

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

COMMITTEE TO BRIDGE THE GAP,
CALIFORNIA FEDERATION OF
SCIENTISTS, PHYSICIANS FOR
SOCIAL RESPONSIBILITY, LOS
ANGELES CHAPTER,

No. 01CS01445 Dept. 11
RULING ON SUBMITTED MATTER

Petitioners, Plaintiffs,

vs.

DIANA M. BONTA, Director,
CALIFORNIA DEPARTMENT OF HEALTH
SERVICES; STATE OF CALIFORNIA,

Respondents, Defendants.

This matter came on for hearing on March 29, 2002. The matter was argued and taken under submission. The Court, having considered the evidence and the arguments of the parties, now makes its ruling as follows:

(1) The respondents' claim that the adoption of the subject regulation, section 30253 of Title 17, California Code of Regulations, is categorically exempt from CEQA pursuant to section 15308 of the CEQA Guidelines is without merit. Petitioners have shown that there is a reasonable

1 possibility that the adoption of the subject regulation will
2 have a significant adverse environmental effect. The
3 argument that the subject regulation imposes a more
4 stringent standard than what presently exists is not
5 persuasive. There is no standard in effect at present for
6 decommissioning of a licensed radioactive site. The 100
7 millirem standard is for sites in operation and not
8 decommissioned sites. Moreover, in practice, decommissioned
9 sites have been required to meet a more stringent standard
10 than 100 millirems and a more stringent standard than the 25
11 millirems in the subject regulation. Nor does the "ALARA"
12 language in the subject regulation transform the subject
13 regulation to a more stringent standard than what has been
14 applied in the past.

15 (2) Respondents' reliance on the federal EIS, even if
16 proper notice had been given, is misplaced. See section
17 15220 of the CEQA Guidelines which provides:

18 "This article applies to projects that
19 are subject to both CEQA and NEPA. NEPA
20 applies to projects which are carried
21 out, financed, or approved in whole or
22 in part by federal agencies.
Accordingly, this article applies to
23 projects which involve one or more state
24 or local agencies and one or more
25 federal agencies."

26 The Court concludes that this project, the approval by the
27 California Department of Health Services of an amendment of
28 California regulations, is not one which is subject to NEPA.
Therefore, section 15225 of the Guidelines is not
applicable.

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1 (3) Respondents have failed to comply with the
2 California Administrative Procedures Act in adopting this
3 regulation. The Court finds that the Initial Statement of
4 Reasons for the regulation contained a sufficient statement
5 of purposes. But respondents acknowledge that they could
6 have chosen a standard more stringent than the federal
7 standard. Yet the statement of reasons for adopting the
8 subject regulation relies on the conclusion that the
9 respondent was limited to following the federal standard.
10 By failing to discuss and consider alternatives, respondents
11 have violated the California Administrative Procedures Act.

12 The respondents' objection to the Declaration of Daniel
13 Hirsch is sustained on the grounds of hearsay and lack of
14 relevance.

15 The petition for writ of mandamus is GRANTED, and the
16 complaint for declaratory relief is GRANTED. Judgment shall
17 be entered directing the issuance of a writ of mandate
18 commanding respondent BONTA to set aside her approval of the
19 regulation amendment, as it was without compliance with the
20 California Environmental Quality Act. The judgment also
21 shall declare that respondent BONTA's approval of the
22 regulation amendment was invalid as it was in violation of
23 the California Administrative Procedures Act.

24 Counsel for petitioners shall prepare, serve and submit
25 a written form of judgment granting the petition and

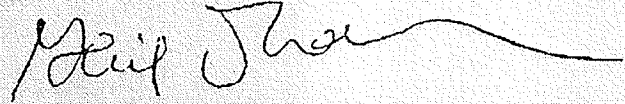
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1 complaint in accordance with the above and a writ of mandate
2 for issuance by the clerk of the court.

3 DATED: APR 10 2002

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6 GAIL D. OHANESIAN
7 JUDGE OF THE SUPERIOR COURT
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