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LEGAL PROCESS #6

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

12
13 **PHYSICIANS FOR SOCIAL**
RESPONSIBILITY - LOS ANGELES, a
14 **non-profit corporation, et al.,**

15 Petitioners,

16 v.

17 **DEPARTMENT OF TOXIC**
18 **SUBSTANCES CONTROL;**
19 **DEPARTMENT OF PUBLIC HEALTH;**
and DOES 1 to 100,

20 Respondents,

21
22 **THE BOEING COMPANY, a corporation;**
23 **ROES 1 TO 100,**

24 Real Parties in Interest.
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27
28

Case No. 34-2013-80001589

ANSWER OF RESPONDENT
DEPARTMENT OF PUBLIC HEALTH
TO PETITIONERS' VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

Dept: 42
Judge: The Honorable Allen H. Sumner
Trial Date: TBA
Action Filed: August 6, 2013

ORIGINAL

1 For its Answer to the Verified Petition for Writ of Mandate and Complaint for Injunctive
2 and Declaratory Relief (the Petition), respondent Department of Public Health (Respondent)
3 states and alleges as follows:

4 INTRODUCTION

5 1. Answering paragraph 1 of the Petition, Respondent ADMITS that radioactive
6 materials were historically used at various sites within Area IV of the Santa Susana Field
7 Laboratory, and that use resulted in varying levels of radiological contamination. Respondent
8 DENIES each and every other allegation contained in paragraph 1

9 2. Answering paragraph 2 of the Petition, Respondent DENIES each and every
10 allegation contained therein.

11 3. Answering paragraph 3 of the Petition, Respondent ADMITS, on information and
12 belief, that DTSC has not conducted CEQA review of Boeing's demolition activities, that DTSC
13 has announced that it will prepare an EIR related to the SSFL site, and that DTSC has issued a
14 public request for a consultant to prepare the EIR. Respondent DENIES that Respondents are
15 authorizing demolition and disposal of radiologically contaminated structures, or any other work
16 that should be reviewed in an EIR. Respondent DENIES each and every other allegation
17 contained in paragraph 3 based on a lack of sufficient information and belief.

18 4. Answering paragraph 4 of the Petition, Respondent DENIES each and every
19 allegation contained therein.

20 5. Answering paragraph 5 of the Petition, Respondent ADMITS that, in 2000, without
21 CEQA review, Respondent promulgated regulations setting forth acceptable levels of
22 radioactivity for license termination, and that the Sacramento County Superior Court ordered
23 those regulations rescinded in 2002, requiring the preparation of an EIR prior to any future re-
24 adoption of the radiological criteria for license termination set forth in 10 C.F.R. §§ 20.1401 –
25 1406, or any similar provisions relating to the establishment of clean-up standards for license
26 termination. Respondent ADMITS that, since 2002, Respondent has not readopted those criteria,
27 or any similar provisions relating to the establishment of clean-up standards for license
28

1 termination, and that Respondent has not prepared an EIR relating to any such criteria.

2 Respondent DENIES each and every other allegation contained in paragraph 5.

3 6. Paragraph 6 of the Petition is a statement of petitioners' requests of this court, which
4 does not require a response.

5 7. Answering paragraph 7 of the Petition, Respondent DENIES each and every
6 allegation contained therein.

7 **PARTIES**

8 8. Answering paragraph 8 of the Petition, Respondent DENIES each and every
9 allegation contained therein based on a lack of sufficient information and belief.

10 9. Answering paragraph 9 of the Petition, Respondent DENIES each and every
11 allegation contained therein based on a lack of sufficient information and belief.

12 10. Answering paragraph 10 of the Petition, Respondent DENIES each and every
13 allegation contained therein based on a lack of sufficient information and belief.

14 11. Answering paragraph 11 of the Petition, Respondent DENIES each and every
15 allegation contained therein based on a lack of sufficient information and belief.

16 12. Answering paragraph 12 of the Petition, Respondent ADMITS that Respondent has
17 regulatory authority over certain radioactive materials in California, that the RHB regulates
18 certain radioactive materials in California pursuant to applicable provisions of the California
19 Health and Safety Code and Title 17 of the California Code of Regulations, that the RHB issues
20 radioactive material licenses and regulates the licensees to the extent provided in the licenses, and
21 that DPH does not terminate radioactive material licenses without determining, among other
22 things, that reasonable effort has been made to eliminate residual radioactive contamination, if
23 present. Respondent DENIES each and every other allegation contained in paragraph 12.

24 13. Answering paragraph 13 of the Petition, Respondent DENIES each and every
25 allegation contained therein based on a lack of sufficient information and belief.

26 14. Answering paragraph 14 of the Petition, Respondent DENIES that Respondents are
27 approving, or have approved, Boeing's demolition and disposal. On information and belief,
28 Respondent ADMITS each and every other allegation contained in paragraph 14.

1 25. Paragraph 25 of the Petition contains only legal conclusions that do not require a
2 response.

3 26. Paragraph 26 of the Petition contains only legal conclusions that do not require a
4 response.

5 27. Paragraph 27 of the Petition contains only legal conclusions that do not require a
6 response.

7 28. Paragraph 28 of the Petition contains only legal conclusions that do not require a
8 response.

9 29. Paragraph 29 of the Petition contains only legal conclusions that do not require a
10 response.

11 30. Paragraph 30 of the Petition contains only legal conclusions that do not require a
12 response.

13 31. Answering paragraph 31 of the Petition, Respondent ADMITS that, in 2000,
14 Respondent, then known as the Department of Health Services, attempted to adopt a standard of
15 the NRC applying to termination of licenses as a regulatory standard for license termination.
16 Respondent ADMITS that it did not prepare an EIR in support of its regulation, but rather relied
17 upon a CEQA exemption for environmentally protective regulations. Respondent DENIES each
18 and every other allegation contained in paragraph 31.

19 32. Answering paragraph 31 of the Petition, Respondent ADMITS that petitioners
20 challenged the regulation and its CEQA exemption. Respondent ADMITS that, in 2002, the
21 Honorable Gail Ohanesian overturned the regulation, ruling that Respondent failed to comply
22 with CEQA and the APA, and issued a writ of mandate prohibiting Respondent from readopting
23 the radiological criteria for license termination set forth in 10 C.F.R. §§ 20.1401 – 1406, or any
24 similar provisions relating to the establishment of clean-up standards for license termination,
25 without first preparing an EIR. Respondent ADMITS that Respondent has not since readopted
26 the radiological criteria for license termination set forth in 10 C.F.R. §§ 20.1401 – 1406, or any
27 similar provisions relating to the establishment of clean-up standards for license termination, and
28 that Respondent has not prepared an EIR for any such criteria. Respondent does not know what

1 petitioners mean by “promulgated any clearance standards.” Respondent DENIES each and
2 every other allegation contained in paragraph 32.

3 33. Answering paragraph 33 of the Petition, Respondent ADMITS that then-Governor
4 Gray Davis issued Executive Order D-62-02. Respondent DENIES that Executive Order D-62-02
5 prohibits the disposal of any waste from decommissioned facilities in any Class III landfills. The
6 remaining allegations of paragraph 33 are legal conclusions that do not require a response.

7 34. Answering paragraph 34 of the Petition, Respondent ADMITS that it has repeatedly
8 stated that low-level radioactive waste may not be disposed of in California’s Class I hazardous
9 waste landfills, that it informed officials tasked with remediating McClellan Air Force Base that
10 radium-226 contaminated waste removed during the decommissioning process could not be
11 disposed of at the Buttonwillow facility, and that it had informed the Buttonwillow facility’s
12 operators in 1999 that the disposal of out-of-state low-level radioactive waste was not permitted.
13 Respondent DENIES each and every other allegation contained in Paragraph 34.

14 **STATEMENT OF FACTS**

15 35. Answering paragraph 35 of the Petition, Respondent DENIES that the Santa Susana
16 Field Laboratory is a former “nuclear meltdown” site. Respondent ADMITS each and every
17 other allegation contained therein based on information and belief.

18 36. Answering paragraph 36 of the Petition, Respondent ADMITS each and every
19 allegation contained therein based on information and belief.

20 37. Answering paragraph 37 of the Petition, Respondent DENIES that the Sodium
21 Reactor experimental unit suffered a partial nuclear meltdown. Respondent DENIES each and
22 every other allegation contained in paragraph 37 based on a lack of sufficient information and
23 belief.

24 38. Answering paragraph 38 of the Petition, Respondent ADMITS that radioactive
25 contamination found by EPA at the site includes cesium-137, strontium-90, plutonium-238,
26 plutonium 239/240, americium-241, tritium, and europium-152 and 154. Respondent DENIES
27 each and every other allegation in paragraph 38 based on a lack of sufficient information and
28 belief.

1 39. Answering paragraph 39 of the Petition, Respondent ADMITS, based on information
2 and belief, that, in 1996, the Boeing Company acquired Rocketdyne, the then-owner, including all
3 of SSFL Area IV. Respondent DENIES each and every other allegation contained in paragraph
4 39 based on a lack of sufficient information and belief.

5 40. Answering paragraph 40 of the Petition, Respondent ADMITS each and every
6 allegation contained therein based on information and belief.

7 41. Answering paragraph 41 of the Petition, Respondent DENIES each and every
8 allegation contained therein based on a lack of sufficient information and belief.

9 42. Answering paragraph 42 of the Petition, Respondent ADMITS that DTSC entered
10 into an MOU for the preparation of a draft EIR relating to the SSFL site. On information and
11 belief, Respondent ADMITS that DTSC has not yet prepared the EIR. Respondent DENIES each
12 and every other allegation contained in paragraph 42 based on a lack of sufficient information and
13 belief.

14 43. Answering paragraph 43 of the Petition, Respondent DENIES each and every
15 allegation contained therein based on a lack of sufficient information and belief.

16 44. Answering paragraph 44 of the Petition, Respondent DENIES each and every
17 allegation contained therein based on a lack of sufficient information and belief.

18 45. Answering paragraph 45 of the Petition, Respondent DENIES each and every
19 allegation contained therein based on a lack of sufficient information and belief.

20 46. Answering paragraph 46 of the Petition, Respondent DENIES each and every
21 allegation contained therein based on a lack of sufficient information and belief.

22 47. Answering paragraph 47 of the Petition, Respondent DENIES each and every
23 allegation contained therein based on a lack of sufficient information and belief.

24 48. Answering paragraph 48 of the Petition, Respondent DENIES each and every
25 allegation contained therein based on a lack of sufficient information and belief.

26 49. Answering paragraph 49 of the Petition, Respondent ADMITS, on information and
27 belief, that, on April 19, 2013, Boeing submitted to DTSC an amendment to the 2010 SOP to
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1 specifically apply to Boeing-owned former radiological buildings in Area IV, and that the
2 amendment specifically identified:

- 3 • Building 4005, Uranium Carbide Manufacturing Facility (remaining slab only; above
4 ground structure demolished in 1996)
- 5 • Building 4009, OMR/SGR Facility
- 6 • Building 4011 (low bay), Instrument Calibration Laboratory (non-radiological high
7 bay demolished following requirements of SOP Amendment 1)
- 8 • Building 4055 (including 4155), Nuclear Materials Development Facility
- 9 • Building 4093 (including 4074, 4083, 4453, 4523), L-85 (AE-6) Research Reactor
10 (remaining slab and west wall; other above ground structure demolished in 1995)
- 11 • Building 4100, Fast Critical Experiment laboratory / Advanced Epithermal Thorium
12 Reactor.

13 Respondent DENIES each and every other allegation contained in paragraph 49 based on a lack
14 of sufficient information and belief.

15 50. Answering paragraph 50 of the Petition, Respondent DENIES each and every
16 allegation contained therein based on a lack of sufficient information and belief.

17 51. Answering paragraph 51 of the Petition, Respondent ADMITS that the April 2013
18 amendment to the SOP includes the statement: "Boeing commits to the following, . . . Provide
19 DTSC and CDPH with a summary of release criteria used for all former radiological buildings.
20 This is designed to facilitate expedited review of release documentation by CDPH." Respondent
21 DENIES each and every other allegation contained in paragraph 51 based on a lack of sufficient
22 information and belief.

23 52. Answering paragraph 52 of the Petition, Respondent DENIES that Respondent
24 exercises or exercised discretion over Boeing's demolition and disposal activities at Area IV, and
25 DENIES that the April 2013 SOP demonstrates such exercise of discretion. Respondent DENIES
26 each and every other allegation contained in paragraph 52 based on a lack of sufficient
27 information and belief.
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1 53. Answering paragraph 53 of the Petition, Respondent DENIES that Respondent
2 approved the remaining demolition and off-site disposal of the L-85 debris. Respondent DENIES
3 that Respondent is or was engaged in approval, or review for approval, of requests to demolish
4 Building 4005, 4055, or 4011 low bay. Respondent DENIES each and every other allegation
5 contained in paragraph 53 based on a lack of sufficient information and belief.

6 54. Answering paragraph 54 of the Petition, Respondent DENIES that Respondent has
7 approved the demolition of any non-radiologic structures, or any other structures, in Area IV.
8 Respondent DENIES that Respondent has permitted Boeing to demolish Area IV structures and
9 dispose of radiologically contaminated debris in facilities that are not licensed under state law to
10 receive such debris. Respondent DENIES that Respondent has approved Boeing's disposal of
11 waste. Respondent DENIES that all waste with levels of radiologic activity that exceed
12 background levels must be disposed of in a facility specifically licensed to receive low-level
13 radioactive waste. Respondent DENIES that DECON-1, IPM-88-2, and Reg. Guide 1.86 have
14 nothing to do with the permissibility of disposing of waste from released sites. Respondent
15 DENIES each and every other allegation contained in paragraph 54 based on a lack of sufficient
16 information and belief.

17 55. Answering paragraph 55 of the Petition, Respondent ADMITS that Respondent did
18 not require Boeing to dispose of the materials in licensed LLRW facilities. Respondent DENIES
19 each and every other allegation contained in paragraph 55 based on a lack of sufficient
20 information and belief.

21 56. Answering paragraph 56 of the Petition, Respondent DENIES each and every
22 allegation contained therein based on a lack of sufficient information and belief.

23 57. Answering paragraph 57 of the Petition, Respondent DENIES that Respondent noted
24 that the background radioactivity level Boeing reported, of the remaining L-85 debris, exceeded
25 the radioactivity in the majority of samples. Respondent DENIES each and every other allegation
26 contained in paragraph 57 based on a lack of sufficient information and belief.

27 58. Answering paragraph 58 of the Petition, Respondent DENIES each and every
28 allegation contained therein based on a lack of sufficient information and belief.

1 environmental effects. The remainder of paragraph 67 contains only legal conclusions that do not
2 require a response.

3 68. Answering paragraph 68 of the Petition, Respondent DENIES that Respondent has
4 approved Boeing's disposal of debris, and that Respondent has authorized Boeing to utilize
5 facilities for disposal of debris from Area IV structures. Respondent DENIES each and every
6 other allegation contained in paragraph 68 based on a lack of sufficient information and belief.

7 69. Answering paragraph 69 of the Petition, Respondent DENIES, based on information
8 and belief, that the demolition and disposal of radiologic structures may have significant
9 environmental effect. Respondent DENIES each and every other allegation contained in
10 paragraph 69.

11 70. Paragraph 70 of the Petition contains only legal conclusions that do not require a
12 response.

13 71. Answering paragraph 71 of the Petition, Respondent DENIES that Respondent has
14 approved, or will approve, the demolition of Area IV structures. Respondent DENIES each and
15 every other allegation contained in paragraph 71 based on a lack of sufficient information and
16 belief.

17 **SECOND CAUSE OF ACTION**

18 72. Answering paragraph 72 of the Petition, Respondent incorporates by reference each
19 and every allegation, admission and denial contained in paragraphs 1 through 71 herein.

20 73. Answering paragraph 73 of the Petition, Respondent ADMITS that, in 2000, the
21 Department of Health Services, the predecessor agency to Respondent, adopted regulations which
22 set dose-based standards for the termination of radioactive material licenses and the
23 decommissioning of licensed sites. Respondent DENIES each and every other allegation
24 contained in paragraph 73.

25 74. Answering paragraph 74 of the Petition, Respondent ADMITS each and every
26 allegation contained therein.

27 75. Answering paragraph 75 of the Petition, Respondent ADMITS each and every
28 allegation contained therein.

