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GROUP FILES BRIEF IN NINTH CIRCUIT COURT OF APPEALS OVER DANGEROUS LIVERMORE LAB BIO-WARFARE RESEARCH

Tri-Valley CAREs Alleges Violations of National Environmental Law Due to Inadequate Analysis of a Terrorist Attack on the Bio-Facility.

Livermore and San Francisco, CA – Tri-Valley CAREs, a watchdog non-profit organization located in Livermore, CA, filed its “Reply” brief with the Ninth Circuit Court of Appeals Friday, June 24, 2011. This is Tri-Valley CAREs’ final submission in the group’s National Environmental Policy Act (NEPA) case against the Department of Energy (DOE) over bio-warfare agent research activities at Livermore Lab. Dates for oral arguments are anticipated soon.

The lawsuit surrounds a controversial Biosafety Level-3 (BSL-3) facility at the Lawrence Livermore National Laboratory, which is located less than 50 miles east of San Francisco. Livermore Lab’s BSL-3 facility has the unique ability to perform aerosol spray experiments on small animals with dangerous pathogens such as live anthrax, plague, Q fever, botulism, and many other bioagents and toxins, including ones that have been genetically modified.

Tri-Valley CAREs’ and the community’s concern regarding the safety hazard the BSL-3 poses to the natural and human environment led them to initiate litigation in 2003. In response to this litigation, in 2006, the Ninth Circuit Court of Appeals ordered the DOE to prepare an analysis of the potential environmental consequences of a terrorist attack at the BSL-3 facility.

Unfortunately, DOE failed to respond with any meaningful terrorism-specific analysis, and instead claimed a previously completed assessment based on a routine centrifuge accident scenario would be sufficiently comparable to meet the Court’s order. The analysis of the centrifuge scenario has been heavily criticized by the National Academy of Sciences for its non-transparent methodology, which does not allow for third party verification of the results, and for other reasons. Tri-Valley CAREs believes the serious inadequacies in this “revised” assessment of risks posed by a terrorist attack are a direct violation of the Court’s order as well as NEPA.

Additional concerns have arisen since 2003 due to the failed safety and security incidents at Livermore Lab’s bio-facilities. There have been serious violations of safety, such as a shipping accident involving live anthrax that exposed 5 laboratory workers, as well as a CDC-restricted, illegal experiment Livermore

conducted wherein an antibiotic resistant strain of Plague was developed. In violation of NEPA, the DOE kept these events secret until after the public comment period on the Draft Revised Environmental Assessment had closed, despite their clear relevance to the Court's inquiry.

Thus, Tri-Valley CAREs is requesting the Ninth Circuit Court of Appeals to order a full Environmental Impact Statement for the BSL-3 with a new public comment period, as well as the suspension of operations at the BSL-3 until the DOE & NNSA are in compliance with NEPA.

Scott Yundt, Staff Attorney for Tri-Valley CAREs stated, "Livermore Lab has failed to meet the direct order of the Ninth Circuit Court of Appeals, which was specifically concerned with the safety and security of the BSL-3 facility in light of the 2001 Anthrax mailing attacks which were found to have originated at a similar federal lab."

Marylia Kelley, the group's Executive Director, noted, "We now know that Livermore Lab management covered up an incident where an unauthorized individual was allowed access to its bio labs and improperly package and ship thousands of vials of live anthrax across the country. Upon opening a shipment, five individuals were exposed to spilled anthrax in the packaging. Further, during the same time period, Lab researchers were discovered conducting an illegal experiment to create an antibiotic resistant Plague virus. These incidents demonstrate the need or additional review. And, that is why we are asking the Court to, again, step in."

Yundt concluded, "Tri-Valley CAREs is requesting the Ninth Circuit Court of Appeals to order a full Environmental Impact Statement for the BSL-3 with a new public comment period, as well as the suspension of operations at the BSL-3 until the DOE is in compliance with NEPA."