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9
10 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 TRI-VALLEY COMMUNITIES AGAINST
A RADIOACTIVE ENVIRONMENT,

13 Plaintiff,

14 vs.

15 UNITED STATES DEPARTMENT OF
16 ENERGY; SPENCER ABRAHAM, Secretary of
Energy,

17 Defendants.
18

) Case No.:

) COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

19 INTRODUCTION

20 1. By this action, plaintiff Tri-Valley Communities Against a Radioactive
21 Environment (“Tri-Valley CAREs”) challenges the United States Department of Energy’s
22 (“DOE’s”) decision to ship highly radioactive, surplus plutonium from the Rocky Flats
23 Environmental Technology Site (“Rocky Flats”) in Jefferson County, Colorado to Lawrence
24 Livermore National Laboratory (“Lawrence Livermore”) in Alameda County, California. Under
25 political pressure to accelerate these shipments, DOE has improperly granted itself a “national
26 security exemption” that allows much of the plutonium to be packaged in containers that do not
27 satisfy applicable safety regulations.

28 2. Despite the magnitude of this decision and the potential for severe harm, DOE has

1 proceeded in the complete absence of informed environmental review, in violation of the
2 National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.* Furthermore, DOE has
3 utterly refused to respond to either of Tri-Valley CAREs’ two requests for public information
4 regarding the proposed shipments, in violation of the Freedom of Information Act (“FOIA”),
5 5 U.S.C. § 552. Accordingly, Tri-Valley CAREs respectfully requests that this Court grant the
6 relief requested below.

7 JURISDICTION AND VENUE

8 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
9 question), 5 U.S.C. § 702 (Administrative Procedure Act), and 5 U.S.C. § 522(a)(4)(B) (FOIA).

10 4. An actual controversy exists between the parties within the meaning of 28 U.S.C.
11 § 2201(a). This Court may grant declaratory relief, injunctive relief, and any additional relief
12 pursuant to 28 U.S.C. §§ 2201 and 2202.

13 5. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e), because both
14 DOE and Tri-Valley CAREs have offices within this district and most of Tri-Valley CAREs’
15 members reside within this district.

16 INTRADISTRICT ASSIGNMENT

17 6. Assignment to the San Francisco Division of this Court is proper, because (1) a
18 substantial part of the events giving rise to the claims in this case occurred in counties covered
19 by this division, and (2) a substantial part of the property that is the subject of this action is
20 situated in counties covered by this division. Civil Local Rule 3-2(c), (d).

21 PARTIES

22 7. Plaintiff Tri-Valley Communities Against a Radioactive Environment is a non-
23 profit, public benefit organization incorporated and existing under the laws of the state of
24 California for charitable purposes. Tri-Valley CAREs is based in Livermore, California, and its
25 principal place of business is located within five miles of the Lawrence Livermore main site.
26 Many of Tri-Valley CAREs’ over 2,900 members reside, own property, work, recreate and/or
27 attend public meetings and other events within the Lawrence Livermore fence line or in very
28 close proximity to the facility’s main site and the plutonium facility.

1 8. Tri-Valley CAREs undertakes projects that increase public knowledge of the
2 relationship between peace and environmental issues, including public education regarding
3 potential impacts from DOE's production, transportation, storage and disposal of hazardous and
4 radioactive waste. In pursuing its mission, Tri-Valley CAREs gathers, reviews and disseminates
5 information involving DOE's nuclear programs and activities at Lawrence Livermore. Tri-
6 Valley CAREs publishes a free monthly newsletter and a wide range of technical papers and
7 policy analyses to inform the public about DOE programs in a timely manner. On behalf of its
8 members and the general public, Tri-Valley CAREs routinely comments on DOE policies and
9 proposals that impact Lawrence Livermore.

10 9. DOE's decision to ship significant quantities of plutonium from Rocky Flats to
11 Lawrence Livermore in containers that cannot be certified for that purpose places many of
12 Tri-Valley CAREs' members at immediate risk of exposure to harmful and potentially lethal
13 levels of radiation. Further, Tri-Valley CAREs cannot effectively pursue its mission when DOE
14 fails to comply with its mandatory obligations under FOIA. These injuries are actual, concrete
15 injuries suffered by Tri-Valley CAREs and its members. These injuries are caused by DOE and
16 would be redressed by the relief sought herein. Tri-Valley CAREs has no adequate remedy at
17 law.

18 10. Defendant United States Department of Energy is the federal agency responsible
19 for administering and overseeing the contracts between the United States and the various
20 contractors that operate DOE's national laboratories and facilities, including Lawrence
21 Livermore and Rocky Flats. DOE has final authority for authorizing the packaging and shipment
22 of plutonium between these and all other laboratory sites and is the lead agency for such
23 authorizations under NEPA. Additionally, DOE is responsible for responding to FOIA requests
24 that seek documents generated and/or maintained at DOE's various facilities.

25 11. Defendant Spencer Abraham, who is sued herein in his official capacity, is the
26 Secretary of the Department of Energy and is responsible for its activities.

1 FACTUAL BACKGROUND

2 Plutonium

3 12. Plutonium is a highly radioactive, metallic element. Although it is virtually non-
4 existent in nature, plutonium has been produced in large quantities by processing uranium in
5 nuclear reactors. Plutonium can exist in approximately fifteen different variations, called
6 isotopes, but only one, plutonium²³⁹, is used to manufacture the explosive triggers, or “pits,” at
7 the core of modern nuclear weapons. Plutonium²³⁹ can also be processed to form a powdery
8 oxide that can be mixed with uranium dioxide to form mixed-oxide (“MOX”) fuel for use in
9 nuclear reactors. All subsequent references to plutonium in this complaint are to plutonium²³⁹.

10 13. Plutonium’s radioactive qualities make it an extremely hazardous substance.
11 Exposure to any amount of plutonium can cause cancer and other adverse health effects. When
12 ingested, plutonium can enter the blood stream and concentrate in the liver, on bone surfaces,
13 and in bone marrow, where it repeatedly bombards nearby cells with large amounts of radiation.
14 When inhaled, plutonium will reside in the lungs, and it has been estimated that inhaling a few
15 micrograms of plutonium would have a 100% probability of causing fatal cancer. Plutonium can
16 also be absorbed directly into the bloodstream through cuts and abrasions.

17 14. Even a relatively small quantity of plutonium has the potential to reach a “critical
18 mass.” A critical mass occurs when plutonium is configured in such a way that its radiation
19 cannot escape into the environment and instead triggers more radiation, causing a self-sustaining
20 chain reaction. A critical mass of plutonium would release an intense amount of radiation that
21 could be lethal to humans and would lead to serious environmental contamination. The amount
22 of plutonium necessary to achieve a critical mass depends on the structure and the density of the
23 material, but the smallest theoretical critical mass of plutonium is only a few hundred grams.

24 15. Plutonium has a “half-life” of 24,000 years, meaning that it takes 24,000 years for
25 half of a given amount of plutonium to decay into a different element. After two half-lives, there
26 would be one-fourth of the plutonium that was contained in the original sample, after three half-
27 lives, one-eighth, and so forth. As a general rule of thumb, a radioactive element’s hazardous
28 life is ten times its half-life. Accordingly, the plutonium in existence today will be hazardous for

1 at least 240,000 years.

2 Lawrence Livermore National Laboratory

3 16. Lawrence Livermore National Laboratory was founded in 1952. The lab is
4 owned by DOE and operated by the University of California, and its mission is to serve as a
5 national research and development laboratory with a special focus on nuclear weapons research,
6 development, testing and manufacture. Lawrence Livermore occupies two noncontiguous sites
7 in southeastern Alameda County, California. The main site occupies approximately 821 acres
8 near Interstate 580, approximately 40 miles east of San Francisco and about three miles east of
9 the City of Livermore's central business district. The main site's boundary is directly adjacent to
10 residential subdivisions.

11 17. Building 332, Lawrence Livermore's plutonium facility, is located on the main
12 site in a cluster of buildings known as the Superblock. Building 332 functions as the central
13 repository and research laboratory for plutonium at Lawrence Livermore, and it is currently very
14 close to its 700 kilogram (1540 pound) "administrative limit" for plutonium. Administrative
15 limits are criteria that establish the maximum quantities of radioactive materials that may be
16 present in a building or group of buildings at Lawrence Livermore. Administrative limits are not
17 regulatory in nature, but they are typically based on the results of safety analyses and intended to
18 ensure site safety.

19 18. Lawrence Livermore has a long history of environmental and safety problems.
20 Both the main site and the nearby "Site 300" are listed on the national priorities list under the
21 Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"),
22 42 U.S.C. §§ 9601 *et seq.*, meaning that they are seriously contaminated with hazardous
23 materials and undergoing a federally mandated cleanup. In 1995 and again in 1997, DOE halted
24 operations at Building 332 after the Defense Nuclear Facilities Safety Board, an independent
25 safety-oversight agency established by Congress, reported serious deficiencies in the lab's safety
26 procedures.

27 19. Numerous accidents involving plutonium have been reported at Lawrence
28 Livermore, including, but not limited to: (1) a plutonium fire in Building 332 that took two and

1 one-half months to clean; (2) a plutonium incident that resulted in the release of plutonium
2 through a stack; (3) multiple indoor and outdoor plutonium spills; and, (4) multiple releases of
3 plutonium to the sewer system. DOE has recorded elevated levels of plutonium at an off-site air
4 monitoring station located to the east of Lawrence Livermore. Plutonium has also been
5 discovered to the west of Lawrence Livermore in the soil at public parks located up to half a mile
6 from the site boundary.

7 The Closure of Rocky Flats

8 20. The Rocky Flats Environmental Technology Site is located in northern Jefferson
9 County, Colorado, approximately 16 miles northwest of Denver. The main site is a 384-acre
10 complex consisting of more than 700 structures situated within a 6,200-acre buffer zone. Rocky
11 Flats is owned by DOE and operated by Kaiser-Hill, L.L.C. (“Kaiser-Hill”) under a
12 performance-based management contract. Rocky Flats was established in 1951 to serve as a top-
13 secret weapons production plant. Rocky Flats manufactured almost all of the plutonium pits that
14 were used in the United States’ nuclear weapons arsenal from 1953 to 1964 and all of the pits
15 that were used from 1964 until 1989.

16 21. In 1989, the Federal Bureau of Investigation and the Environmental Protection
17 Agency raided Rocky Flats and exposed serious environmental and safety violations. Activities
18 at the site were halted soon after, and in 1993 DOE formally announced the permanent end of
19 nuclear production at Rocky Flats.

20 22. As of 1994, Rocky Flats contained about 12.9 metric tons of plutonium in various
21 forms and stages of manufacture. Some of that plutonium was never fully manufactured into
22 complete nuclear weapon pits, but could be readily converted for use in nuclear weapons in the
23 future. DOE refers to such plutonium as “non-pit, weapons-usable” plutonium. Some of this
24 non-pit, weapons-usable plutonium is considered classified because it is in a form that reveals
25 information about nuclear weapons design or manufacture. In 1996, DOE declared that all of the
26 non-pit, weapons-usable plutonium at Rocky Flats, classified or otherwise, was surplus and not
27 needed for national security purposes.

28 23. On January 14, 1997, DOE released its Record of Decision for the Storage and

1 Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact
2 Statement (“Storage and Disposition ROD”). 62 Fed. Reg. 3014 (Jan. 14, 1997). Therein, DOE
3 announced its decision to ship all of the non-pit, weapons-usable plutonium at Rocky Flats to
4 DOE’s Savannah River Site (“Savannah River”) in South Carolina. The plutonium from Rocky
5 Flats would be stored at Savannah River in the Actinide Packing and Storage Facility, which was
6 then under construction and scheduled to be completed in 2001.

7 The Decision to Accelerate the Closure of Rocky Flats

8 24. In August of 1997, motivated in large part by the potential for \$1.3 billion in cost
9 savings, DOE designated Rocky Flats as an “Accelerated Closure Pilot Project.” In so doing,
10 DOE committed to completing the cleanup and closure of Rocky Flats by 2006 – four years
11 earlier than was previously anticipated.

12 25. On August 13, 1998, DOE amended the Storage and Disposition ROD to provide
13 for the accelerated closure of Rocky Flats. 63 Fed. Reg. 43386 (Aug. 13, 1998). According to
14 DOE, all of the non-pit, weapons-usable plutonium at Rocky Flats would have to be shipped
15 offsite by the end of 2002, two years ahead of the original schedule, to achieve the 2006 closure
16 date.

17 26. To meet the 2002 deadline, DOE announced that it would begin shipping
18 plutonium to Savannah River in early 2000 – prior to the completion of the Actinide Packing and
19 Storage Facility. DOE’s amended plan was to store the early shipments of non-pit, weapons-
20 usable plutonium from Rocky Flats temporarily in Building 105-K at Savannah River until
21 construction of the Actinide Packing and Storage Facility could be completed.

22 27. Complicating matters, however, DOE realized that it could not store classified
23 plutonium at Building 105-K because it had previously planned to allow International Atomic
24 Energy Agency inspections of that building. Consequently, DOE announced in the amended
25 Storage and Disposition ROD that it would declassify the Rocky Flats plutonium as necessary in
26 a facility at Savannah River known as the FB-Line. In the FB-Line, the plutonium would be
27 melted and fashioned into unclassified metal buttons that could then be stored at Building 105-K
28 or the finished Actinide Packing and Storage Facility.

1 The Decision to Ship Plutonium from Rocky Flats to Lawrence Livermore

2 28. Sometime between August 1998 and March 1999, DOE decided that Savannah
3 River's FB-Line might be inappropriate for declassifying some of the classified plutonium items
4 that it had planned to ship from Rocky Flats. This is because some of the classified items at
5 Rocky Flats consist of plutonium bonded to a non-plutonium substrate that is itself classified by
6 shape. According to DOE, the FB-Line would remove, melt, and thereby declassify the
7 plutonium. The substrate metal, however, would remain intact and emerge from the process as
8 classified nuclear waste. DOE claims that Savannah River is not currently able to handle
9 classified nuclear waste.

10 29. In early 1999, DOE discussed the possibility of processing 89 classified,
11 composite plutonium items at Lawrence Livermore instead of Savannah River as it had
12 originally planned. The 89 items consist of plutonium bonded to a non-plutonium metal
13 substrate such as beryllium, tantalum, vanadium or depleted uranium. They are leftover from
14 past operations at Rocky Flats and described as targets and hemi-shells.

15 30. In late 1999 or early 2000, DOE headquarters, Rocky Flats, Lawrence Livermore,
16 and Savannah River entered into a memorandum of agreement to provide for the shipment of the
17 89 classified, composite items from Rocky Flats to Lawrence Livermore. Therein, Lawrence
18 Livermore agreed to receive the 89 items over the course of seven shipments.

19 31. To offset the shipments of plutonium from Rocky Flats and ensure that Lawrence
20 Livermore would stay within its administrative limits for plutonium, Savannah River agreed to
21 accept early deliveries of plutonium already in storage at Lawrence Livermore. Lawrence
22 Livermore is expected to ship up to 65 containers containing approximately 270 kilograms of
23 plutonium across the country to Savannah River – the estimated total weight of plutonium that
24 Lawrence Livermore would receive from Rocky Flats.

25 32. DOE has proposed an elaborate plan for the 89 items once they arrive at
26 Lawrence Livermore. In the mid- to late-1990s, Lawrence Livermore was actively researching
27 and developing a "pit disassembly and conversion" process that would provide a means by which
28 fully assembled nuclear weapons pits could be prepared for safe disposition. DOE now intends

1 to use essentially the same technology to declassify both the plutonium and the substrate material
2 in the 89 composite, non-pit plutonium items that would be shipped from Rocky Flats.

3 33. If all goes according to plan, the process proposed by DOE would convert the
4 plutonium items from Rocky Flats into declassified nuclear waste and plutonium oxide. The
5 plutonium oxide would be stored at Lawrence Livermore and one day shipped to Savannah
6 River. The nuclear waste would also be stored onsite for eventual shipment to the Waste
7 Isolation Pilot Project (“WIPP”) in New Mexico.

8 34. DOE has not proposed a schedule for shipping the plutonium oxide to Savannah
9 River or the nuclear waste to WIPP, but neither location is currently able to accommodate
10 additional shipments of radioactive material from Lawrence Livermore due to existing backlogs
11 and scheduling delays. As a result, the plutonium oxide and nuclear waste that would result from
12 processing the 89 composite items would have to remain in temporary storage at Lawrence
13 Livermore for an unknown length of time.

14 The DT-22 Shipping Container and the Decision to Grant a National Security Exemption

15 35. The DT-22 shipping container is a 170 liter (45 gallon) stainless steel drum with
16 an insulated inner containment vessel manufactured by Lockheed Martin Energy Systems for
17 transporting radioactive materials. It is approximately 71 centimeters (27 inches) in height, 64
18 centimeters (25 inches) in diameter and weighs about 108 kilograms (238 pounds) when empty.

19 36. As early as 1999, DOE recognized that the DT-22 could not be certified for
20 certain shipments of radioactive materials because the container does not comply with applicable
21 regulations established by the Nuclear Regulatory Commission, an independent agency
22 established by Congress. Most notably, the DT-22 cannot withstand the “dynamic crush test,”
23 which is required for all lightweight, highly radioactive packages. The dynamic crush test
24 involves dropping a 500 kilogram (1100 pound) steel plate onto a package from a height of nine
25 meters (30 feet). The crush test is intended to simulate the impact that a package might sustain if
26 there were an accident during shipment.

27 37. On January 24, 2000, DOE contracted with Kaiser-Hill to complete the cleanup
28 and closure of Rocky Flats. Under the terms of the contract, Kaiser-Hill must ship all plutonium

1 composites to Lawrence Livermore by September 30, 2002. The contract includes complex fee
2 incentives that make Kaiser-Hill's final fee highly dependent on the amount of time and money
3 needed to complete the cleanup and closure.

4 38. Under Kaiser-Hill's 2006 closure project baseline, many of the classified
5 plutonium items at Rocky Flats would be shipped offsite in DT-22 containers. According to
6 Kaiser-Hill, the DT-22's relatively large containment vessel will allow classified items to be
7 shipped "as-is," thereby avoiding delays and costs associated with cutting or otherwise
8 reconfiguring the items at Rocky Flats to fit into alternative containers. Kaiser-Hill considers the
9 use of the DT-22 integral to its ability to meet the 2006 closure baseline schedule.

10 39. As expected, DOE was unable to certify many of Kaiser-Hill's proposed
11 shipments in DT-22s due to the container's acknowledged inability to pass the dynamic crush
12 test. However, in early 2000 DOE's Rocky Flats Field Office requested a "national security
13 exemption" from DOE headquarters that would authorize Kaiser-Hill to disregard the Nuclear
14 Regulatory Commission's safety regulations and use the DT-22 for a number of shipments from
15 Rocky Flats.

16 40. On July 19, 2000, after at least one initial request was turned down, DOE
17 headquarters finally granted a national security exemption to allow 125 items to be shipped from
18 Rocky Flats in DT-22 containers. Forty-eight of these 125 exempted items are part of the
19 previously described 89 composite items destined for Lawrence Livermore. DOE intends to ship
20 these items in mid- to late 2002.

21 Tri-Valley CAREs' FOIA Requests

22 41. Under FOIA, federal agencies must respond to requests for agency documents
23 within twenty days of a formal request. 5 U.S.C. § 552(a)(6). Additionally, DOE regulations
24 require DOE to respond to FOIA requests in a timely fashion. 10 C.F.R. § 1004.5.

25 42. On August 30, 2001, counsel for Tri-Valley CAREs submitted a FOIA request to
26 DOE for documents related to the decision to grant a national security exemption for the
27 shipment of plutonium from Rocky Flats to Lawrence Livermore in DT-22 containers and
28 records of DOE's corresponding compliance with NEPA. DOE responded with a short letter

1 acknowledging receipt of Tri-Valley CAREs' request and indicating a review was underway to
2 determine whether the request addressed all of the proper criteria under FOIA. DOE sent a
3 second letter soon after, indicating that Tri-Valley CAREs' August 30 FOIA request had been
4 assigned to several DOE offices so that they could conduct a search of their files.

5 43. On September 24, 2001, Tri-Valley CAREs submitted a second FOIA request to
6 DOE, this time for records related to the use of DT-22 containers for shipments of plutonium
7 from Rocky Flats to any offsite location. As before, DOE responded with a brief letter indicating
8 that a review was in progress to determine whether the request was proper, followed by a second
9 letter stating that a search for responsive documents would be conducted at appropriate DOE
10 offices.

11 44. As of the date of filing this Complaint, more than five months have elapsed since
12 Tri-Valley CAREs submitted its August 30 FOIA request and more than four months have
13 elapsed since it submitted its September 24 request. Nevertheless, DOE has not produced a
14 single document that is responsive to either request, nor has DOE given any indication that there
15 are exceptional or unusual circumstances that would justify its failure to comply with the time
16 limits for document production set forth in FOIA.

17 45. Similarly, DOE has yet to provide Tri-Valley CAREs with a substantive response
18 to either FOIA request that incorporates (1) a decision on the requests, (2) the reasons for the
19 decision, or (3) a notification to Tri-Valley CAREs of its appeal rights. DOE's failure to respond
20 to Tri-Valley CAREs' FOIA requests constitutes a constructive denial of those requests and a
21 constructive denial of Tri-Valley CAREs' rights to administrative appeals.

22 FIRST CAUSE OF ACTION

23 (Failure to Prepare an EIS for the Shipment of Plutonium to Lawrence Livermore)

24 46. Tri-Valley CAREs hereby realleges and incorporates by reference every
25 paragraph above.

26 47. NEPA is the "basic national charter for protection of the environment." 40 C.F.R.
27 § 1500.1. Its purposes are to "help public officials make decisions that are based on
28 understanding of environmental consequences, and to take actions that protect, restore, and

1 enhance the environment” and to “insure that environmental information is available to public
2 officials and citizens before decisions are made and before actions are taken.” 40 C.F.R.
3 § 1500.1(b)-(c).

4 48. To accomplish these purposes, NEPA requires all agencies of the federal
5 government to prepare a “detailed statement” regarding all “major federal actions significantly
6 affecting the quality of the human environment,” 42 U.S.C. § 4332(2)(C). This statement is
7 commonly known as an environmental impact statement (“EIS”).

8 49. If an agency makes substantial changes in a proposed action that are relevant to
9 environmental concerns or there are significant new circumstances or information relevant to
10 environmental concerns and bearing on the proposed action or its impacts, the agency must
11 prepare a supplement to the EIS. 40 C.F.R. § 1502.9(c)(1).

12 50. DOE’s decision to ship surplus plutonium from Rocky Flats to Lawrence
13 Livermore in DT-22 containers constitutes a major federal action significantly affecting the
14 quality of the human environment for which an EIS is required under NEPA, 42 U.S.C.
15 § 4332(2)(C).

16 51. DOE has not prepared an EIS for the planned shipments of plutonium from Rocky
17 Flats to Lawrence Livermore. DOE’s failure to do so violates NEPA.

18 SECOND CAUSE OF ACTION

19 (Violation of the Administrative Procedure Act)

20 52. Tri-Valley CAREs hereby realleges and incorporates by reference every
21 paragraph above.

22 53. The Administrative Procedure Act (“APA”) entitles a party to seek judicial
23 review of an agency action where a legal wrong is alleged and the party alleging the violation is
24 adversely affected or aggrieved by the agency action. 5 U.S.C. § 702. A reviewing court shall
25 (1) compel agency action unlawfully withheld or unreasonably delayed or (2) hold unlawful and
26 set aside an agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise
27 not in accordance with the law. 5 U.S.C. § 706.

28 54. DOE’s failure to prepare an EIS with regard to the planned shipments of surplus

1 plutonium from Rocky Flats to Lawrence Livermore constitutes agency action unlawfully
2 withheld and was arbitrary, capricious, and an abuse of discretion, all in violation of the APA.

3 THIRD CAUSE OF ACTION

4 (Violation of the Administrative Procedure Act)

5 55. Tri-Valley CAREs hereby realleges and incorporates by reference every
6 paragraph above.

7 56. DOE's decision to grant a national security exemption to facilitate the shipment of
8 surplus plutonium from Rocky Flats to Lawrence Livermore was motivated not by national
9 security but rather by the desire to accelerate the closure of Rocky Flats. DOE's decision was
10 therefore arbitrary, capricious, an abuse of discretion, and not in accordance with the law within
11 the meaning of the APA and should be set aside by this Court.

12 FOURTH CAUSE OF ACTION

13 (Failure to Respond to Tri-Valley CAREs' August 30, 2001 FOIA Request)

14 57. Tri-Valley CAREs hereby realleges and incorporates by reference every
15 paragraph above.

16 58. Tri-Valley CAREs has a statutory right, pursuant to FOIA, to the information it
17 seeks in its August 30 FOIA request. DOE's refusal to produce the information is arbitrary,
18 capricious, an abuse of discretion and otherwise not in accordance with FOIA.

19 FIFTH CAUSE OF ACTION

20 (Failure to Respond to Tri-Valley CAREs' September 24, 2001 FOIA Request)

21 59. Tri-Valley CAREs hereby realleges and incorporates by reference every
22 paragraph above.

23 60. Tri-Valley CAREs has a statutory right, pursuant to FOIA, to the information it
24 seeks in its September 24 FOIA request. DOE's refusal to produce the information is arbitrary,
25 capricious, an abuse of discretion and otherwise not in accordance with FOIA.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Tri-Valley CAREs requests that this Court:

3 A. Issue a declaratory judgment that:

4 1. DOE has violated NEPA and the APA by failing to prepare an EIS with
5 regard to its decision to ship surplus plutonium from Rocky Flats to Lawrence Livermore
6 in DT-22 containers;

7 2. DOE has violated the APA by granting a national security exemption for
8 the shipment of surplus plutonium from Rocky Flats to Lawrence Livermore in DT-22
9 containers;

10 3. DOE has violated FOIA by failing to respond in a timely fashion to
11 Tri-Valley CAREs' August 30 FOIA request; and

12 4. DOE has violated FOIA by failing to respond in a timely fashion to
13 Tri-Valley CAREs' September 24 FOIA request;

14 B. Issue a mandatory injunction prohibiting any actions by DOE to implement any
15 part of the proposed shipments of surplus plutonium from Rocky Flats to Lawrence Livermore
16 until such time as DOE has complied fully with NEPA;

17 C. Order DOE to produce immediately the documents sought by Tri-Valley CAREs'
18 August 30 FOIA request;

19 D. Order DOE to produce immediately the documents sought by Tri-Valley CAREs'
20 September 24 FOIA request;

21 E. Award Tri-Valley CAREs its costs, expenses and reasonable attorney's fees
22 pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, and any other applicable law;

23 F. Award Tri-Valley CAREs such further relief as the Court deems appropriate.
24

25 Dated: February 13, 2002

Respectfully submitted,

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28 _____
GREGORY C. LOARIE
Attorney for Plaintiff