

# Blue Ridge Environmental Defense League

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Department of Homeland Security  
Science and Technology Directorate  
James V. Johnson  
Mail Stop #2100  
245 Murray Lane SW, Building 410  
Washington, DC 20528  
<http://www.dhs.gov/nbaf>  
Fax: 1-866-508-6223

**Re: Notice of Intent to prepare an EIS for the National Bio and Agro-Defense Facility (NBAF), Federal Register, Vol. 72, No. 146, 31 July 2007**

Dear Mr. Johnson:

On behalf of the Blue Ridge Environmental Defense League, I write to provide scoping comments on the environmental impact statement on the national bio and agro-defense facility proposed by the Department of Homeland Security. These comments will supplement my oral remarks at the scoping hearing held in Creedmoor, NC on September 18<sup>th</sup>.

We are opposed to plans for a facility which we are convinced would create and test biological weapons. In brief, our recommendations are:

1. The DHS must conduct a detailed study of the environmental, health and economic impacts of siting, building and operating a facility which would create and test diseases which can be transferred from animals to humans and for which there are no treatments or vaccines.
2. DHS must determine that the proposed facility is needed. The Department must evaluate the two dozen existing research labs in the Triangle area and show why and how they are inadequate to protect North Carolina's cows, pigs and chickens.
3. Two recent federal court decisions mandate that DHS evaluate the likelihood and the impacts of terrorist attacks on such a laboratory.
4. Under NEPA, DHS must evaluate thoroughly the adequacy of existing emergency response programs and personnel. DHS must detail emergency response needs including notification of paid and volunteer first responders, training and equipment needs, and funding requirements.
5. Because DHS is exempt from the federal Freedom of Information Act, the Department must lift the shroud of secrecy. A true disease research facility requires open scientific debate and peer review.
6. The proposed disease lab would violate the international Biological Weapons Convention. DHS must not defy a treaty which the United States has upheld since 1972.

*Esse quam videre*

According to the Federal Register notice of July 31, 2007, the DHS has tentatively identified the environmental issues it seeks comments for including land use, air quality, noise, geology, water resources, endangered species, cultural resources, human health, socioeconomics, public infrastructure, waste management and compliance with laws and regulations. The scoping hearing held on September 18<sup>th</sup> was largely dedicated to the NCC-NBAF consortium and infrastructure issues. However, the quality of highways and other facilities in an area with one and a half million people cannot be the most important factor to consider in the pending decision. (The Raleigh-Durham Combined Statistical Area population as of July 2006 was 1,565,223.) In fact, the proximity of a dangerous facility to such a highly populated area should be considered a negative factor. The proposed facility at Butner would be only twenty miles from downtown Raleigh and ten miles from Durham.

### **National Environmental Policy Act Requirements**

Under NEPA Congress directs all federal agencies to include a detailed statement by the responsible official for every major Federal action which significantly affects the quality of the human environment. This environmental impact statement must include: 1) the environmental impact of the proposed action, 2) any adverse environmental effects which cannot be avoided should the proposal be implemented, 3) alternatives to the proposed action, 4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and 5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Pursuant to the National Environmental Policy Act, the Department of Homeland Security as the responsible agency must conduct a comprehensive analysis of the purpose of and the need for a bio-safety level 4 laboratory (BSL-4). The EIS must include the expected amounts of biological agents which would be produced, acquired, modified, stored, packaged and dispersed.

Further, DHS must conduct a full assessment of the impacts of a possible terrorist attack on a biological weapons facility. Two recent court decisions, one on a nuclear power plant and the other on a BSL-3 laboratory, require such a thoroughgoing analysis. In the most recent case, *Tri-Valley CARES v. Department of Energy*, citizens living near the Lawrence Livermore National Laboratory filed suit calling for the inclusion of terrorism in the environmental assessment of a laboratory similar to the proposed NBAF. The court wrote:

Concerning the DOE's conclusion that consideration of the effects of a terrorist attack is not required in its Environmental Assessment, we recently held to the contrary in *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016 (9th Cir. 2006). In *Mothers for Peace*, we held that an Environmental Assessment that does not consider the possibility of a terrorist attack is inadequate. *Id.* At 1035. Similarly here, we remand for the DOE to consider whether the threat of terrorist activity necessitates the preparation of an

Environmental Impact Statement. As in Mothers for Peace, we caution that there "remain open to the agency a wide variety of actions it may take on remand [and]. . . [w]e do not prejudice those alternatives." Id. [1]

To comply with the National Environmental Policy Act, DHS must include the impacts of possible terrorist attacks on the proposed facility at Butner. DHS must include an analysis of an accidental or a deliberate release of any of the tens of thousands of pathogens from the NBAF including but not limited to *Bacillus anthracis*, *Clostridium botulinum* toxin, *Yersinia pestis*, *Variola major* other pox viruses, *Francisella tularensis*, Ebola, Marburg, *Burkholderia pseudomallei* *Coxiella burnetti*, *Brucella* species *Burkholderia mallei*, Ricin toxin, *Staphylococcus enterotoxin* and *B Rickettsia prowazekii*. Genetically modified biowarfare agents would be developed and studied at the NBAF; therefore, these must also be included in the environmental impact analysis. Water release, airborne emissions and other vectors must be considered. Dispersion modeling should be performed to assess the extent and pattern of water and/or aerial releases. The theft of potent bio-agents and their deliberate release into the environment must also be considered.

A thorough study of the release of zoonotic pathogens posed by transportation risks must be included in the EIS. As should be done for the NBAF facility assessment, worst-case accidental and deliberate scenarios must be included in the transportation analysis.

### **Emergency Response**

Emergency response is one area of infrastructure which does not appear in the NCC-NBAF consortium's printed materials. It is likely that both professional and volunteer medical technicians and firefighters would respond to an emergency in the event of an accident or attack at or near the NBAF. Could they handle accidental or deliberate releases involving genetically modified biological agents? How will first responders be notified? How will they be protected? How and when will they be trained and equipped? How and when will the public be notified? The DHS must assess the level of emergency preparedness at local agencies.

NBAF accident scenarios should include an analysis of possible delays in reporting releases of harmful biological agents. I would refer you to the investigations carried out by Tri-Valley CARES which discovered improper behavior by the Lawrence Livermore National Laboratory's Biology and Biotechnology Research Program. They reported that the defense lab mistakenly conducted experiments with a virulent strain of *Bacillus anthracis* (anthrax) and did not notify the institution's biological safety officer for more than two weeks after the error was discovered. [2]

### **The Mission of the Proposed BSL-4 Laboratory**

Many people at the scoping hearing maintained that our food supply must be protected. There is no argument here. However, there are already two dozen bio-safety level 3

facilities located in the Triangle at colleges, universities and state and federal government agencies. Among these are the NC Dept of Agriculture Rollins Animal Disease Diagnostic Lab. The State Laboratory of Public Health operates several BSL-3 facilities with bio-terror response capability. In the EIS, the DHS must examine the level of expertise at these laboratories at the present time and determine whether the state's hogs, cattle and poultry are sufficiently protected. Moreover, operating BSL-4 facilities exist in Atlanta and Maryland. A thorough analysis of these alternatives to the NBAF must be included in the EIS. Both statewide and regional analyses are necessary to provide a no-action alternative as required under NEPA.

### **Biological Weapons**

The NCC-NBAF Consortium states: “[T]his lab will NOT do bioweapons work.” [3] (emphasis in the original) However, a DHS fact sheet distributed at scoping hearings which stated the rationale for the NBAF reveals that the North Carolina Consortium is overlooking important information about the Department's mandate:

“A gap in the nation's coordinated biodefense strategy has been identified that must be filled by an integrated research, development, test and evaluation infrastructure for combating biological and agricultural threats from natural and manmade sources. The proposed action is to build the NBAF that would fill this gap....” (emphasis added) [4]

The Blue Ridge Environmental Defense League maintains that the NBAF would do bioweapons work. In fact, the Homeland Security Act of 2002 transferred certain functions of the Department of Energy to the newly-created DHS, *including biological and chemical weapons programs*. The statute states in part:

116 STAT. 2162 PUBLIC LAW 107-296—NOV. 25, 2002, 6 USC 183.

#### SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

Further, at a 2004 Department of Defense workshop, Lt. Colonel George W. Korch provided an overview of the new National Biodefense Analysis and Countermeasures Centers. His presentation outlined the “pillars” of the NBACC as constituted under the Department of Homeland Security. NBAAC includes facilities at Plum Island, NY, Fort Detrick, MD and Lawrence Livermore National Laboratories. His Powerpoint presentation contained the following: [5]

DHS National Biodefense Analysis and Countermeasures Centers (NBACC)

- Scientific basis to assist Department of Homeland Security (DHS)

implementation of the statutory [P.L. 107-296, Section 302(2)] mandate to develop national policy and strategic plans.

Lt.Col. Korch outlined task areas for biological threat analysis as “Acquire, Grow, Modify, Store, Stabilize, Package, Disperse.” [5] These are programs which will be seen as the development of biological weapons.

### **NBAF Will Operate in Secret**

The development and operation of the NBAF by the Department of Homeland Security raises troubling questions of secrecy. In 2001 representatives of the United States blocked the development of verification protocols which were in progress under the international Biological Weapons Convention. Subsequent progress appears to have been stalled in order to conceal our biological defense program. Moreover, the Homeland Security Act of 2002 which created the Department of Homeland Security gave the agency special protections from public inquiry and free information flow. Section 214(a)(1), entitled “In General”, provides:

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructures and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement... shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).” (emphasis added) [6]

The Homeland Security Act created an exemption from the Freedom of Information Act for DHS which eliminates the right to obtain existing, unpublished records. In other words, the free access to information which FOIA allows for other federal agencies is prohibited at DHS. As a result, legitimate scientific inquiry and peer-review are stifled and the ability of the public to know what its government is doing is foreclosed. Further, other nations, friend and foe alike, will have cause to follow suit with their own clandestine bio-defense programs. The result may be the dissolution of international cooperation on biological weapons which has endured since 1972.

The DHS must explain in its EIS how it plans to carry out the requirements of the National Environmental Policy Act of 1969 with regard to an interdisciplinary approach, consultation with other federal agencies, and the provision and dissemination of information to the public and other parties as required by the law. Specifically address the following NEPA statute:

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: ...all agencies of the Federal Government shall...utilize a systematic, interdisciplinary

approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking....

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes; (emphasis added)

The track record of the Department of Homeland Security does not engender confidence in its ability to carry out its mission. How will public confidence be assured? The public's right to know was mandated by NEPA in order to provide critical information essential to intelligent decision-making. Free inquiry is essential for the development of prudent public policy. Open scientific debate is a hallmark of a free society. What will DHS do to lift the veil of secrecy?

### **International Treaty Violation**

Compliance with international law and treaty obligations must be addressed in the EIS. At issue are potential violations of the Biological Weapons Convention. The aerosolization of microbes and toxins is how biological weapons are created. So, too, is genetic modification of existing strains. Both of these techniques are proposed for the NBAF. The development of biological weapons is flatly prohibited by the Biological Weapons Convention, a treaty ratified by 144 nations including the United States.

We bring to your attention the statement by, who said: "The rapidity of elaboration of American biodefense programs, their ambition and administrative aggressiveness, and the degree to which they push against the prohibitions of the Biological Weapons Convention, are startling." [7]

The BWC is unequivocal in its prohibition of biological weaponry; it states:

"Each party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain: 1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; 2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or armed conflict." [8]

Compliance with the Biological Weapons Convention is not optional. For over three decades it has formed a bulwark against biological weapons of mass destruction; it was the first international treaty to ban an entire class of weapons. The United States cannot

and must not abrogate this treaty by executive fiat, administrative proceedings or mission creep.

Respectfully submitted,

Louis A. Zeller  
Blue Ridge Environmental Defense League

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References and citations

1. United States Court of Appeals for the Ninth Circuit, *Tri-Valley CARES v. Department of Energy*, October 16, 2006
2. Tri-Valley CAREs Freedom of Information Act request for releases and contamination incidents at the LLNL Biology and Biotechnology Research program, November 3, 2003
3. "Ten Important Facts," North Carolina Consortium-NBAF, September 2007
4. "National Bio and Agro-defense Facility Environmental Impact Statement Proposed Action," a fact sheet distributed by the Department of Homeland Security at the scoping hearing, September 18, 2007
5. "Leading Edge of Biodefense," LTC George Korch, Deputy Director of the National Biodefense Analysis and Countermeasures Center, Science and Technology Directorate, Dept. of Homeland Security, powerpoint presentation downloaded September 22, 2007 from <http://www.cbwtransparency.org/archive/nbacc.pdf>
6. P.L. 107-296, 116 Stat. 2135, § 214(a)(1)(A) (to be codified at 6 U.S.C. § 133(a)(1)(A))
7. *Biodefense crossing the line*, Guest Commentary by Milton Leitenberg, Senior Research Scholar at the Center for International and Security Studies at the University of Maryland; Ambassador James Leonard, Head of the United States Delegation to the Biological Weapons Convention Negotiations, 1972; and Dr. Richard Spertzel, Former Deputy Director, USAMRIID, and Senior Biologist on the Staff of the United Nations Special Commission (UNSCOM), 1994-1998
8. The text of the Convention can be found in United Nations General Assembly Resolution 2826 of 1971, available online at: <http://disarmament2.un.org/wmd/bwc/index.html>