



DOE Biolabs and Citizen Litigation

Department of Energy Biological Efforts - Past and Present:

The Department of Energy (DOE) is quick to defend itself from any criticisms of its growing biological research programs by pointing out that it and its predecessor agencies have conducted "biological research" since the early days of the Cold War. Though this statement is true, biological research during the Cold War was a far cry from the sophistication now being sought by the DOE's new bio-research program. Advanced bio-research facilities are currently in the works at both Los Alamos National Laboratory (LANL) in New Mexico and Lawrence Livermore National Laboratory (LLNL) in California. These new facilities will provide DOE with the ability to work with some of the deadliest diseases, or biological agents, known (such as anthrax, Q fever, plague, and tularemia), as well as the capability to genetically modify these diseases.

The Chemical and Biological National Security Program (CBNP):

In 1996, Congress passed a law that enabled DOE to create the CBNP, which subsequently found a home within the National Nuclear Security Administration (NNSA). The NNSA, which began operating in 2000, is a semi-autonomous agency within the DOE responsible for the U.S. nuclear weapons research, design, testing and production programs. Prior to September 11, 2001, funding for the CBNP remained at fairly paltry levels, but in fiscal year 2002 the budget leapt by 115%. The fear of terrorism has resulted in a boom in the biodefense industry, including massive increases in funding and facilities within the DOE. Agencies across the board have been scrambling for the hundreds of millions of dollars Congress is frantically throwing at defensive biotechnology. An investigative arm of the U.S. government has reported that lead agencies like Health and Human Services do not have long-term, integrated strategies for use in the search for a strong defense against the shadowy threat of bioweapons and bioterrorism. Yet the money keeps pouring in, accelerated by the creation of the Department of Homeland Security (DHS). Recently DHS has taken over programmatic control of the CBNP, although the CBNP facilities remain at DOE's national laboratories.

Bioweapons Agents Research at Los Alamos and Lawrence Livermore:

In October 2001 LANL issued a draft environmental assessment (EA) for a proposed biological safety level (BSL)-3 facility. This is the second highest containment level for bio-research, the highest being a BSL-4 where diseases such as Ebola are studied. After receiving some 300 letters from the public, overwhelmingly in opposition to the proposal, LANL chose to go ahead and build the facility, the first in the nation-wide DOE nuclear weapons complex. In December 2002 LLNL also released a final decision, giving itself the green light to build a similar facility. In many ways the LLNL facility is much more aggressive than the LANL facility in that it allows experimentation on rodents and the creation of aerosols containing biological agents. Creating an aerosol involves the same processes that are used to "weaponize" a biological agent, such as anthrax. If allowed to proceed, these projects by DOE could have wide ramifications on local, national, and international levels. Though Nuclear Watch of New Mexico recognizes the need for bio-research and bio-threat reduction, such work must be conducted with a clear goal in mind, not in the willy-nilly fashion that is now taking place. The work must also be conducted in a transparent environment which is above possible international suspicions and where the rights and safety of citizens are recognized. NukeWatch believes that the efforts by the DOE and other federal agencies may have the unintended consequence of putting public health at risk and undermining efforts to curb the proliferation of bioweapons.

Biological Weapons Proliferation:

As a State Party to the Biological and Toxin Weapons Convention (BTWC), the U.S. is prohibited from conducting any research on offensive biological weapons. The Convention does permit limited defensive research. However, biological research is inherently "dual use," meaning that any facilities conducting "defensive" research could just as easily be conducting offensive research. The framers of the BTWC understood the need for an inspection regime that would physically verify that no offensive bioweapons work was being conducted at a particular facility. [This is precisely the same method used

in Iraq prior to the recent invasion, which found scant evidence that Iraq had programs for weapons of mass destruction.] After years of negotiations, in 2001 the Party States had finally agreed in principle to a coercive inspection and verification process. In the summer of 2001 the Bush Administration walked away from the negotiating table at the last minute, thereby ensuring that the inspection system would never come into being and that the BTWC would remain toothless and unenforceable. What was the Administration's justification? The inspection regime threatened the trade secrets of the U.S. pharmaceutical and biotechnology industries. As a result, there are still no inspection protocols to ensure that all countries are adhering to their commitments under the BTWC, including the U.S.

Internal Threats:

As the October 2001 anthrax attacks seem to indicate, the rapid growth in the U.S. bio-defense program could pose an added threat from internal sources. The proliferation of laboratories conducting research on bioagents historically used for bioweapons greatly increases the number of people who have access to the materials, facilities and knowledge with which to create bioweapons, however crude they may be. Decisionmakers must take into account the risks of theft, sabotage, and the "rogue scientist" scenario when considering the need for greater defensive bio-research.

NukeWatch Efforts to Increase Public Scrutiny and Environmental Analysis of DOE's Bio-programs: During 2001 and 2002 NukeWatch vigorously contested the arbitrary and capricious public process DOE was using to justify its decision to build the proposed BSL-3 facilities at LANL and LLNL. DOE failed to adequately address the many concerns raised by the public and proceeded to release final EAs for both laboratories, along with so-called Findings of No Significant Impact, which gives the Department the green light to begin the first steps leading to operations. Because DOE left so many legitimate questions and concerns unanswered, NukeWatch felt that a legal challenge was necessary.

No "Bugs Without Bounds."

In August 2003 NukeWatch and Tri-Valley CAREs, a citizens group based in Livermore, CA, jointly filed a lawsuit in the federal district court of northern California claiming that DOE had failed to fully analyze the environmental and health risks associated with the proposed operation of its BSL-3 facilities at LANL and LLNL. In effect, DOE wrote itself a blank check for a wide range of infectious disease research at the two labs. Furthermore, the two EAs concluded that the facilities could conduct research on emerging diseases or on diseases for which no known cure was available. NukeWatch and Tri-Valley CAREs argue that DOE failed to consider the grave risks of introducing pathogens whose behavior may not be known or understood, and for which a cure may not exist. DOE also failed to address security concerns, such as the risk of intentional sabotage (such as a disgruntled employee or "rogue scientist"), theft, or a terrorist act against the facility. Dr. Matthew McKenzie, a scientist with the Natural Resources Defense Council, highlighted the grave nature of DOE's failure to seriously examine the potential risks while using a Department of Defense modeling program. He calculated that if the LLNL facility suffered light damage from an earthquake a plume of airborne anthrax could be released, causing as many as 9,000 deaths. Issues like this should have been analyzed in a comprehensive environmental impact statement. The lawsuit filed by NukeWatch and Tri-Valley CAREs seeks to compel DOE to conduct just such a study, as well as to examine the broader implications of its nation-wide bio-research program in a programmatic environmental impact statement.

Our Legal Successes to Date:

In December 2003 the federal judge presiding over our case issued an order barring DOE from introducing "select agents" at the LANL or LLNL facilities until May 15, 2004, by which time we have asked the court to issue a decision. [Select agents are those pathogens that historically have been associated with weaponizing efforts.] In early January 2004, DOE admitted to the court that it had failed to supply 56 documents to NukeWatch and Tri-Valley CAREs that it said it had, while acknowledging that it was obligated to do so. In late January DOE abruptly withdrew its Finding of No Significant Impact for the LANL BSL-3 facility, claiming that it had become aware of "new circumstances and information," and stated that it would prepare a new environmental assessment. As a result, the DOE's Finding of No Significant Impact for the Livermore facility may be highly vulnerable as well. We encourage interested citizens to comment on the new LANL BSL-3 Environmental Assessment when it becomes available. (Visit nukewatch.org for notice and updates.)

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