

MICHAEL J. VEILUVA (State Bar No. 100419)
ALBORG, VEILUVA & CANNATA LLP
1220 Oakland Boulevard, Suite 200
Walnut Creek, CA 94596-4337
Telephone: (925) 939-9880
Facsimile: (925) 939-99151220

PHYLLIS OLIN (State Bar No. 182770)
WESTERN STATES LEGAL FOUNDATION
1440 Broadway, Suite 500
Oakland CA 94612
(510) 839-5877

ALAN RAMO (State Bar No. 63425)
ANNE ENG (State Bar No. 136512)
Environmental Law and Justice Clinic
Golden Gate University School of Law
536 Mission Street
San Francisco CA 94105
(415) 442-6647
Attorneys for Plaintiffs
Tri-Valley Communities Against A Radioactive
Environment, Western States Legal Foundation,
and Physicians for Social Responsibility

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

TRI-VALLEY COMMUNITIES AGAINST A
RADIOACTIVE ENVIRONMENT, a non-profit
California corporation, WESTERN STATES LEGAL
FOUNDATION, a non-profit California corporation,
and PHYSICIANS FOR SOCIAL
RESPONSIBILITY, SF BAY AREA CHAPTER, an
unincorporated association,

Petitioners and Plaintiffs,

Case No.

vs.

STATE OF CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL, a Department of the State of
California Environmental Protection Agency,

**PETITION FOR WRIT OF MANDAMUS AND
COMPLAINT FOR DECLARATORY RELIEF**
(Pub.Res.C. §21167) (CEQA)

/

Defendant and Respondent.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,
UNITED STATES DEPARTMENT OF ENERGY, and DOES
1 through 20,

Real Parties in Interest.

_____/

Petitioners and plaintiffs allege:

INTRODUCTION

1. Plaintiffs, who are three public interest organizations, bring this action to compel the State of California Department of Toxic Substances Control (DTSC) to comply with the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.) and to prepare an environmental impact report (EIR) in connection with the agency's decision to issue a final Part B Resource Conservation and Recovery Act (RCRA) permit for operation, construction and modification of the hazardous waste management facility at Lawrence Livermore National Laboratory (LLNL) in California. LLNL is a national nuclear weapons laboratory managed by real party in interest Regents of the University of California (Regents) and owned by real party in interest United States Department of Energy (US DOE).

2. As alleged more fully below, respondent DTSC abused its discretion by basing its permit decision dependent upon a Negative Declaration and finding of *di minimis* impacts under CEQA. The existing and planned operation of LLNL's hazardous waste management facilities have, and will, cause impacts to the environment and surrounding community. LLNL's facilities treat and store millions of pounds of hazardous wastes, and hundreds of thousands of pounds of mixed radioactive and hazardous wastes annually. Over the years, DTSC has issued notices of violations relating to LLNL's hazardous waste management practices. Accidents involving hazardous wastes have resulted in releases to the environment. For these reasons, and others as set forth more fully below, a fair argument exists whether the continued and expanded operation of the subject facilities may result in environmental impacts.

PARTIES

3. Petitioner Tri-Valley Communities Against a Radioactive Environment (hereinafter TVC) is a non-profit corporation duly organized under the laws of the state of California., comprising residents of the City of Livermore and the San Francisco Bay Area. Petitioner TVC has since 1983 engaged in educational, legal and social activities

to raise public awareness, safeguard the community and effectuate changes to policies regarding nuclear weapons and nuclear waste, particularly at the Lawrence Livermore National Laboratory. Many participants in TVC live and work within a few miles of LLNL and the proposed hazardous waste treatment facility which is the subject of the permit and use and enjoy areas that provide habitat to animals in the Livermore environment. TVC's principal place of business is in downtown Livermore, within several miles of LLNL. TVC is authorized and qualified to represent those of its members who use the air, water and public utilities of the City of Livermore affected by the subject facility.

4. Petitioner TVC has monitored information concerning LLNL's hazardous waste facilities since the mid-1980s, including the long-pending series of RCRA Part B applications submitted by LLNL to the Department of Health Services (DHS), the predecessor to DTSC. TVC representatives have spent many hours reviewing the administrative files and records pertaining to LLNL's Part B applications of June 1996 and October 1998, and Interim Status Documents (ISDs), and in meeting with agency personnel re same. TVC representatives participated in the September 23, 1997 "public workshop" conducted by DTSC, the October 9, 1997 public hearing conducted by DTSC, and submitted written comments.

5. Petitioner Western States Legal Foundation (WSLF) is a non-profit corporation duly organized and existing under the laws of the state of California, and is based in Oakland, California. Petitioner WSLF, has, since 1982, engaged in educational, legal and social activities to raise public awareness, safeguard the community and effectuate changes to policies regarding nuclear weapons, nuclear power, and nuclear waste, and to encourage international disarmament. In or about 1988, WSLF attorneys, representing *inter alia* petitioner TVC, by settlement agreement compelled real parties Regents of the University of California to prepare the site-wide environmental impact statement/report ultimately released in 1992. WSLF is authorized and qualified to represent those of its participants who live near and travel by the cities, counties and regions affected by the subject facility.

6. Petitioner WSLF has monitored information concerning LLNL's hazardous waste facilities since the mid-1980s, including the long-pending series of RCRA Part B applications. WSLF representatives participated in the October 9, 1997 public hearing conducted by DTSC, and submitted written comments. Participants in WSLF live and work in the San Francisco Bay Area which is affected by LLNL operations, and use and enjoy areas within a few

miles of LLNL and the proposed hazardous waste treatment facility which is the subject of the permit.

7. Petitioner Physicians for Social Responsibility (PSR), SF Bay Area Chapter, is one of the largest chapters of Physicians for Social Responsibility, a national non-profit corporation. PSR SF Bay Area Chapter is an unincorporated association comprised of physicians and health workers living and working in the San Francisco Bay Area. PSR is a public interest organization engaged in educational, legal and social activities to raise public awareness of the dangers posed to public health through nuclear materials, weapons and waste, and to promote policies to reduce such dangers. Many members of PSR live and work in the San Francisco Bay Area which is affected by LLNL operations. PSR is authorized and qualified to represent those of its members who live near and travel by the cities, counties and regions affected by the subject facility.

8. Petitioner PSR participated in the notice and comment process by submission of written comments to DTSC before the expiration of the comment period on December 9, 1997.

9. Respondent State of California Department of Toxic Substances Control (DTSC) is a department of the State of California Environmental Protection Agency, an agency of the State of California.

10. Real Party in Interest Regents of the University of California (Regents) is and at all times was a public agency of the State of California. Real Party Regents manages LLNL and the subject facility under written contracts with US DOE.

11. Real Party in Interest United States Department of Energy (US DOE) is a cabinet-level agency of the United States, and owns and operates LLNL and the subject facility.

12. Petitioners are presently unaware of the true names and capacities of parties named as Does 1 through 20. Petitioners will amend this petition to set forth their true names and capacities when the same have been ascertained.

STANDING AND VENUE

13. Petitioners are within the class of persons and organizations beneficially interested in Respondents' faithful performance of their legal duties under CEQA. If the relief sought in the petition is not granted, petitioners will suffer irreparable harm in that:

- a. They will continue to be exposed to environmental injury that has occurred as a result of

respondent's actions, including the potential for serious and catastrophic accident resulting from the generation, management, treatment and disposal of hazardous and mixed radioactive materials. Such risks include, *inter alia*:

- i. The risk of leakage from containers used in the transportation of hazardous and mixed wastes;
 - ii. The risk of seismic activity that could cause a release of hazardous and mixed wastes into the environment;
 - iii. The risk of human error and accident in the handling, treatment, storage and handling of radioactive and mixed wastes;
 - iv. The risk of accidental exposure to employees and visitors to LLNL;
 - v. The risk of accidental releases of hazardous and waste materials to the sanitary sewer system and groundwater;
- b. The accidental release of hazardous and mixed wastes from LLNL or the subject hazardous waste management facility may expose petitioners' participants and members, and other citizens, to adverse health impacts, and will impact other plants and animals in the surrounding environment including threatened species.
 - c. The right of petitioners to respondent's faithful performance of its duties will be denied.
 - d. In the absence of an environmental impact report, their right to full and complete analysis of environmental impacts, and appropriate mitigation measures, is denied.

14. Petitioners have instituted this action on behalf of the residents of California as private attorney generals pursuant to CCP §1021.5.

15. Petitioners have exhausted all applicable administrative remedies. As set forth above, petitioners appeared in all administrative proceedings relevant to the instant permit. Petitioners TVC and PSR timely filed and prosecuted an administrative appeal of DTSC's decision to issue of a final permit to LLNL. The appeal was denied.

16. The facility and project which are the subject of the administrative action, and the responsible office of respondent DTSC, are located in Alameda County, California.

THE AFFECTED ENVIRONMENT

17. Lawrence Livermore National Laboratory (LLNL) is a national nuclear weapons research facility in Alameda County owned by real party US DOE and managed by the real party Regents under written contract. LLNL was established in 1952 to conduct research on nuclear weapons and nuclear energy. Since then, other major programs have been added, including plutonium materials fabrication and research, simulated weapons testing, laser fusion, laser isotope separation, and applied energy technology. The LLNL main site is located adjacent to the city of Livermore, approximately 39 miles east of San Francisco. Nearly 6 million people live within 50 miles of the Livermore site; over 55,000 live within the city of Livermore. Real parties US DOE and Regents also operate "Site 300", a non-contiguous facility 15 miles to the southeast which transports hazardous wastes for treatment at the LLNL main site (Initial Study (IS), p.3).

18. In 1997, LLNL generated 2,769,600 pounds of hazardous waste (including liquids), and 243,200 pounds of mixed hazardous and radioactive wastes (DOE, *Draft Supplement Analysis*, January 1999, p.7-8). LLNL discharges hundreds of thousands of gallons of wastewater each year into the Livermore municipal sewer system.

19. LLNL operations and hazardous waste management activities have resulted in releases of hazardous and radioactive materials into the air, soil and groundwater. Employees at LLNL have been contaminated with radioactive and hazardous materials.

20. The site occupied by LLNL and affected by the project includes wetlands and an arroyo. Species which have been sighted or reasonably believed to be situated at or near the project site include: the California Red-Legged Frog, White-Tailed Kite, and Burrowing Owl.

PROCEEDINGS BELOW

21. Real parties Regents and US DOE operate non-exempt hazardous waste management facilities at LLNL subject to the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6926, the state Hazardous Waste Control Act (HWCA), H.&S.C. §25200 and Title 22, California Code of Regulations (CCR). Since July 23, 1992, respondent DTSC and its predecessor department/agencies have exercised primary regulatory jurisdiction over LLNL's hazardous waste and mixed hazardous/radioactive waste management activities under RCRA and HWCA, including review and issuance of permits for hazardous waste management facilities under

RCRA Part A and B. Since 1983, LLNL has operated under one or more Interim Status Documents pending consideration and approval of LLNL's RCRA Part B application. Despite numerous application revisions, no final RCRA part B permit was issued to LLNL. before 1999.

22. LLNL is also subject to a 1992 "Federal Facility Agreement" which addresses LLNL's compliance obligations under RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In 1987, the LLNL main site was listed as a national priority site under CERCLA; in 1990, Site 300 was separately listed and scored as a priority site based on groundwater contamination by hazardous materials, and threat of contamination to drinking water.

23. In June 1996, real parties Regents and US DOE submitted a revised Part B permit application for operation of their hazardous waste management facilities at LLNL, including construction of new treatment and/or storage units. In connection with the application, DTSC circulated a "Special Initial Study" pursuant to CEQA in September 1996.

24. The public comment period for the Draft Permit and proposed Negative Declaration under CEQA was conducted pursuant to notice in September 1997 in connection with LLNL's RCRA Part B application filed in June 1996. DTSC conducted a "public workshop" on September 23, 1997 and a public hearing on October 9, 1997.

25. The public notice, hearing, and opportunity to comment preceded the actual revised and supplemented Part B RCRA permit application submitted by LLNL in October 1998, as referenced in the final version of the hazardous waste permit dated May 27, 1999. The revised and supplemented Part B application contained numerous substantive revisions that required public notice and comment, including *inter alia*:

- a. LLNL's proposed hazardous waste facility was reorganized, so that uranium bleaching, mercury amalgamation, water reactor, pressure reactor, and gas adsorption systems were added as additional individual hazardous waste management units. In the 1996 permit application, these units were grouped under the "Small Scale Treatment Lab."
- b. LLNL has added waste stream codes to units and facilities within its hazardous waste management facility.
- c. LLNL modified approximately 30 pages of the Part B permit application addressing facility

design and operations. Changes were made to the on-site handling and off-site transport of tanks and containers, waste transfer, empty container management, and miscellaneous equipment and treatment units. LLNL revised its description of the "Small Scale Treatment Unit." LLNL added new information regarding its facility operations under 40 CFR Part 264.

- d. LLNL modified approximately 50 pages of the Part B permit application to reflect changes in management practices.
- e. LLNL modified the entire Waste Analysis Plan;
- f. LLNL added a new contingency plan for Area 612, area 514, Building 233 and Building 693.

26. No subsequent public notice or comment was promulgated by DTSC, even though:

- a. As reflected in DTSC's April 1999 Response to Comments, many of these substantive changes were in response to DTSC's investigation of the "July 1997 Shredder Incident" which occurred after DTSC's issuance of the Initial Study and proposed Negative Declaration, and after public notice and comment

- b. The summary of changes to the Part B application set forth in the Response to Comments reflected that wholesale substantive additions and modifications made after the Initial Study to the section of the application addressing waste characterization and tracking, which is the heart of the HWCA/RCRA compliance and mitigation scheme.

27. As DTSC acknowledged, LLNL is a "major and complex facility" with a constantly changing array of waste streams, which include many radioactive components. DTSC further admitted in its Response to Comments that substantive changes to the Part B application were made due to deficiencies in characterizing waste streams.

28. DTSC failed to give the public adequate notice of any draft permit decision on the revised and supplemented Part B application submitted and dated October 1998 as required by Health & Safety Code §25200.4(c) and 22 CCR §66271.9.

29. Many of the issues concerning LLNL's non-compliance were referenced in petitioners' written comments submitted to DTSC before the deadline for comments in December, 1997. As referenced in petitioners' public comments, there have been dozens of incidents at LLNL involving radioactive and hazardous materials and

wastes in recent years including:

- (a) the leakage of an underground tank resulting in seepage of tritium into the soil and groundwater;
- (b) workers contaminated with tritium while packaging radioactive wastes;
- (c) three workers contaminated during a filter shredding operation postdating the preparation of the CEQA Negative Declaration (the "Shredder Incident");
- (d) evacuation of employees from a waste bulking operation;
- (e) at least fourteen (14) hazardous releases into the City of Livermore waste water treatment facility above permitted limits in a one year period;
- (f) numerous citations issued based on violation of the 90 day limit for temporary holding of hazardous materials subject to movement to, and treatment at LLNL's hazardous waste facility (H. & S.C. §25123.3).

30. Since the submission of petitioners' public comment and the close of the comment period in 1997, the following incidents and events have been reported at LLNL:

- (a) a chemist was injured by a ruptured receptacle for transient waste collection in April 1998;
- (b) two containers of hazardous wastes were improperly combined and sent to a landfill without appropriate treatment (according to a March 1999 LLNL memorandum);
- (c) a fire broke out during a waste procedure in July 1999 when a technician failed to fully assess the bagged materials to be disposed, allowing bulk uranium to remain in the waste. The bag began "glowing and starting to expand." The uranium had undergone spontaneous combustion and ignited other material in the waste package.
- (d) in July 1999, all shipments of waste from Livermore Laboratory to the Nevada Test Site were suspended after the Lab failed a waste audit conducted by the Department of Energy. The audit resulted in 33 corrective action orders;
- (e) in September 1999, a hazardous waste management contractor was sprayed with a slurry of Radney nickel when the cap on a hazardous waste container blew off;
- (f) in DTSC's "Summary of Violations" dated February 9, 1998 prepared in connection with the

"shredder incident" of July 2, 1997 (in which three hazardous waste personnel were exposed to significant radioactive contamination while shredding HEPA filters) DTSC found, *inter alia*, that LLNL:

- violated 22 CCR 66265.13(a) by failing to "make an adequate hazardous waste determination before any treatment or storage" of 226 drums of mixed waste prior to shredding them, violated 66265.13(a)(2) by failing to maintain records,
- violated 66265.73(b)(4) by failing to notify DTSC of the incident involving the shredder until 15 days had elapsed;
- violated Health and Safety Code §25189(a) by submitting "false and misleading information in the operating record for the operation of the shredder."

31. In DTSC's response to comments, respondent stated that "[t]hese accidents do not support a fair argument that significant impacts to the environment may occur from the permitting of the specific hazardous waste management facilities covered by the Part B permit." In considering whether to issue its Part B permit, DTSC failed to adequately consider, in the exercise of its discretion, the past compliance record of the applicant and any pending enforcement actions.

32. DTSC failed to issue an adequate public notice of the actual or constructive withdrawal of the June 1996 Part B application. The public and decision makers are entitled to full notice and comment based on significant changes to the project and project description since the Initial Study, particularly since the agency's finding of no significant impact is dependent in large part upon the viability of the matters amended in the October 1998 Part B application.

33. DTSC conducted an inadequate RCRA Facility Assessment and failed to adequately determine whether corrective action to investigate whether releases of hazardous wastes in the soil and groundwater was necessary as a condition to permit approval.

34. DTSC failed to initiate proceedings to deny the permit application despite the submission by LLNL of incomplete or unsatisfactory information in response to multiple notices of deficiencies in the June 1996 application.

35. Respondent DTSC issued its final Hazardous Waste Facility Permit decision on May 27, 1999, to be effective June 9, 1999 (Exhibit A). The decision was accompanied by a Negative Determination under CEQA (Exhibit B).

36. Petitioners TVC and PSR timely filed a petition for review of DTSC's final permit decision under HWCA. On November 19, 1999, DTSC issued its Order Denying Petition for Review (Exhibit C).

37. On November 24, 1999, DTSC lodged with the State Clearinghouse (Office of Planning and Research) its Notice of Determination and attached Negative Declaration under CEQA.

FIRST CAUSE OF ACTION

(Administrative Mandamus - California Environmental Quality Act)

38. Petitioners and plaintiffs reincorporate the allegations of paragraphs 1 through 37 as though fully set forth.

39. In determining to issue the final hazardous waste permit to LLNL, DTSC failed to comply with CEQA, *inter alia*, in that:

- (a) The proposed project presents a fair argument that significant environmental effects or impacts may result, so that a full environmental impact report (EIR) is required for permit issuance;
- (b) Respondent's CEQA Initial Study (IS) and Negative Declaration failed to adequately describe the routes and destinations of transporting hazardous waste from LLNL;
- (c) The IS improperly relied upon mitigation measures which are not part of the Negative Declaration or IS; consequently, the IS was ambiguous whether the CEQA documentation would take the form of a "negative declaration" or "mitigated negative declaration";
- (d) The IS failed to adequately identify or address waste streams generated by LLNL activities to be treated at the Project;
- (e) The IS failed to adequately describe the affected environment including the proximity of high-density residential development and seismic hazards;
- (f) The IS failed to contain any meaningful data identifying the volume or health risks associated with hazardous waste currently treated, or contemplated as being treated by the Project;
- (g) The IS contained no analysis of the risk to the public or environment from accidental releases of

hazardous materials despite LLNL's history of such releases;

(h) The IS improperly relied upon environmental analysis in the outdated 1992 site-wide EIS/EIR.

40. DTSC failed to substantially revise its Negative Determination consistent with changes to the Part B application and permit, and failed to recirculate the proposed Negative Declaration for an additional public comment period. CEQA Guidelines, 15073.5(a), (b). DTSC identified the mitigation issues in the Response to Comments and changes to the application, but failed to recirculate a revised Negative Declaration.

41. DTSC failed to conduct a hearing in connection with the substitution of mitigation measures effected by the revised and supplemented Part B application filed in October 1998, as required under Public Resources Code §21080(f).

42. Pursuant to Public Resources Code §21151.1, an EIR was statutorily mandated for the project since:

(a) the Small Scale Treatment Facility is a non-exempt HWCA facility that may or will be a new facility which may or will burn hazardous wastes (§21151.1(a)(1)(A)(i));

(b) the project is a non-exempt HWCA facility that may or will constitute an "offsite large treatment facility" within the meaning of §21151.1(a)(3) based on shipments from Site 300 (an off-site generator under 22 CCR §66260.10) and possibly other off-site waste generators.

43. In the alternative, the descriptions of the project and Small Scale Treatment Facility in the IS, Part B applications and record were defective in that the public and decision makers were precluded from meaningfully discerning whether the above-referenced statutory mandates for preparation of an EIR were triggered.

44. The IS, Negative Declarations and Permit decisions failed to take into account growth-inducing impacts to laboratory, research and production activities at LLNL that will take advantage of the permitted hazardous waste management facilities, including the transfer of new nuclear weapons research and production facilities, including plutonium pit research, fabrication and manufacture, from other US DOE sites.

45. In the Initial Study, DTSC improperly found that there was no evidence before it that the "project [would] have the potential for an adverse effect on wildlife resource (sic) or the habitat upon which wildlife depends." Neither the Initial Study nor any other document provided to the public properly identified the environmental setting of the proposed project in violation of 14 CCR 15063 (d)(2). If DTSC had properly evaluated

the environmental setting, it would have found substantial evidence to support the following findings of potential adverse significant impacts from the project, each of which would have required commencing an environmental impact report:

a. Contrary to DTSC's finding that "[c]onstruction associated with the project would...occur well outside of the Arroyo Las Positas...and would therefore not impact any riparian areas or wetlands"(IS 27), in fact wetlands would be impacted from the project. LLNL has proposed certain maintenance measures for the Arroyo Las Positas. As proposed, the measures are likely to reduce the wetland by some 20-percent, significantly harming the wetland and animal habitat.

b. Contrary to the Initial Study's finding that a less significant impact to animal life will occur as a result of the project, the California Red-Legged Frog (*Rana aurora draytonii*), a "Threatened" species under the Federal Endangered Species Act and a "Protected" species within the state of California, make their home in the perimeters of LLNL within the Arroyo Las Positas. The Arroyo Las Positas, as habitat for the California Red-Legged Frog, is located approximately 250 feet from the siting of the Decontamination and Waste Treatment Facility Complex (DWTF). The project may significantly harm this animal by destroying its habitat.

c. The White-Tailed Kite (*Elanus leucurus*) has been sighted near the project site. The White-Tailed Kite is one of thirteen bird species that is fully protected by the California Department of Fish and Game. (See California Fish & Game Code § 3511). As a "Fully Protected" species, the White-Tailed Kite cannot be taken or possessed without a permit from the Department of Fish and Game pursuant to California Fish & Game Code § 3511. This project may significantly harm this animal's habitat.

d. The Burrowing Owl (*Athene cunicularia*) has been sighted near the project site. The Burrowing Owl is listed as a California Special Concern species as well as a Federal Special Concern species. For California Special Concern species, it is the goal of the Department of Fish and Game to halt or reverse the species' decline. This animal's habitat may be significantly harmed by this project.

46. DTSC, nearly two years after holding the public hearing referenced above, reviewed the federal Draft

Supplemental Analysis for Continued Operations of LLNL and Sandia National Laboratory by the United States Department of Energy (January 1999). This document and its subsequent final version, issued in March 1999 before the Negative Declaration, provided the agency with the information necessary to make the findings discussed in the preceding paragraphs supporting a fair argument for an environmental impact statement. The document also purported to identify potential mitigation measures to protect the wetland habitat and the red-legged frog. DTSC in violation of Public Resources Code §§21064.5, 21080, subdivision (c)(2) and (g), and CEQA Guidelines §§15070(b)(1) and 15073.5, failed to make such findings and recirculate a revised negative declaration and initial study, or hold a public hearing regarding this information, nor provide plaintiffs with an opportunity to raise these matters to the agency.

47. DTSC specifically stated to plaintiffs in its Order Denying Petition for Review of its permit decision that its appeal process of its permit "is not a proper forum in which to raise a challenge to compliance with CEQA" and that "CEQA provides a separate judicial appeal process to resolve disputes concerning compliance with CEQA," thus denying Plaintiffs the ability to comment or assert any CEQA issues after the public hearing in 1997. Exhibit C at p. 9.

48. The above alleged actions and omissions by respondent, including respondent's omission to prepare an EIR and to base its decision solely on an unmitigated Negative Declaration, constituted a prejudicial abuse of discretion in that respondent failed to proceed in the manner required by law, in that, *inter alia*:

- a. It can be fairly argued, in light of the whole record, that the project may have a significant effect on the environment (Pub.Res.C. §§21080(d) and 21082.2(d)) ;
- b. Substantial evidence exists, in light of the whole record, that the project may have a significant effect on the environment (Pub.Res.C. §§21080(c));
- c. The project was subject to one or more mandatory findings of significance (CEQA Guidelines 15065); and/or
- d. Respondent failed to comply with CEQA Guideline 15073.5 which required DTSC to recirculate the negative declaration after substantial project revisions were made after the close of public comment.

49. Respondent DTSC thereby violated its duties to prepare an EIR in advance of its final Permit decision as described above. Accordingly, the Negative Declaration and Permit decision must be set aside, and respondent DTSC must be compelled to prepare an EIR before issuing any final Part B permit for the project.

50. Where reasonably possible, petitioners presented nearly all of the above issues and errors in public comments to respondent DTSC in 1997, and in the administrative appeal filed in 1999. Those matters not raised in the public comments are directly related to and arising from substantive changes between the draft and final permit, and events occurring after the close of the public comment period. Petitioners accordingly request that the administrative record in this proceeding be augmented to incorporate such matters.

51. Petitioners performed all conditions precedent to filing this action by serving upon respondent a notice of intention to sue pursuant to Pub.Res.C. §21167.5 on December 20, 1999 (attached as Exhibit E).

52. Petitioners have no plain, speedy and adequate remedy other than the relief sought by this petition in that public officers and agencies may be compelled to act pursuant to law only by mandamus.

53. Respondent's violation of CEQA, and issuance of its permit for new construction of hazardous waste facilities at LLNL, will result in irreparable injuries to the environment and surrounding communities, and petitioners' beneficial interests therein through their members and participants, until and unless injunctive relief is issued to restrain the actions above alleged.

54. As a further consequence of the foregoing, petitioners have been required to retain counsel, and are entitled to an award of reasonable attorney's fees pursuant to CCP §1021.5.

WHEREFORE, petitioners and plaintiffs pray for relief as set forth below.

SECOND CAUSE OF ACTION

Declaratory Relief

55. Petitioners and plaintiffs reincorporate the allegations of paragraphs 1 through 54 as though fully set forth.

56. Petitioners desire a declaration by the Court as to the propriety of the CEQA Negative Declaration and the actions taken by respondent DTSC in regard to same, the permit decisions by DTSC made in conjunction therewith, and whether respondent should be compelled to prepare an EIR in conformance with the law.

57. A ripe and actual controversy presently exists between petitioners, on one hand, and respondent

DTSC, on the other, regarding the actions taken by respondent under CEQA as more fully alleged above.

WHEREFORE, petitioners and plaintiffs pray for relief and judgment as follows:

- A. That the Court issue a writ of mandamus to respondent DTSC to:
 - i. Set aside the Notice of Determination and Negative Declaration, and findings related thereto pertaining to DTSC's final decision to issue an Part B permit for LLNL's hazardous waste management facility;
 - ii. Compel DTSC to prepare a legally adequate EIR for the project and permit, and otherwise comply with CEQA in connection with the project and Permit;
 - iii. Set aside the final Permit until and unless a legally adequate EIR is certified for the permit and project;
- B. For declaratory judgment that the Notice of Determination and Negative Declaration are inadequate and fail to comply with CEQA;
- C. For injunctive relief restraining and enjoining respondent and real parties in interest from undertaking any construction activities pursuant to the Permit until an EIR is certified for the project and Permit;
- D. For reasonable attorney's fees;
- E. For petitioners' costs of suit;

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F. For such other equitable and legal relief as the Court deems proper.

Dated: December 23, 1999

ALBORG, VEILUVA & CANNATA LLP

MICHAEL J. VEILUVA
Attorneys for Plaintiffs
Tri-Valley Communities Against A Radioactive
Environment, Western States Legal Foundation,
and Physicians for Social Responsibility, SF Bay Area Chapter