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Attorneys for Plaintiff Tri-Valley CAREs

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRI-VALLEY COMMUNITIES AGAINST )  
A RADIOACTIVE ENVIRONMENT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UNITED STATES DEPARTMENT OF )  
ENERGY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. Preliminary Statement

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, to compel the Department of Energy ("DOE") to produce certain information, specifically

identified to the DOE by Plaintiff Tri-Valley CAREs, relevant to major changes in the national Nuclear Weapons Complex managed by the DOE.

2. Plaintiff Tri-Valley Communities Against a Radioactive Environment (“Tri-Valley CAREs”) is a California non-profit corporation with tax exempt status. Tri-Valley CAREs is devoted to research and public education concerning the activities and operations of the DOE’s national laboratory facilities in general, and the DOE’s nuclear weapons programs in particular. Tri-Valley CAREs requested the information that is the subject of this lawsuit in furtherance of its objective of assuring that the public is adequately informed of the DOE’s activities at the DOE’s national laboratory facilities, including its nuclear weapons programs and its nuclear safety records.
3. The FOIA requires federal agencies to respond to public requests for information within twenty days. In this case, Tri-Valley CAREs submitted the subject FOIA request on September 15, 1999. As of the date of the filing of this complaint, more than one year has elapsed since Tri-Valley CAREs submitted the subject FOIA request to the DOE, and the DOE has still not provided a single responsive document in response to the FOIA request.
4. The DOE has a pattern and practice of not responding to FOIA requests in a timely fashion. Routinely, the DOE fails to respond to Tri-Valley CAREs’ FOIA requests, and the FOIA requests of other individuals and organizations, within the time prescribed by statute.

5. The DOE's conduct in this case amounts to a constructive denial of Tri-Valley CAREs' September 15, 1999 FOIA request and a constructive denial of Tri-Valley CAREs' rights to an administrative appeal of that denial.
6. The DOE's arbitrary and capricious conduct with respect to its FOIA obligations frustrates Tri-Valley CAREs' efforts to educate the public regarding on-going activities at the DOE's national laboratory facilities.
7. With this action, Tri-Valley CAREs seeks a court order that declares the DOE's untimely response to the FOIA request at issue to be contrary to the requirements of the FOIA and that mandates the DOE to produce immediately the documents sought in the September 15, 1999 FOIA request. Additionally, Tri-Valley CAREs seeks a declaratory judgment obligating the DOE to respond to future FOIA requests in a timely fashion.
8. Finally, Tri-Valley CAREs seeks a court order appointing a Special Counsel to investigate the DOE's unlawful pattern and practice of failing to respond to FOIA requests within the time prescribed by statute.

## II. Jurisdiction and Venue

9. This court has jurisdiction over this action under 5 U.S.C. §522(a)(4)(B) (Freedom of Information Act), 28 U.S.C. §1331 (action arising under the laws of the United States), and 28 U.S.C. §1361 (mandamus).
10. Plaintiff Tri-Valley CAREs is a California non-profit corporation with federal tax exempt status. Its principal place of business is in Livermore, California. Accordingly, venue in this Court is proper under 5 U.S.C. §522(a)(4)(B).

### III. Intradistrict Assignment

11. Plaintiff Tri-Valley CAREs is a California non-profit corporation with its primary place of business in Alameda County.

### IV. Parties

12. Plaintiff Tri-Valley CAREs is a California non-profit corporation that provides information and advice to a wide range of environmental and peace organizations -- as well as to the public at large, the government, the news media, and elected officials -- concerning the DOE's activities and operations, particularly at its national laboratory facilities in California and New Mexico. Tri-Valley CAREs collects, reviews, and disseminates information regarding the DOE's nuclear weapons programs via telephone, fax, mailings, and conferences. Tri-Valley CAREs produces a free monthly newsletter as one of its services to inform the public about DOE programs in a timely manner. Tri-Valley CAREs also produces a wide range of technical papers and policy analyses designed for public education. A wide spectrum of individuals and organizations rely on Tri-Valley CAREs' in-depth analyses to understand the DOE's operations at the DOE's national laboratory facilities. Tri-Valley CAREs cannot effectively pursue its mission when the DOE fails to comply with its mandatory obligations under FOIA.
13. Defendant DOE is a federal agency. It is responsible for administering and overseeing the contracts between the United States and the various contractors that operate the DOE's national laboratory facilities. Under the DOE's contract with the operators of the national laboratory facilities, all records generated at national laboratory facilities are

deemed to be agency records under the control and authority of the DOE, with the limited exception of personnel and other similar records. The DOE is therefore responsible for responding to FOIA requests that seek documents generated at and/or maintained at the DOE's national laboratory facilities.

#### V. Facts

14. Pursuant to the FOIA, federal agencies must respond to requests for federal agency documents within twenty days of receipt of a formal request. Additionally, DOE regulations require that the DOE respond to FOIA requests in a timely fashion.
15. On September 15, 1999, Tri-Valley CAREs submitted a FOIA request to the DOE in which Tri-Valley CAREs requested the production of documents pertaining to major changes in the Nuclear Weapons Complex. Attached to Tri-Valley CAREs September 15, 1999 FOIA request was a set of DOE viewgraphs and a newspaper article that provided the DOE with specific detail regarding the precise records sought in the request.
16. Shortly after it received the September 15, 1999 FOIA request, the DOE sent a brief letter acknowledging receipt of the request and assigning the request a DOE processing number.
17. Since that time, the DOE has not produced a single document that is responsive to the September 15, 2000 FOIA request. Thus, more than one year has elapsed since Tri-Valley CAREs submitted the request, and the DOE has yet to provide any response to the request.

18. As of the date of the filing of this Complaint, DOE has not provided a substantive response to the September 15, 1999 FOIA request that incorporates (1) a decision on the request, (2) the reasons for the decision, and (3) a notification to Tri-Valley CAREs of its appeal rights. This failure constitutes a constructive denial of Tri-Valley CAREs September 15, 1999 FOIA request and a constructive denial of Tri-Valley CAREs' rights to an administrative appeal of the denial.
19. The DOE has not given any indication that there are exceptional or unusual circumstances that would justify its failure to comply with the time limits for document production as set forth in the FOIA.
20. Additionally, the DOE has failed to notify Tri-Valley CAREs' as to the reasons for its failure to comply with the FOIA's statutory timeline and has failed to notify Tri-Valley CAREs as to when it can expect a formal response to its FOIA requests. Both the notification of reasons and the notification of expected response date are affirmatively required by the DOE's own FOIA regulations.
21. The DOE is not exercising due diligence in responding to Tri-Valley CAREs' September 15, 1999 FOIA request.
22. The DOE has a pattern and practice of failing to respond to FOIA requests within the time period prescribed by statute.
23. The DOE's failure to produce the documents sought by Tri-Valley CAREs within the statutory timeframe frustrates Tri-Valley CAREs' efforts to continue its work of

educating the public, the media, and the government as to the activities and operations of the DOE's national laboratory facilities.

## VI. Causes of Action

### First Cause of Action

(Failure to respond to the September 15, 1999 FOIA request)

24. Tri-Valley CAREs incorporates all preceding paragraphs by reference, as if fully set out herein.
25. Tri-Valley CAREs has a statutory right, pursuant to the FOIA, to the information it seeks in its September 15, 1999 FOIA request, and the DOE's refusal to produce the information is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the FOIA.

### Second Cause of Action

(Pattern and practice of violating the FOIA's time requirements)

26. Tri-Valley CAREs incorporates all preceding paragraphs by reference, as if fully set out herein.
27. Tri-Valley CAREs is injured by the DOE's pattern and practice of disregarding the statutory timeframe set out in the FOIA for the production of documents. This pattern and practice is deliberate, arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the FOIA.

## VI. Request for Relief

WHEREFORE, Tri-Valley CAREs requests that this Court:

1. Expedite this case in accordance with 28 U.S.C. §1657(a) so as to resolve this case in time for Tri-Valley CAREs to use the requested information in furtherance of its legitimate objectives.

2. Declare that the DOE's failure to respond in any substantive fashion to Tri-Valley CAREs' September 15, 1999 FOIA request in a timely fashion is unlawful.

3. Order the DOE to produce immediately the documents sought by Tri-Valley CAREs in the September 15, 1999 FOIA request.

4. Declare that the DOE has a mandatory obligation to respond to all future FOIA requests within the time prescribed by statute.

5. Order the Special Counsel to commence an investigation to determine whether disciplinary action is warranted against any federal employee for the DOE's unlawful pattern and practice of withholding information sought pursuant to the FOIA. See 5 U.S.C. §552(a)(4)(F).

6. Award Tri-Valley CAREs its costs and reasonable attorney's fees incurred in the prosecution of this action. 5 U.S.C. §552(a)(4)(E).

7. Grant such other and further relief as the Court deems just and proper.

Dated: \_\_\_\_\_

Respectfully submitted,

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1452 Curtis Street  
Berkeley, CA 94702  
(510) 525-0817

**CERTIFICATION OF SERVICE OF THE COMPLAINT**

Pursuant to Local Rule 4-2, the plaintiff Tri-Valley Communities Against a Radioactive Environment hereby certifies that it served the defendant United States Department of Energy with the complaint in this action by certified mail, as required by Fed.R.Civ.P. 4(i), on \_\_\_\_\_  
\_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_  
Steven Sugarman  
320 Aztec Street, Suite 4  
Santa Fe, New Mexico 87501  
(505) 983-1700  
Attorney for the Plaintiff

I hereby certify that a true and correct copy of this Certification of Service of the Complaint was served on the following opposing counsel of record by first class mail on this \_\_\_\_\_  
\_\_\_\_\_:

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Federal Programs Branch  
901 E Street, N.W.  
Washington, DC 20530

\_\_\_\_\_  
Steven Sugarman