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*For immediate release*

## **Community Groups Challenge Biowarfare Agent Research at Nuclear Weapons Lab in Livermore; Charge Energy Dept. Did Not Properly Evaluate Risks of Spraying Deadly Pathogens in Populated Area**

### ***Case Will be Heard in 9th Circuit Court on Tuesday, June 13, 2006 at 9 AM***

A federal hearing in the Ninth Circuit Court of Appeals is scheduled in San Francisco for June 13. Stephan Volker, lead attorney for Tri-Valley CAREs and Nuclear Watch New Mexico, will argue that the U.S. Dept. of Energy (DOE) violated the country's most fundamental environmental law by attempting to run a deadly biowarfare agent research facility inside the Lawrence Livermore National Laboratory (LLNL) main site without first performing a stringent safety review or holding public hearings.

Tri-Valley CAREs and Nuclear Watch contend that DOE violated the National Environmental Policy Act by failing to produce a legally required Environmental Impact Statement to study the significant health and environmental risks of operating the proposed facility, styled as a Biosafety Level-3 (BSL-3).

The hearing is the first and only opportunity for the federal court and public to hear arguments for the appeal. Attorneys for both sides will present arguments and answer questions from a panel of judges. The judges will rule on the basis of the hearing, plus written evidence and expert witness testimony already submitted. (*Copies of expert testimony and other court documents are available in advance to the media on request.*)

At the controversial bio-facility, Livermore Lab researchers propose to genetically modify and aerosolize (spray) lethal pathogens, such as live anthrax, plague and botulism. The Livermore Lab sits astride major earthquake faults. Seven million residents live within a 50 mile-radius.

Attorney Volker explained, "To propose operation of this extremely hazardous facility in the San Francisco Bay Area without required environmental reviews is not only illegal, but irresponsible. All it would take is a single earthquake to unleash billions of deadly pathogens on an unsuspecting public."

Tri-Valley CAREs and Nuclear Watch have submitted evidence to the court derived from Defense Dept. models to show the type of analysis that the DOE should have done, but didn't. The modeling demonstrates that hundreds or, depending on wind currents, thousands could die if an accident sends anthrax or other potentially fatal bioagents skyward.

According to experts, two grams of live anthrax represents up to 25 million times the inhaled lethal dose. Documents obtained by Tri-Valley CAREs disclose that DOE has given the proposed Livermore bio-facility permission to use up to 100 liters of biowarfare agents at a time.

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“It is outrageous, but true, that DOE granted itself the go-ahead to operate this facility without conducting thorough analyses of the risks to workers and neighbors,” charged Marylia Kelley, Tri-Valley CAREs’ Executive Director who lives down the street from Livermore Lab. “We are asking the court to mandate a comprehensive environmental review, public hearings and serious consideration of safer alternatives.”

“The low-level, cursory study that DOE conducted improperly dismissed serious threats such as filter failures, terrorist attacks, sabotage, transportation accidents, earthquakes and fire,” added Tri-Valley CAREs’ Staff Attorney, Loulena Miles.

Physicist Marion Fulk, a retired Livermore Lab staff scientist, provided expert testimony for the community groups. “I have no confidence that the LLNL BSL-3 operations will not include accidents, spills and/or releases, unless (at a minimum) additional analysis of potential release scenarios is undertaken, mitigation measures are designed and implemented, due caution is exercised in place of reckless optimism, and competent personnel are assigned,” Fulk told the court.

Dr. Matthew McKinzie, a scientist with the Natural Resource Defense Council, provided testimony disputing DOE’s assertion that study of a catastrophic event at the BSL-3 is not needed because it is not reasonably foreseeable. McKinzie stated: “[T]he EA does not provide enough information to clarify whether the exterior of the facility is vulnerable to a breach due to earthquake, fire or explosion, as might result from a terrorist attack or a nearby industrial or experimental accident.”

Dr. Robert Curry, a geologist and professor at UC Santa Cruz, points out in written testimony that the design basis for the BSL-3 at Livermore Lab is wholly inadequate to withstand predictable ground accelerations at the site and that the facility should be redesigned.

Originally, DOE approved advanced biowarfare agent research at both its Livermore and Los Alamos National Labs. The groups’ lawsuit challenged both sites. Then, in 2005, DOE announced in the Federal Register that it would conduct a full Environmental Impact Statement for the proposed Los Alamos bio-facility (as Plaintiffs had asked - and as the law requires). Potential earthquakes, and the need for “additional seismic analysis,” were listed as a reason for the more stringent review in New Mexico.

“We believe that Livermore and Bay Area residents deserve no less than their New Mexico counterparts,” insisted Kelley. “In fact, the potential for a catastrophic earthquake is much greater in Livermore.”

The Livermore Lab bio-facility, if it becomes operational, would mark the first time that the U.S. mixes advanced biowarfare and nuclear weapons research at the same site, raising the specter of grave local harm and potentially severe damage to the Biological Weapons Convention, the international treaty banning bio-weapons.

Tri-Valley CAREs and Nuclear Watch are appealing a September 2004 District Court ruling, which held that DOE was not required to conduct an EIS. The groups originally filed the litigation in August 2003, and have, thus far, prevented DOE from mixing “bugs and bombs” at either weapons lab.