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PRESS RELEASE

MAY 20, 2004

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for immediate release, May 20, 2004

FEDERAL COURT ALLOWS TESTIMONY PROVING SECURITY LAPSES AND HEALTH AND SAFETY HAZARDS AT LIVERMORE BIO-WARFARE AGENT RESEARCH LAB

OAKLAND, CA -- Yesterday, United States District Judge Sandra Brown Armstrong rejected a motion by the United States Department of Justice to strike testimony by whistleblower Mathew Zipoli describing ongoing security lapses at the Lawrence Livermore National Laboratory, and testimony by several national experts documenting serious health and safety hazards at the Livermore Lab. Ruling in a lawsuit brought by environmental organizations attacking the Department of Energy's (DOE's) proposed bio-warfare agent research at the Lawrence Livermore and Los Alamos National Laboratories, Judge Armstrong denied the Department of Energy's motion to strike key testimony submitted by these organizations documenting the extreme hazards posed by this proposed research. The Livermore and Los Alamos facilities, styled "Biosafety Level 3" (BSL-3) laboratories by DOE, would be used for experiments with live anthrax, botulism, bubonic plague and other deadly pathogens on live animals utilizing aerosol (spray) delivery techniques. Plaintiffs seek withdrawal of DOE's approval of the Livermore facility because of the grave risks to public health documented in this testimony

Today's ruling caps nine months of litigation against operation of this bio-warfare agent laboratory, which has already resulted in DOE withdrawing its approval of the Los Alamos facility. Two environmental organizations - Tri-Valley CAREs (Communities Against a Radioactive Environment) of Livermore, CA and Nuclear Watch of New Mexico, located in Santa Fe, New Mexico, filed suit against both facilities on August 26,

2003. Their litigation charges DOE with violating the National Environmental Policy Act (NEPA) by approving advanced research on bio-warfare agents at its two principal nuclear weapon design labs without conducting a thorough review of the resulting environmental risks. The lawsuit asks the Court to compel DOE to prepare Environmental Impact Statements before DOE can begin operations. Last December, Judge Armstrong had issued an Order prohibiting any shipment of select agents (those capable of being weaponized) to these proposed bio-warfare agent research facilities pending the Court's ruling on the merits of the lawsuit, which is expected soon.

Judge Armstrong's ruling yesterday accepting this testimony directly undermines DOE's justification for not preparing an EIS on the Livermore bio-warfare lab – that it had already considered and addressed all of the potential environmental hazards of this new facility. The Court allowed the testimony of Mathew Zipoli, a retired Security Police Officer of the Lawrence Livermore security force, Professor Robert Curry, an Emeritus Professor of Geology at the University of California at Santa Cruz, Dr. Matthew McKinzie, an Experimental Physicist with expertise in the dispersal of hazardous materials, Terrell Watt, an Urban Planner familiar with the rapid urban growth engulfing the Livermore Laboratory, and Marion Fulk, a retired Chemical Physicist previously employed at the Livermore Lab for 18 years.

The testimony upheld by Judge Armstrong documents profound security and safety risks at the laboratory:

- Retired Livermore Lab police officer Zipoli testified that security officials at Livermore have not been trained to detect bombs, have never been trained in the use of bio-suits (or even told where such suits might be found), have never trained with local law enforcement authorities nor with the FBI, have never been trained in the use of Self-Contained Breathing Apparatus (SCBA) gear which is essential for use in responding to the release of biological, chemical or radioactive agents, have never conducted practice exercises involving the simulated release of such hazardous materials, and are even removed from their posts to perform other duties, jeopardizing laboratory security. Officer Zipoli also testified that DOE's own Inspector General documented many of these deficiencies in a report dated December, 2001, which DOE ignored when it approved Livermore's bio-warfare facility. Mr. Zipoli testified regarding the recent resignation of the Livermore

Laboratory's top security official, William Cleveland, in response to FBI accusations that he had a sexual relationship with a known Chinese agent between 1993 and 2003. Mr. Zipoli also testified to numerous other security breaches at the Livermore Laboratory, including the disappearance of a security officer's skeleton keys and access badges, and suspicious delays in the reporting of these security lapses.

- Professor Curry testified that DOE's conclusion that an EIS was not needed was based on the erroneous claim that no active earthquake faults are located in proximity to the proposed laboratory. In fact, as Dr. Curry testified, the Los Positas fault and the Greenville fault – both major, active fault zones – “are located in proximity to this site.” Professor Curry testified that an earthquake on January 24, 1980 had caused substantial structural damage in the Livermore area, and that major earthquakes are likely to recur in the area, posing a significant risk to human health and safety.
- Chemical Physicist Marion Fulk testified that the High Efficiency Particulate Air (HEPA) filters utilized at the Livermore Lab to prevent the escape of hazardous airborne chemicals to the surrounding community have a high failure rate. Mr. Fulk testified that DOE's reliance on HEPA filters to assure that toxic pathogens would not be released from the BSL-3 facility ignored their propensity to fail. According to Mr. Fulk, surveys have shown that approximately 12 percent of all HEPA filters fail when wet, may be defective, may be torn during installation, may leak due to changes in air pressure, and may become brittle and fail over time. For example, in 1969, a fire at DOE's Rocky Flats Nuclear Facility near Denver, Colorado, blew out multiple HEPA filters. In 1977, an accident at Lawrence Laboratory blew HEPA filters through an exhaust stack. According to retired Lawrence Livermore staff scientist Fulk, DOE's reliance on HEPA filters is a blueprint for disaster.
- Physicist Matthew McKinzie testified that using the United States' military's Hazard Prediction and Assessment Capability (HPAC) computer model, a foreseeable accident at the Lawrence Laboratory, resulting in the release of about 2 teaspoons of dry anthrax spores, would result in the deaths of thousands of nearby residents. From October through March, when prevailing winds often move from the east, up to 240,000 people would be exposed to a potentially deadly dose of anthrax,

resulting in nearly 5,000 deaths. At times when the easterly winds reach 9 miles per hour, over one-half million people would be exposed to potentially deadly dosages, resulting in more than 10,000 fatalities in the San Francisco Bay Area. Yet, DOE claims that its proposed bio-warfare laboratory would pose no risk to human health and safety.

- Urban Planner Terrell Watt testified that rapid urban growth will continue both in the San Francisco Bay Region and in the vicinity of Livermore. She testified that within 20 years, the population within 50 miles of the Livermore Lab would exceed 10 million people. Ms. Watt concluded that because of the heavy traffic on Highway 580, which is very close to the Livermore Lab, “[a]n accidental release of pathogens from [the Livermore Lab] when the prevailing winds are from the south or east could expose tens of thousands of people driving on Highway 580 to potentially lethal dosages” and that “[t]hese drivers and their passengers would effectively disperse these pathogens throughout the San Francisco Bay Area within minutes.” Yet none of the accidental scenarios that DOE examined ever addressed the potential exposure to Bay Area residents traveling on Highway 580.

Marylia Kelley, Executive Director of Tri-Valley CAREs, was pleased with the ruling: “We brought this lawsuit because DOE’s planned bio-warfare agent facility endangers Livermore Lab workers and the 7 million people who live in the Bay Area. We are gratified with Judge Armstrong’s ruling to allow our experts’ testimony, which documents the serious threat to public health posed by this facility. We believe we have a strong case, and we fully expect to win it.”

“We are elated that the Judge has rejected DOE’s challenges to this crucial testimony, on which she will now base her decision,” exulted Nuclear Watch of New Mexico Director Jay Coghlan. “DOE must now explain to the Court why it shouldn’t withdraw its decision to operate the Livermore biolab just like this lawsuit has already compelled it to withdraw the Los Alamos biolab.”

“We are pleased that Judge Armstrong has rejected the Department of Justice’s attempt to muzzle our witnesses and prevent the Court from hearing the truth,” commented plaintiffs’ lead attorney Stephan Volker of Oakland, California. “Both the Court and the public are entitled to know that this bio-warfare agent lab could become a magnet for

terrorist attacks, exposing the entire Bay Area to potential contamination,” added Mr. Volker. “DOE’s attempt to silence our witnesses ignores the lessons that we should have learned from 9/11,” Volker stated. “Now that the Court has a full and fair record, we expect the Court will order DOE to halt this ill-advised bio-warfare research program until its grave risks to public safety are fully aired and considered,” Volker added.

For further information, please call Tri-Valley CAREs at (925) 443-7148 or Nuclear Watch of New Mexico at (505) 989-7342. Or, visit their websites at www.trivalleycares.org and www.nukewatch.org.

Copies of Judge Armstrong’s Order and the testimony in question are available in PDF format from the above-listed offices.