

Friends of the Earth  
California Communities Against Toxics  
Nuclear Information and Resource Service

Honorable Patricia Guerrero, Chief Justice and Associate Justices  
California Supreme Court  
350 McAllister Street, Room 1295  
San Francisco, California 94102-4797

Re: Physicians for Social Responsibility-Los Angeles; Southern  
California Federation of Scientists; Committee to Bridge the Gap; and  
Consumer Watchdog V. Department of Toxic Substances Control  
(DTSC); Department of Public Health, Case No. S280480

Amicus Letter of Nuclear Information and Resource Service, Friends  
of the Earth and California Communities Against Toxics in Support of  
Petition for Review

July 11, 2023

Dear Chief Justice Guerrero and Associate Justices:

Nuclear Information and Resource Service (NIRS), California Communities Against Toxics (CCAT) and Friends of the Earth (Friends) herewith write to support the Physicians for Social Responsibility-LA et al V. DTSC et al Petition for Review of Case No. S280480. The case raises vital questions of great importance, significantly affecting millions of Californians now and in the future.

**Nuclear Information and Resource Service (NIRS)** has been tracking and actively participating in the issues of nuclear decommissioning, waste management, deregulation, release and the regulations and policies that govern these practices since the 1980s. NIRS has challenged deregulation of radioactive waste on local, state, federal and international levels. NIRS researched and

produced a report on nuclear waste release from radioactive control including the origins and evolution of Atomic Energy Act Regulatory Guide 1.86 and Department of Energy (DOE) Order 5400.5.

**Friends of the Earth (Friends)** is a tax-exempt 501(c)(3) organization with a national office in Washington, DC and a regional office in Berkeley, CA. Friends is a membership organization consisting of nearly 244,000 members, and more than 6.6 million activists, nationwide. Friends is also a member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. Its mission is to protect our natural environment, including air, water, and land, and to create a more healthy and just world for all. Friends utilizes public education, advocacy, legislative processes, and litigation to achieve its organizational goals. Its Climate & Energy Justice program directly engages in administrative and legal advocacy to protect the environment and society from climate change, pollution, and industrialization associated with fossil fuels and other forms of dirty energy. Since its inception in 1969, Friends has worked toward the safe retirement and just transition away from harmful nuclear power plants, including the permanent closure of California's San Onofre Nuclear Generating Station in 2013, and the future retirement of Diablo Canyon.

**California Communities Against Toxics (CCAT)** has worked to oppose the disposal of nuclear waste into solid waste, industrial waste, and hazardous waste landfills in California since 1989. We have litigated, commented on regulations, participated in public hearings, and worked with communities opposing the siting of landfills in their communities and the dumping of nuclear waste into existing landfills, including the community of Buttonwillow. The communities of Buttonwillow and Kettleman City are the only two operating hazardous waste landfills in California, and Buttonwillow has had nuclear waste materials dumped

illegally into it in the past. Our organization also worked to pass legislation in California banning the disposal of nuclear waste in landfills and recycling into consumer goods. We have a material interest in the outcome of this case and are very concerned about the possibility of nuclear materials which have been banned from landfill disposal being illegally disposed of into any landfills. Our organization was founded to protect environmental justice communities and disposing of nuclear materials in communities which are environmental justice communities is contrary to our founding mission.

### **Why the California Supreme Court should take this case:**

At issue here is a matter that could gravely affect the health and economics of large numbers of Californians statewide. The question is whether state regulators can ignore long-standing regulations about radioactive contamination and allow those responsible for the contaminated materials to dispose of it any way they wish—for example—recycle contaminated metals into the commercial metal supply, recycle contaminated concrete and asphalt, and dispose of radioactive waste in sites not licensed or designed for such waste. Significant harm could occur if the existing appellate decision is not reversed, both by allowing radioactive material from Santa Susana Field Lab (SSFL) to be improperly disposed of and by giving state regulators an effective green light to allow that practice statewide, affecting numerous other radioactive sites, solid and hazardous waste facilities and recyclers, and residents and consumers throughout the state.

California regulations have long required that when a radioactively contaminated facility is decommissioned, all contamination must be removed to the extent practicable and all radioactive waste properly disposed of. (CCR § 30256)

Reasonable effort must be made to **eliminate** residual radioactive contamination if present.

Two decades ago, the California Department of Health Services (now the Department of Public Health (DPH)) controversially attempted to replace those regulations which would “eliminate” contamination with ones that would allow radioactive contamination to be left at levels equivalent to hundreds of additional chest X-rays over a lifetime, and allow radioactive wastes at those high levels from such decommissioning to be disposed of in sites not licensed or designed for radioactive wastes. Judge Ohanesian of the Sacramento Superior Court struck down the new regulations. Until and unless new regulations were adopted through proper rulemaking, the court ruled, the state must enforce the existing “eliminate” regulation (CCR § 30256). No new regulation has been put forward. Thus, the existing “eliminate” regulation remains in place.

But state regulators have in recent years been ignoring the clear language of the regulation and Judge Ohanesian’s ruling, and instead have substituted for the CCR § 30256 “eliminate” regulation an underground regulation allowing significant levels of contamination and washing their hands of the requirement to assure proper disposal. If not reversed, people throughout the state can be exposed to radioactive waste that should be disposed of in licensed “low-level” radioactive waste facilities but instead will end up in recycled materials and landfills not licensed for radioactive waste. This includes landfills in environmental justice communities such as Buttonwillow and Kettleman Hills, where the landfills are permitted and designed for chemical wastes but not radioactive wastes, markedly increasing the risk to the people living nearby. Chemical waste landfills and other hazardous facilities are not designed to isolate radioactive waste. In fact, the health damage from exposure to both hazardous and radioactive substances together can

be synergistic—much greater than additive or cumulative. In addition, some chemicals at hazardous waste sites could accelerate the leakage of radioactive waste from the site. Chelating agents, present at hazardous waste landfills, have been likened to putting radioactive wastes on roller skates.

Metal industries, which are international leaders in recycling, are doing their best to prevent radioactive metal getting into their facilities and products by investing in detection systems at their entrances. But it can be expensive and difficult to detect some types of radioactivity. If radioactive metals or sources get into recycling it can result in closures and expensive cleanups. Obviously, they want to protect their workers and prevent radioactivity in their products like belt buckles, silverware, frying pans, baby toys, pipes and building supplies, dental braces, even IUDs. The Metal Industry Recycling Coalition, including the Steel Manufacturers Association, copper, nickel and brass industries and specialty metals, opposes allowing any man-made radioactivity entering their clean metal supplies.

Concrete, asphalt, plastics and other recyclers and their consumers are also at risk if radioactivity is released from nuclear sites such as SSFL.

The economic burden and liability should not be on recyclers to keep out radioactive waste that can and should be isolated at radioactive-licensed and controlled destinations.

So-called “low-level” radioactive waste is not low risk. Low, slow doses, like those delivered from contaminated consumer products or regular emissions from unregulated waste sites, can sometimes cause more health damage than a large dose. Some so-called “low-level” radioactive waste can give very high doses and be long-lasting—dangerous now and dangerous for millions of years. “Low-level” is in quotes because it can include plutonium, cesium, strontium, and iodine

isotopes among hundreds of others--biologically active and very long-lasting radionuclides.

There is no safe level of radiation exposure—even unavoidable background causes some cancers according to the National Academy of Sciences. Deliberate, additional radioactive releases add to that burden, unnecessarily. Children and women are more susceptible, getting 1.5 to 7 times more cancer from the same amount of radiation than adult males get.

Rather than following the existing state legal regulations, the California agencies are allowing the misuse of Regulatory Guide 1.86 to justify releasing radioactive wastes, material and property from radioactive controls.

Regulatory Guide 1.86, is an old Atomic Energy Commission guidance document generated in 1974 for terminating nuclear reactor licenses, based on the detection levels of instruments at that time. It was never intended to define a level for the free release of radioactivity to the public. DOE appears to have expanded the use of Reg Guide 1.86 as guidance for free release, decommissioning and deregulation of nuclear wastes, materials and properties without public notice or comment, then incorporated it into its internal Order 5400.5. According to EPA comparisons, the doses from the Reg Guide 1.86 would be higher in some cases than the Below Regulatory Control policies that Congress rejected in 1992. Even if one were to use the outdated, unprotective Regulatory Guide 1.86, it only applies to surface contamination, not waste, materials and property with radioactivity throughout—volumetrically contaminated. These [Reg Guide 1.86] levels, most of which were selected in 1974, “were never intended to be used as (a) release guideline for recycling purposes,” according to John MacKinney of the EPA in 1993.

The existing California law should be enforced. Once released, radioactivity is irretrievable, and the decision is irreversible. Once the radioactive materials get into commerce, there is no tracking or verification of contamination. The radioactivity can never be recaptured. The contaminated materials spread or even reconcentrate the radioactivity making it effectively “forevermore.”

It is our societal responsibility to isolate for as long as possible, not deliberately release, man-made radioactive metal, concrete, asphalt, soil, plastic and other materials into every-day recycling, reuse or garbage facilities that were not designed to sequester it. If facilities throughout the state receive radioactive materials, there could be widespread exposures and expensive closures and cleanups. The consequences of uncontrolled releases or distribution of man-made radioactive waste and materials are unlimited, uninformed, involuntary exposure and contamination and unacceptable economic, environmental and public injury and suffering.

The State of California has the responsibility and authority to protect its businesses and residents. We petition the California Supreme Court to take this case for the benefit of all Californians.

Sincerely,

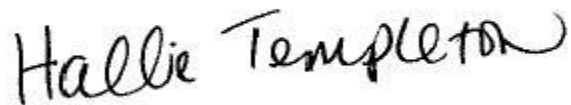
A handwritten signature in black ink, appearing to read "Tim Judson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim Judson, Executive Director  
Diane D'Arrigo, Radioactive Waste Project Director  
Nuclear Information and Resource Service

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## PROOF OF SERVICE

STATE OF CALIFORNIA

Re: *Physicians for Social Responsibility-Los Angeles, et al., v. Dept. of Toxic Substances Control, et al.*, Case No. S280480  
3DCA No. C088821, 34-2013-80001589

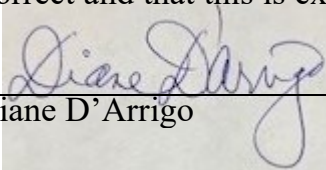
I reside in the County of Montgomery County, State of Maryland. I am over the age of 18 and not a party to the within action. My office address is 6930 Carroll Avenue, Suite 340, Takoma Park MD 20912. My electronic mail address is dianed@nirs.org.

On **July 11, 2023**, I served the foregoing document(s) described as **Amicus Letter from NIRS, CCAT and Friends of the Earth** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by using the EFS/TrueFiling system as required by California Rules of Court, rule 8.70. Participants in the case who are registered EFS/TrueFiling users will be served by the EFS/TrueFiling system. Participants in the case who are not registered EFS/TrueFiling users will be served by mail or by other means permitted by the court rules.

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 practice of mail collection by the U. S. Postal Service at my office. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Takoma Park, Maryland. 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 and that this is executed on July 11, 2023 at Takoma Park, Maryland.

  
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Diane D'Arrigo

**SERVICE LIST**

*Physicians for Social Responsibility-Los Angeles, et al., v. Dept. of Toxic Substances Control, et al.,*

Case No. S280480, 3DCA No. C088821, 34-2013-80001589

<p><b><i>Via EFS</i></b> Kavita P. Lesser David Zaft California Department of Justice 300 South Spring Street Los Angeles, California 90013 Tel: 213-269-6605 • Fax: 213-269-6372 Email: Kavita.Lesser@doj.ca.gov David.Zaft@doj.ca.gov</p> <p><i>Attorneys for Respondent Department of Toxic Substances Control</i></p>	<p><b><i>Via EFS</i></b> Gordon E. Hart Cox Castle Nicholson 50 California Street 32<sup>nd</sup> Floor San Francisco, California 94111 Tel: 415-262-5100 • Fax: 415-262-5199 Email: ghart@coxcastle.com</p> <p><i>Attorneys for Real Party in Interest The Boeing Company</i></p>
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<p><b><i>Via U. S. Mail</i></b> Honorable Richard K. Sueyoshi Sacramento Superior Court – Dept. 28 720 Ninth Street Sacramento, California 95814</p>	