



Response to Petitioners' Claim of Victory in PSR-LA Litigation

Petitioners alleged that Boeing's proposed disposal of decommissioned material would be disposal of radioactive waste. Petitioners lost Case 34-2013-80001589 in the California Superior Court in November 2018,¹ lost their appeal in Case C088821 in the California Appeals Court in May 2023², and the California Supreme Court declined to review the case in July 2023. Petitioners subsequently attempted to snatch victory from the jaws of defeat but failed.

Consumer Watchdog, one of the Petitioners, posted an article on its website.³ The following is the article in its entirety, followed by rebuttals of its faulty key assertions.

"The Good That Came Out Of Suing the State Over **Allowing Illegal Disposal Of Radioactive Waste** From CA's Most Notorious Cold War Lab: An Epitaph."

"The Santa Susana Field Lab, nestled in the Simi Hills, is about an hour by car from downtown Los Angeles. It is the scene of experimental nuclear reactor testing and a partial nuclear meltdown in 1959, plutonium production, and tens of thousands of rocket engine tests that left this infamous Cold War lab one of the most dangerously contaminated in the entire state. To this day, its toxic and radioactive contamination threatens more than 700,000 people living within ten miles of the site."

"At the beginning of 2013, Consumer Watchdog and Committee to Bridge the Gap discovered that two state agencies—the Department of Toxic Substances Control (DTSC) and the Department of Public Health (DPH)—were allowing Boeing, federal contractor at the site of the former Cold War lab in Simi Hills, to illegally deliver radioactive debris from the nuclear portion of the site to recycling shops and landfills not equipped or licensed to accept the waste and with no state oversight."

"Disposing of such waste at recycling shops threatens the health and safety of consumers with potential exposure from radiologically contaminated zippers to structural components used in the construction of new buildings. Only facilities with barriers to prevent any material from escaping for 500 years are licensed to accept low-level

¹ Superior Court of California, County of Sacramento, "Ruling on Submitted Matter Re: Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief", November 19, 2018.
https://www.dtsc-ssfl.com/files/lib_physocrespsvdtsc/courtdocuments/68115_Ruling.pdf.

² California Appeals Court, Case C088821, Final Decision, May 2, 2023.
https://www.dtsc-ssfl.com/files/lib_physocrespsvdtsc/courtdocuments/69837_PSR_v_DTSC_Appeal_Decision.pdf

³ Consumer Watchdog. "The Good That Came Out Of Suing the State Over Allowing Illegal Disposal Of Radioactive Waste From CA's Most Notorious Cold War Lab: An Epitaph", August 21, 2023.
<https://consumerwatchdog.org/energy/the-good-that-came-out-of-suing-the-state-over-allowing-illegal-disposal-of-radioactive-waste-from-cas-most-notorious-cold-war-lab-an-epitaph/>



radioactive waste. There are no such facilities in California. Hazardous waste facilities are not deep enough to safely contain radioactive waste.”

“Consumer Watchdog, Committee to Bridge the Gap, Physicians for Social Responsibility-Los Angeles, and the Southern California Federation of Scientists, represented by Strumwasser & Wocher, LLP, filed suit against both the DTSC and the DPH in August 2013 in Sacramento Superior Court. The complaint alleged the continuing violation of the California Environmental Quality Act (CEQA) by the two agencies because they entirely failed to perform any of the required environmental review prior to authorizing demolition and disposal of radiologically contaminated structures in the nuclear portion of the Santa Susana Field Lab site known as Area IV owned by Boeing.”

“The suit also alleged that the agencies were using diluted decontamination standards never formally adopted under the state’s Administrative Procedure Act (APA), rather than the sole, more stringent legally applicable state standard for cleanup and disposal of radiologically contaminated sites in California. That **standard requires the removal of all radiation to “background,”** meaning naturally occurring levels of radiation with all reasonable effort made to achieve that.”

“The groups succeeded in getting the trial court to issue a preliminary injunction in October 2013 ordering DTSC to not approve further demolition of Boeing radioactively contaminated structures in Area IV while the suit was pending. In September 2017, the DTSC issued a draft Program Environmental Impact Report (PEIR) reviewing the significant environmental effects of the lab’s cleanup, identifying ways to minimize those effects and to review all the reasonable alternatives for cleanup. But the agency did not address the demolition and disposal of Boeing’s five Area IV radwaste buildings as part of the cleanup project under CEQA in that draft PEIR, and the case proceeded to trial.”

“In December 2018, the trial court denied the requested writ of mandate that would have ordered DTSC and DPH to comply with CEQA and the APA prior to allowing demolition. Petitioners appealed, but the First District Court of Appeal in Sacramento upheld the trial court’s decision in May 2023. The groups then petitioned the California Supreme Court to review the case, which the Court declined to do in July 2023.”

“But at the end of the day, the groups’ litigation did result in expanding the scope of the DTSC’s environmental review to include demolition and disposal activities of Boeing’s five Area IV radiological structures. In June 2023, the DTSC issued its final Program Environmental Impact Report (PEIR) for the lab site, which stated, **“DTSC will ensure that the demolition and disposal of these buildings is carried out in accordance with applicable law...To facilitate a more conservative and quantitative analysis of impacts, DTSC is including the remaining Boeing building demolition as part of the analysis of project impacts.”**



“Further, the DTSC’s final PEIR stated that Boeing structures in Area IV “will be removed consistent with the 2010 AOC for Area IV.” In 2010, the state signed a cleanup agreement with the US Department of Energy ensuring that its contractor Boeing cleaned Area IV up to background and disposed of radioactive debris at low level radioactive waste facilities. The plaintiffs have long supported the AOC and its requirements as environmentally protective.”

“The plaintiffs in the case had asked the DTSC to comply with CEQA by including the demolition and disposal of radwaste buildings belonging to Boeing in Area IV of the Santa Susana Field Lab as part of the sitewide cleanup project in its PEIR. Though the case was lost on appeal, the agency did ultimately consider the potential environmental impact of demolition and disposal of Boeing’s remaining Area IV structures as part of the overall lab cleanup project in its final PEIR, and the agency committed to requiring Boeing to carry out these activities in accordance with California law.”

“Plaintiffs’ perseverance over the course of a decade was the catalyst in motivating the defendants in the case, namely state agencies, to provide the primary relief sought. The litigation brought the reprieve of a decade in disposal of radioactive waste in a manner that threatens the public. The groups will continue to monitor whether DTSC follows through on its promises to require Boeing to dispose of radiologically contaminated structures in facilities equipped and licensed to store radioactive waste.”

Faulty statements in red above are discussed below.

Statement #1

The article’s title alleges “... illegal disposal of radioactive waste ...” This is incorrect. The appeals court’s decision stated that former radiological buildings that had been “released for unrestricted use” by the appropriate regulatory agency, and “removed from the radioactive materials license” were no longer subject to radiological regulatory control. As such, material from the building’s demolition is no longer “regulated radioactive material,” and therefore could not be arbitrarily alleged to be “low-level radioactive waste.” Such “decommissioned material” would instead be subject to the restrictions of California Executive Order D-62-02 (2002), requiring disposal to either Class I or II disposal facilities in California.⁴ DTSC-approved disposal objective for the subject decommissioned material was, and is, Class I hazardous waste disposal facilities.

Statement #2

The “cleanup to background” standard implied by Petitioners does not exist in federal or state building decommissioning regulations or guidance. The only place in which this concept is used

⁴ California Appeals Court Decision, Case No. C088821, Section IIC, pages 8-9, May 2, 2023
https://www.dtsc-ssf.com/files/lib_physocrespsvdtsc/courtdocuments/69837_PSR_v_DTSC_Appeal_Decision.pdf#page=8 .



is in the 2010 AOC signed by DTSC, DOE and NASA. Boeing was not a signatory to the 2010 AOC and is not subject to the 2010 AOC.

Statement #3

Plaintiffs infer that DTSC's statement in the 2023 Final PEIR that "DTSC will ensure that the demolition and disposal of these buildings is carried out in accordance with applicable law ..." implies that DTSC will ensure that disposal of decommissioned material from the five remaining Boeing-owned buildings in Area IV will be sent to a licensed LLRW disposal site. This is a gratuitous and illogical leap of faith. Indeed the final arbiters of the law, the California Superior Court, the California Appeals Court and by implication, the California Supreme Court, have all stated that is not a regulatory requirement. See response to Statement #1 for more detail.

Statement #4

Plaintiffs claim, "DTSC's final PEIR stated that Boeing structures in Area IV "will be removed consistent with the 2010 AOC for Area IV."" This is incorrect. A key word search for the phrase "removed consistent with the 2010 AOC for Area IV" in the Final PEIR and the revised Draft PEIR failed to verify the existence of this phrase. This is not surprising, since DTSC understand that Boeing did not sign a 2010 AOC and is obviously under no obligation to comply with the 2010 AOC.

Statement #5

Plaintiffs claim, "In 2010, the state signed a cleanup agreement with the US Department of Energy ensuring that its contractor Boeing cleaned Area IV up to background and disposed of radioactive debris at low level radioactive waste facilities." This is incorrect. DTSC and DOE did sign the 2010 AOC, however the AOC did not obligate Boeing to do anything. On September 30, 2014, Boeing terminated its 60-year contract as prime contractor to DOE, and North Wind Portage became DOE's prime contractor. Furthermore, the remaining subject Boeing-owned buildings in Area IV that were the subject of Plaintiffs' complaint are Boeing property. Whatever DOE signed with DTSC is irrelevant and has no impact on Boeing's obligations.

Statement #6

Plaintiffs express the promise that, "The groups will continue to monitor whether DTSC follows through on its promises to require Boeing to dispose of radiologically contaminated structures in facilities equipped and licensed to store radioactive waste." DTSC did not promise that, and the law does not require that. Boeing will ensure that demolition and disposal of the subject decommissioned buildings in Area IV will be carried out in accordance with applicable law. DTSC does not have regulatory authority or approval authority over demolition of these buildings.



Litigation Background

Prior responses to Plaintiffs' litigation are available below.

- "Response to the PSR-LA Petition to the California Supreme Court." August 27, 2023.
https://www.philrutherford.com/SSFL/boeing_building_demolition/Response_to_PSR-LA_Petition_to_CA_Supreme_Court.pdf
- "Response to PSR-LA Appeal." Originally issued August 5, 2022. Revised June 11, 2023.
https://philrutherford.com/SSFL/boeing_building_demolition/Response_to_PSR-LA_Appeal.pdf
- "Response to PSR-LA Petition & Complaint." Originally issued November 20, 2013. Revised and updated May 20, 2023.
https://philrutherford.com/SSFL/boeing_building_demolition/Response_to_PSR-LA_Petition.pdf
- "Nuclear Decommissioning at the Santa Susana Field Laboratory: 20+ Years of Politics vs. Science." Section 19.0. Originally issued June 9, 2022. Revised August 1, 2023.
https://www.philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=60