specifically, in the non-radiological buildings already demolished and disposed of, 17 samples exceed even Boeing's own clearance levels (the DECON-1, IPM-88-2, and Reg. Guide 1.86 levels). DTSC and DPH did not require Boeing to dispose of the materials exceeding this standard in licensed LLRW facilities, in spite of statements that materials exceeding the "release standards" would be disposed only in properly licensed facilities.

56. The samples for the non-radiological structures also contained 14 instances of detection of radiation activity above background exceeding Boeing's "Minimum Detectible Activity Level" ("MDA"). The MDA is the lowest level of radiation that must be detected in order to conclude that there is less than a five percent chance of a false negative, or a failure to detect radiation where it is actually present. Boeing sets its MDA well above background, and well above DECON-1/IPM-88-2/Reg. Guide 1.86 levels, meaning that Boeing's own sampling efforts may well miss radiation above background. The MDA does not mean that detections of radioactivity below the MDA level are inaccurate. It simply means that Boeing is not conducting its surveys in manner that is designed to actually detect the presence of radiation at or above background levels. Boeing sets its MDA at very high levels because its sampling times are only one minute. Longer sampling times are required in order to accurately measure radioactive disintegrations because radioactive materials do not degrade in a regular, linear fashion, but rather do so at random intervals, which can easily be missed if sampling time is too short.

57. The samples for the non-radiological structures also contained 254 instances of radiation above the background levels established by Boeing's. . Moreover, Boeing's background levels are notably higher than background levels measured by US EPA for the same materials and vary significantly day by day, calling the very measurements against which radiation levels are assessed into suspicion. Indeed, in their reviews of Boeing's request for approval of the disposal of the remaining L-85 debris, Respondent DPH and the US EPA both noted that the background radioactivity level Boeing reported exceeded the radioactivity in the majority of samples.

58. The samples for the non-radiological structures also contained 62 instances with readings of radioactive higher than Boeing's critical level, or Lc. Boeing's own submissions state that readings that exceed the critical level are considered to be above background.

59. In the prior surveys of Building 4055, the plutonium building conducted for EPA by a contractor, TetraTek, 87 samples were in excess of the critical level. Respondents are presently reviewing and may imminently approve Boeing's request to demolish and dispose of this structure.

60. Boeing's radiological surveys do not identify the specific isotopes generating radiologic activity, a critical concern. A sample with a level of gross radiation that Boeing may consider

"background" may be contaminated with a non-natural isotope, such as Cesium-137 or Strontium-90, both of which can easily penetrate to human muscle or bone, respectively. Materials contaminated with these isotopes could be contaminated, i.e., above "background" levels because these isotopes do not occur in nature, and thus should be disposed of in a licensed LLRW facility.

FIRST CAUSE OF ACTION
Violation of California Environmental Quality Act
(Public Resources Code § 21168.5)

61. Petitioners incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

62. CEQA defines projects as any activity which may cause either a direct physical change or a reasonably foreseeable indirect change in the environment, and which involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub. Resources Code, § 21065.) CEQA applies to all discretionary projects proposed to be carried out or approved by public agencies. (Pub. Resources Code, § 20180.)

63. CEQA applies when a public agency proposes to "approve" a project. (Pub. Resources Code, § 21080, subd. (a).) The term "approval" refers to a public agency decision that commits the agency to a definite course of action in regard to a project. (Cal. Code Regs., tit.14, § 15352(a).)

64. Agencies may not undertake actions that could have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (Cal. Code Regs., tit. 14, § 15004(b)(2).) CEQA also requires that an agency consider the cumulative effects of its actions. Where "individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect," the agency must prepare an EIR addressing the scope of the entire project, including "comment upon the cumulative effect." (Cal. Code Regs., tit. 14, § 15165.)

65. There has been no review of the demolition and disposal of Area IV structures under CEQA. Respondents have not issued any Notice of Exemption or Notice of Decision regarding the demolition and disposal of Area IV structures.

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

radiation above background. Moreover, these measurements account only for surficial contamination, and do not measure volumetric contamination contained *within* the building materials. Volumetric contamination that was not measured by or accounted for by Boeing may be released during demolition. Even worse, as discussed *supra*, Boeing's measurements are conducted using a detection level that is not designed to reliably measure contamination above background levels or even Boeing's release levels, so the measurements submitted by Boeing to Respondents cannot demonstrate that the material is uncontaminated or even that it is not contaminated above the release limits being used. Nonetheless, some of the measurements are so high that they clearly show contamination and at levels exceeding even the limits used. The demolition may expose workers, nearby residents, park users, and children attending the adjacent camp to radiation released when radioactively-contaminated dust and soil reaches air or water.

67. The disposal of demolition debris likewise may have significant environmental effects. The Legislature has made specific findings regarding the potential environmental and safety hazards of improper disposal of low-level radioactive waste. In 2002, the Legislature enacted Assembly Bill 2114, which set standards for licenses for facilities where low-level radioactive waste is permitted to be disposed. The Legislature specifically found that, "[b]ecause of the need to protect public health and the environment, it is appropriate for the state to (1) prohibit shallow land burial of low-level radioactive waste because of the potential for the migration of radioactive waste beyond the site and to groundwater, and (2) require that a facility be designed and constructed to permanently isolate the radioactive waste to protect public health and the environment." (Stats. 2002, ch. 513, sec. 2 (b).) Moreover, the Legislature explained its intent "to establish standards for the disposal of low-level radioactive waste to permanently isolate low-level radioactive waste, with the goal of protecting public health and the environment." (Stats. 2002, ch. 513, sec. 2 (g).) The Legislature adopted specific requirements for facilities in which low-level radioactive waste is to be disposed, including multiple engineered barriers lasting at least 500 years, monitoring for the release of radioactive materials, and prohibiting shallow land burial. (Health & Saf. Code, § 115261, subd. (b).) The Legislature has, by imposing these requirements for all facilities in which low-level radioactive waste may be disposed, established that the improper disposal of such waste risks harm to the environment and to the public.

68. Respondents have already approved Boeing's disposal of debris containing materials that Boeing's own surveys showed contained radioactive materials with levels above background. Respondents have not required Boeing to dispose of these materials at licensed low-level radioactive waste facilities. The facilities that Respondents have authorized Boeing to utilize for disposal of the debris from Area IV structures that contain materials with radiation above naturally occurring levels are in fact not licensed by DPH for the disposal of low-level radioactive waste and satisfy none of the protective requirements that the AB 2114 mandates for such facilities. The lack of appropriate licenses and the lack of required protective measures at these facilities means that Respondents' approvals risk causing the harm to the environment and public health that the Legislature sought to avoid in enacting AB 2114.

69. Because Respondents exercise their discretion in evaluating and approving Boeing's requests to demolish and dispose of the radiologic structures in Area IV, and because the demolition and disposal of these radiologic structures may have significant environmental effect, review under CEQA is required. By failing to complete CEQA review before approving Boeing's demolition and disposal activities, Respondents have not proceeded in a manner required by law and have abused their discretion. (Pub. Resources Code, § 21168.5.)

70. Under Public Resources Code section 21167, subdivision (a), an action alleging that a public agency "is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project."

71. This action is timely filed within 180 days of the date that Petitioners were first aware that DTSC intended to authorize Boeing to demolish the radiological structures on Area IV, which was when Boeing submitted to DTSC the April 2013 SOP specifically addressing Area IV radiological structures. Until that time, DTSC's only public comment on Area IV structures indicated that the then-current SOPs would not permit demolition of the Area IV structures. Prior to April 2013, no prior

amendments to the SOP were made publically available indicating that Respondents would approve the demolition of Area IV structures.

SECOND CAUSE OF ACTION

Violation of Prior Writ of Mandate
(Code of Civil Procedure § 1097)
(By all Petitioners and Plaintiffs against Respondent and Defendant DPH)

72. Petitioners incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

73. In 2001, the Department of Health Services, the predecessor agency to Respondent and Defendant DPH, adopted regulations purporting to set standards for the clean-up of radiologically contaminated nuclear sites and the termination of licenses for nuclear sites. Although the public notice of the regulation did not state it, the Department of Health Services also took the position that the regulations would apply to permit the shipment of radioactive waste to unlicensed sites so long as the aggregate dose did not exceed a specified standard, a direct contradiction to the existing legal requirements regarding disposal of radioactive materials.

74. In promulgating the regulations, the Department of Health Services relied upon an exemption from CEQA and did not perform any environmental review of regulations or their possible environmental effects either at or near clean-up sites or disposal sites.

75. Petitioners and Plaintiffs Committee to Bridge the Gap, Southern California Federation of Scientists, and Physicians for Social Responsibility, Los Angeles Chapter filed suit in Sacramento Superior Court, challenging the Department of Health Service's adoption of the regulations for failure to comply with the Administrative Procedures Act and for violations of CEQA. (*Committee to Bridge the Gap et al v. Bonta*, Sacramento Superior Court Case No. 01CS01445.)

76. Superior Court Judge Gail Ohanesian heard argument on the Motion for Issuance of Peremptory Writ of Mandate in April 2002, and issued a Ruling on Submitted Matter finding that the Department of Health Services violated both the APA and CEQA. As to CEQA, the Ruling stated that the challenging parties "have shown that there is a reasonable possibility that the adoption of the subject regulation will have a significant adverse environmental effect." Accordingly, reliance on an exemption was inappropriate and environmental review was required.

77. The Amended Peremptory Writ of Mandate, issued June 17, 2002, commands, *inter alia*, that "Respondents . . . are ordered not to readopt the radiological criteria for license termination set forth in 10 CFR §§ 20.1401-1406 or *any similar provisions* relating to the establishment of clean-up standards for license termination, without first preparing an EIR in compliance with CEQA, Pub. Res. Code § 21000 *et. seq.*" (Emphasis added.)

78. In the *more than 10 years* since the writ was issued, Respondent and Defendant DPH has not prepared an EIR in compliance with CEQA to evaluate any radiological criteria for license termination.

79. In spite of not having prepared the EIR required by the writ, Respondent and Defendant DPH is utilizing decades old standards adopted for entirely different purposes to approve and authorize Boeing's clean-up, demolition, and disposal activities. DPH is relying upon these standards rather than following the procedures set forth in the APA, as set forth *infra* at paragraphs 82-88 and incorporated herein by reference, and without any environmental review of the potential adverse environmental consequences of the reliance upon these standards.

80. Respondent and Defendant assesses the permissibility of Boeing's demolition proposals and disposal plans by direct reference to these general standards. It is not reviewing the proposals on a case-by-case basis but rather measuring each against a set standard. Yet it has neither promulgated those standards pursuant to the APA nor performed the EIR required by the 2002 Writ of Mandate.

THIRD CAUSE OF ACTION

Unlawful Underground Rulemaking

(Violation of Administrative Procedures Act, Gov. Code, § 11340 et seq.)

81. Petitioners incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

82. Respondents and Defendants have a clear, present, and ministerial duty to comply with the APA, Government Code section 11340 et seq., which provides, *inter alia*, that "[n]o 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." (Gov. Code, § 11340.5, subd. (a).) Government Code section 11340.600, in turn, broadly defines a "regulation" as a "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." (*Id.* at § 11340.600; see also *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 [describing regulation definition as "very broad[]"].)

83. Courts apply the following two-part test set forth by the California Supreme Court in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, to determine whether an agency rule that was not adopted pursuant to the APA amounts to an underground regulation: "First the agency must intend its rule to apply generally, rather than to a specific case[, and s]econd, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure.'" (*Tidewater*, 14 Cal.4th at p. 571 [quoting Gov. Code, § 11342, subd. (g)].) If the rule constitutes a "regulation," and there is no express statutory exemption excusing the agency from complying with the APA's strict procedural requirements, then the underground regulation is invalid and cannot be enforced. (14 Cal.4th at p. 576.)

84. In issuing their approvals of Boeing's demolition and disposal activities, Respondents and Defendants rely upon several specifically identified standards of general application. These include Regulatory Guide 1.86, adopted in 1974 by the federal Atomic Energy Commission (later renamed the Nuclear Regulatory Commission); DOE 5400.5, a policy document that has since been rescinded by the Department of Energy; an undated document generated by DPH's Radiologic Health Branch titled "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use" ("Decon-1"); and a 1991 "policy memorandum" from the same source denominated IPM-88-2.

85. None of the standards were adopted by Respondents and Defendants pursuant the APA's strict public notice and other requirements.

86. The standards were intended by Respondents and Defendants and are, on their face, intended to apply generally rather than to a specific case.

87. Respondents and Defendants have utilized, and enforced these standards in their review of Boeing's requests for approval to demolish structures at Area IV and to dispose of the resultant debris

in off-site locations, and the reliance upon these standards has affected policy, practice, or procedure within the agencies.

88. Regulatory Guide 1.86, DOE 5400.5, Decon-1, and IPM-88-2 constitute an underground regulation in that each applies generally, and each is being applied to implement, interpret, and make specific the law enforced or administered by Respondents and Defendants, or govern the procedure of Respondents and Defendants.

89. There is no express statutory exemption excusing Respondents and Defendants from complying with the APA's strict procedural requirements with respect to these standards.

90. A writ of mandate may be issued under Code of Civil Procedure section 1085 "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office."

91. If not otherwise directed by this Court's issuance of the requested writ of mandate, Respondents and Defendants will continue to violate their clear, present, and ministerial duty to comply with the APA by continuing to utilize, enforce, or attempt to enforce Regulatory Guide 1.86, DOE 5400.5; Decon-1 and IPM-88-2, which constitute illegal underground regulations. Issuance of the requested writ of mandate is therefore necessary to prevent Respondents and Defendants from continuing to violate California law and to ensure that the Respondents and Defendants do not use standards that have been adopted without public review and which are not even intended for the purposes for which Respondents and Defendants are utilizing them.

92. Petitioners and Plaintiffs have a beneficial interest in the issuance of a writ of mandate, apart from the public at large, in that the organizations each advocates for safe and appropriate remediation and disposal of radioactive waste, as detailed in paragraphs @@@, above, and as specifically incorporated by reference herein. In particular, Petitioners Physicians for Social Responsibility – Los Angeles; Southern California Federation of Scientists, and Committee to Bridge the Gap have for over 20 years been involved in discussions, review, and litigation concerning the SSFL site and Area IV, in particular. Petitioner Consumer Watchdog has been enforcing laws designed to protect consumers and the general public since its inception, and has, over the past year, been actively campaigning against lax state agency enforcement of environmental laws. Collectively, Petitioners advocate for sound governmental decisionmaking and compliance with important state environmental

and consumer protection laws specifically enacted to provide the citizens of California with a high quality environment and consumer products free from harmful materials.

93. Petitioners and Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law, in that no damages or other legal remedy could compensate them or their members for the harm that could result from the use of improperly promulgated and inapplicable standards for the evaluation of Boeing's demolition and disposal of Area IV structures.

FOURTH CAUSE OF ACTION

(Declaratory Relief)
(Code Civ. Proc., §1060)

94. Petitioners incorporate by reference all the allegations contained in the preceding paragraphs as though fully set forth herein.

95. A dispute has arisen between Petitioners and Respondents, in that Petitioners believe and contend, for the reasons set forth above, that Respondents' actions as set forth above were unlawful and invalid. Petitioners are informed and believe, and on that basis contend, that Respondents contend in all respects to the contrary.

96. In particular, Petitioners contend that the approval of demolition and disposal of the Area IV radioactive structures is a "project," under CEQA; that Respondents exercise discretion in approving Boeing's demolition and disposal; and that such demolition and disposal of the former radiological structures may have a significant effect on the environment. Petitioners are informed and believe, and on that basis contend, that Respondents do not consider their actions in approving Boeing's demolition and disposal to be a "project" subject to CEQA review.

97. Petitioners also contend that Respondents are improperly utilizing standards of general applicability that have not been adopted pursuant to the Administrative Procedures Act. Petitioners are informed and believe, and on that basis contend, that Respondents believe that reliance upon these standards is appropriate.

98. Petitioners also contend that Respondent DPH is not compliant with the 2002 Writ of Mandate requiring it to prepare an EIR under CEQA prior to adopting any standards governing clean up 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

Mandate.

99. A judicial declaration as to the legality of Respondents' actions, as set forth above, is therefore necessary and appropriate to determine the respective rights and duties of the parties.

FIFTH CAUSE OF ACTION

(Injunctive Relief)
(Code Civ. Proc., § 525)

100. Petitioners incorporate all the allegations set forth in the preceding paragraphs as though fully set forth herein.

101. Respondents' actions in approving Boeing's demolition and disposal of Area IV structures, and reliance on improper standards to evaluate those demolition and disposal activities, has caused and threatens to cause Petitioners irreparable and substantial harm.

102. Petitioners have no plain, speedy, and adequate remedy at law, in that unless Respondents are enjoined by this Court to comply with CEQA, the 2002 Writ of Mandate, and the APA, Respondents will continue to approve Boeing's requests to demolish and dispose of the debris from radiologic structures in Area IV. No amount of monetary damages or other legal remedy can adequately compensate Petitioners for the irreparable harm that Petitioners, their members, the residents nearby the SSFL site and the sites in which radioactive materials have been improperly disposed, and the general public who consume products made from recycled materials into which radiologically active materials have been incorporated, have suffered and will suffer from the violations of law described herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. That this Court issue alternative and peremptory writs of mandate, commanding Respondents:

   a. To immediately cease review and approval of Real Party in Interest Boeing's request for approval of demolition of Boeing-owned radiologic structures in Area IV of the Santa Susana Field Laboratory;

   b. To order Real Party in Interest Boeing to immediately cease all demolition and disposal activity presently ongoing in Area IV of the Santa Susana Field Laboratory, and not to commence any further such activity;

c. To rescind all prior approvals for the demolition of radiologic structures in Area IV of the Santa Susana Field Laboratory and prohibiting any person acting in concert, consultation, or cooperation with Respondents from relying upon, enjoying any benefit from, or otherwise acting based upon the authorizations issued to demolish and/or dispose of any radiological structures in Area IV of the Santa Susana Field Laboratory;

d. 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. 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.

2. This this Court issue a temporary restraining order, preliminary injunction, and permanent injunction ordering Respondents as follows:

a. Ordering Respondents to immediately cease review and approval of Real Party in Interest Boeing's request for approval of demolition of Boeing-owned radiologic structures in Area IV of the Santa Susana Field Laboratory;

b. Order Real Party in Interest Boeing to immediately cease all demolition and disposal activity presently ongoing in Area IV of the Santa Susana Field Laboratory, and not to commence any further such activity;

c. Ordering Respondents to rescind all prior approvals for the demolition of radiologic structures in Area IV of the Santa Susana Field Laboratory and prohibiting any person acting in concert, consultation, or cooperation with Respondents from relying upon, enjoying any benefit from, or otherwise acting

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 & WOOCHER 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

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 maters 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

Daniel O. Hirsch

EXHIBIT A

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BRYCE A. GEE
BEVERLY GROSSMAN PALMER
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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

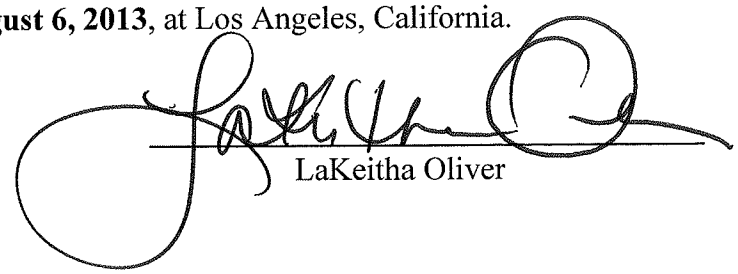
Dr. Ron Chapman, Director
Department of Public Health
1615 Capitol Avenue, Suite 720
Sacramento, CA 95814
Fax: (916) 558-1762

☒ 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

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‡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.

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:

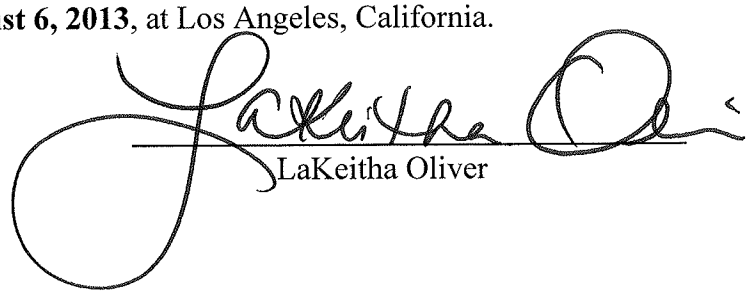
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

☐ 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