

# Congress of the United States

## House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

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May 9, 2024

Lawrence A. Tabak, D.D.S., Ph.D.  
Principal Deputy Director  
National Institutes of Health  
9000 Rockville Pike  
Bethesda, MD 20892

Dear Principal Deputy Director Tabak:

On May 1, 2024, the Select Subcommittee on the Coronavirus Pandemic (Select Subcommittee) held a hearing with the President of EcoHealth Alliance, Inc. (EcoHealth), Dr. Peter Daszak.<sup>1</sup> Dr. Daszak's testimony, both during this hearing and a November 14, 2023 transcribed interview before the Select Subcommittee, frequently conflicts with the testimony of numerous National Institutes of Health (NIH) and National Institute of Allergy and Infectious Diseases (NIAID) officials, including yourself.<sup>2</sup> Accordingly, the Select Subcommittee has outlined these inconsistencies and unresolved issues below.

Considering these discrepancies, we are pleased you have agreed to voluntarily appear before the Select Subcommittee for a public hearing on **May 16, 2024**. While negotiating your testimony, the Select Subcommittee originally requested both you and NIH Deputy Director for Extramural Research, Dr. Michael Lauer testify. The Department of Health and Human Services assured us you were the correct witness. Based on this assurance, the Select Subcommittee has expectations that you be able to provide answers regarding the testimonial discrepancies and questions outlined below. If you cannot answer the Select Subcommittee's reasonable questions, we will be obligated to evaluate further testimony, including potentially recalling past witnesses. As such, we believe that are providing you with ample time to prepare and present the facts.

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### **I. EcoHealth's Late Year 5 Annual Progress Report**

EcoHealth's Year 5 Report was nearly two years late. Dr. Daszak testified that EcoHealth attempted to submit the report on time but was "locked out" of the NIH system. Dr. Lauer testified that, after conducting a forensic audit, he found no evidence to support that claim and, in fact, stated that EcoHealth could have submitted the report on time.

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<sup>1</sup> *A Hearing with the President of EcoHealth Alliance, Dr. Peter Daszak: Hearing Before Select Subcomm. on the Coronavirus Pandemic, 118th Cong. (May 1, 2024) (statement of Dr. Peter Daszak, President of EcoHealth Alliance).*

<sup>2</sup> *Transcribed Interview of Peter Daszak, President, EcoHealth Alliance, Inc. (Nov. 14, 2023).*

**Dr. Michael Lauer (November 2, 2023)**

Q. Okay. Oh, I meant to -- I had one other question on this late year-five report. You said earlier to somebody's questioning today that you were not convinced that EcoHealth -- EcoHealth sent a product. They had a submission. They were trying to submit it in July 2019, and they experienced a lockout. They were locked out of the eRA Commons system, and they weren't able to do it. Now, you said you were not convinced. So could you explain why you were of that view?

A. Yeah. So our office did an electronic forensic investigation of EcoHealth's encounters with our grant system, and that included both looking at activity logs. Every time that anyone interacts with our system, there is an activity log that describes when they came in, who came in, what actually happened. And it also involved our help desk ticket. So we have a help desk. And so whenever somebody calls in and says, "I am having problems with the system," that encounter that they have with our staff is recorded. We never found any evidence that they had been locked out of our system. We did see that on one day somebody from EcoHealth had attempted to log in through one -- you can log into our system in multiple different ways. And they had attempted to log in in one way and had entered the wrong password, I think, three times. And so that particular channel did get blocked. But then, on the very same day, later they were interacting with our system having logged in through a different route. And then we looked at the help desk tickets, we also looked at emails with NIAID staff, and we never saw any evidence that they claimed that they were unable to submit their progress report because the eRA system had locked them out.<sup>3</sup>

**Dr. Peter Daszak (November 14, 2023)**

Q. So I'm going to show you what's going to be majority exhibit No. 5. This is an excerpt of a transcribed interview with Dr. Lauer that the committees took earlier this month. So we asked Dr. Lauer what, as part of his compliance review of the grant, what steps he did to look into this lockout issue...So we plan to ask for that, the results of that forensic audit. But, again, wanted to get your impression as to how correct that is.

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<sup>3</sup> Transcribed Interview of Dr. Michael Lauer, Dep. Dir. for Extramural Research, Nat'l Insts. of Health, at 103 (Nov. 2, 2023).

A. It's absolutely possible. What Dr. Lauer says there is true and what I'm saying to you is true. It can be true that there is, as he states, there's no evidence of us contacting the help desk and getting a help desk ticket because we maybe didn't do that. We contacted the grants officer. It can also be true that Dr. Lauer doesn't have any evidence that we'd been locked out of the system and that we were locked out of the system. Just because he can't find evidence of that doesn't mean it's not true. We were locked out of the system. Not only were we locked out of the system then, when Dr. Lauer wrote to us demanding that we immediately send the year 5 report and upload it into the system, NIH couldn't get the system to work for 11 days. We have it on record. And that's how we did keep email. So look, Dr. Lauer is a very senior manager at NIH. I'm sure that it's logical to him that someone would go to the help desk. But we had a direct point of contact in charge of grants management who never responded to us by phone. All we can do is try. And if NIH was unable to, even when they demanded the report 2 years later, they were unable to unlock the system for a number of days, it was clearly locked.<sup>4</sup>

**Dr. Peter Daszak (May 1, 2024)**

Q. I appreciate that. I have some more questions about it, but we'll get to it. You've testified here today that, on the year 5 report being delayed, that an employee of EcoHealth made a phone call to NIAID. Who is that employee?

A. I don't know. It was one of our admin staff. It might've been Aleksei Chmura, Dr. Chmura. It might've been other people who were working there at the time. It would've been from one of their phones. We've looked at the records, we can't find it, but we believe there were repeated phone calls to Saddayah Girma, to -- who was the grant management officer at the time. There were repeated emails I've got the list of them here -- and she never responded.<sup>5</sup>

**Dr. Peter Daszak (May 1, 2024)**

Q. In response to Mr. Griffith pointing out that you were still making edits to the year 5 progress report 7 months past its due date, the year 5 progress report is only supposed to contain information from year 5. Is that correct?

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<sup>4</sup> Daszak TI, *supra* note 2, at 140-1.

<sup>5</sup> Daszak Hearing, *supra* note 1.

A. The NIH requested the year 5 progress report 2 years late --

Q. No, no, no. It was due September 30th, and it covered --

A. Yeah.

Q. --the grant period of 2018 to 2019, correct?

A. Yeah. Yeah, yeah.

Q. So the report is not supposed to cover information outside of that grant period?

A. Well, I think NIH is always happy to receive any information they can on research you're doing that has relevance to the goals. There are no strict rules on that.<sup>6</sup>

1. Did NIH conduct a forensic audit to determine whether EcoHealth was truly locked out and unable to submit its Year 5 Report on time?
2. Did the results of that audit suggest EcoHealth was able to submit its Year 5 Report on time?
3. Are the results of NIH's forensic audit documented?
4. Does NIH believe that EcoHealth was capable of submitting its Year 5 Report on time?
5. Does NIH have any record that EcoHealth called an NIH or NIAID employee to alert them of the problems with submitting the Year 5 report?
6. When EcoHealth eventually submitted its Year 5 Report, Dr. Daszak testified it took 11 days to unlock the NIH system, is this true?
7. Is it NIH's policy that annual progress reports only contain data from that budget year?
8. Does NIH allow grantees to update progress reports with information gathered outside the scope of the applicable budget period?

## **II. Discrepancies Between Experiments Reported in Year 4 and 5 of EcoHealth's Grant**

It is contested whether an experiment that resulted in unexpected but excessive growth occurred during Year 4 or Year 5 of EcoHealth's grant. Dr. Daszak claims this experiment

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<sup>6</sup> *Id.*

occurred in Year 4, but NIH claims it occurred in Year 5. This is vital because this experiment resulted in viral growth that was required to be reported immediately but was not.

**Dr. Peter Daszak (November 14, 2023)**

Q. Okay. You just said that the experiment in the year 4 -- first, is the experiment in year 4 and year 5 the same experiment?

A. Yes.<sup>7</sup>

**Dr. Peter Daszak (May 1, 2024)**

Q. There's a dispute whether or not an experiment was conducted in year 4 or year 5. It's the experiment that Dr. Tabak reported to Congress that's been –

A. There's no dispute. It was conducted in year 4.

Q. Do you have the dates?

A. We submitted the results from the experiment back in 2018, I think, so it was just prior to that submission.

Q. You submitted it in the year 4 report?

A. Correct, yes.

Q. NIH disputes whether or not those are the same experiments. Do you have the date that the experiment was conducted?

A. No. And, again, this is another issue of -- this is something that I could ask WIV, and it's highly unlikely we're going to get a response.”<sup>8</sup>

**Dr. Lawrence Tabak (January 5, 2024)**

Q. It says in the fourth paragraph, the first sentence, "The limited experiment described in the final progress report provided by EcoHealth Alliance..." Is it your understanding or recollection that the experiment in year 5 was different from the experiment in year 4?

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<sup>7</sup> Daszak TI, *supra* note 2, at 104.

<sup>8</sup> Daszak Hearing, *supra* note 1.

A. That was our conclusion.

Q. Okay.

A. That was our conclusion. Yes.<sup>9</sup>

1. Is the position of the NIH that the experiment in question occurred in Year 4 or Year 5 of EcoHealth's grant? And why?
2. Is it the position of the NIH that this experiment should have been reported immediately to NIH pursuant to the one log growth terms in EcoHealth's Notice of Award?
3. If it is the position of NIH that the experiment should have been reported immediately, is that lack of reporting a violation of EcoHealth's grant terms and conditions?
4. Has Dr. Daszak submitted any evidence to support his claim that the experiment occurred in Year 4 versus Year 5?
5. What information would validate the dates of the experiment in question?

### **III. The Authority to Request Laboratory Notebooks**

During compliance efforts between 2020 and 2023, NIH requested EcoHealth provide the Wuhan Institute of Virology's (WIV) lab notebooks to confirm the dates of the experiments conducted. Numerous NIH officials testified that EcoHealth was required to provide the lab notebooks. However, EcoHealth disputes those assertions.

#### **Dr. Emily Erbeling (Nov 28, 2023)**

Q. Thank you. Yes. That's what I was asking. When Dr. Lauer -- he's asked for the notebooks a couple times. We've already discussed EcoHealth hasn't produced them. And it is EcoHealth's responsibility to produce them when requested. Is that correct?

A. [Nonverbal response.]

Q. You have to give an audible answer.

A. Yes. Oh, I'm sorry. Yes.<sup>10</sup>

<sup>9</sup> Transcribed Interview of Lawrence A. Tabak, D.D.S., Ph.D., Principal Dep. Dir., Nat'l Insts. of Health, at 81 (Jan. 5, 2024) (hereinafter "Tabak T1").

<sup>10</sup> Transcribed Interview of Dr. Emily Erbeling, Director of Microbiology and Infectious Disease, Nat'l Inst. Of Allergy and Infectious Disease, at 102 (Nov. 28, 2023).

**Dr. Michael Lauer (Nov. 2, 2023)**

Q. And, in your opinion, NIH had the authority to ask for those notebooks and files?

A. Yes.

Q. And, in your opinion, EcoHealth should've had access to those notebooks and files?

A. Yes.<sup>11</sup>

**Dr. Lawrence Tabak (Jan. 5, 2024)**

Q. So, at the time of the EcoHealth enforcement actions, it would have been a requirement, if NIH requested lab notebooks, for EcoHealth to provide them?

A. Yes, it would've been.<sup>12</sup>

**Dr. Peter Daszak (May 1, 2024)**

Q. All right. During its compliance efforts with your grant, NIH requested you provide the underlying lab notebooks from the WIV. You responded that you did not have access to them, but that you would ask the WIV. Did you know that you had to have access to them under your grant terms?

A. Well, we checked on that, and at the time that we requested the lab notebooks, it is not true that we had to have access to lab notebooks in a foreign subrecipient. That rule then came into play from NIH later and –

Q. Dr. Tabak testified that it was part of the standard grant terms and policies at the time of your grant.

A. Well, as I said, we checked –

Q. So you disagree with him?

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<sup>11</sup> Lauer TI, *supra* note 3, at 74.

<sup>12</sup> Tabak TI, *supra* note 9, at 100.

A. We checked the CFRs. We've received dozens of letters from NIH with listing CFR, Codes of Federal Regulations. We check them all. They do not state that. It's a fact.<sup>13</sup>

1. At the time NIH requested the notebooks from EcoHealth, was EcoHealth required, pursuant to its grant terms, to produce them?
2. At the time NIH requested the notebooks from EcoHealth, should EcoHealth have been able to or already have access to them?
3. Did EcoHealth ever produce the requested notebooks?

#### **IV. The Location of Samples**

Dr. Erbelding testified that Dr. Daszak told her he had “access” to samples—samples previously paid for by the U.S. government and a major reason for the reinstatement of EcoHealth’s grant. Further, Dr. Erbelding testified that Dr. Daszak did not inform her that a substantial amount of these samples were actually in the custody and control of the WIV. Dr. Daszak contested Dr. Erbelding’s testimony.

#### **Dr. Emily Erbelding (November 28, 2023)**

Q. If you know, at the time of reinstatement, how many samples did EcoHealth have access to that remained untested?

A. I don't know the number.

Q. Did EcoHealth -- was it EcoHealth that told you that they had samples?

A. They did -- they did give an approximate number. I don't recall what it was.

Q. Did they tell you that the samples were in their possession?

A. I believe I asked, You have access to these samples? Do you have access to these samples? I think that, to my -- to the best of my recollection, that's how I phrased the question. And I got an affirmative answer. That was, I think, the conversation.

Q. You asked, do you have access, and they responded yes?

A. This was Peter Daszak. Yes.

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<sup>13</sup> Daszak Hearing, *supra* note 1.



Q. There wasn't an elaboration on the yes?

A. I did not ask further questions. I took his representation as truthful.<sup>14</sup>

**Dr. Emily Erbelding (November 28, 2023)**

Q. So Dr. Daszak, his understanding of the reinstatement of the work that he was going to do involves a large portion of getting previously collected samples from the WIV, but he can't pay the WIV because they're debarred. And your recollection -- and correct me if I'm wrong, by all means -- is that he never mentioned that the bulk of the samples, the bulk of the data resides at the WIV?

A. He did not mention that the bulk of the samples resides at the WIV. There may be other samples from other parts of Asia. There might be serologic samples that weren't collected by the WIV that aren't the focus of line 18. I mean, I'm just -- I'm just saying what might be true. I don't know.<sup>15</sup>

**Dr. Peter Daszak (November 14, 2023)**

Q. Sure. Who is the custodian for those samples presently?

A. Right now, they are in the Wuhan Institute of Virology. And theoretically, a sample collected in a foreign government belongs to the foreign government so yeah.

Q. But the WIV has been debarred. They can't participate in this grant?

A. Yeah. And they are not participating in this grant.

Q. But they have custody of all the samples?

A. But we have got information, data from the samples that has not yet been analyzed. We have that information here in the U.S.<sup>16</sup>

**Dr. Peter Daszak (May 1, 2024)**

Q. You were asked by Ms. Tokuda about access to samples previously paid for by the U.S. Government. And I want to read the exact

<sup>14</sup> Erbelding TI, *supra* note 10, at 57.

<sup>15</sup> *Id* at 59.

<sup>16</sup> Daszak TI, *supra* note 2, at 263.

testimony from Dr. Erbeling so that you can understand what we're working off of... You testified a couple of minutes ago that you were very forthright with NIH and NIAID that you actually didn't have access to the samples.

A. Correct.

Q. Is Dr. Erbeling lying?

A. Dr. Erbeling is -- it's the same procedures for them. She says she doesn't recall, I believe, I think that. Clearly, Dr. Erbeling either wasn't in the conversation where I clearly stipulated we do not have access to those samples; we do have access to the sequences, or perhaps she has mistaken sequences for samples. But whatever one might tease apart from her memory, what matters is the record, which is the emails sent to NIH proposing the work to be done and the revised specific names, which clearly state no further samples will be brought out of China and that sequences are already in EcoHealth's possession.<sup>17</sup>

1. According to a record of Dr. Daszak's meetings and calls, he met with Dr. Erbeling during the course of the renegotiation and about the renegotiation. Did Dr. Erbeling meet with Dr. Daszak during the course of the renegotiation of EcoHealth's grant?
2. Did Dr. Erbeling ask Dr. Daszak about access to samples? Or did Dr. Erbeling, during her transcribed interview mistake samples and sequences?
3. Did Dr. Daszak inform NIH or NIAID that the samples collected and being discussed during the process of reinstating the grant were in the custody and control of the WIV?
4. Does NIH or NIAID have emails in its custody from Dr. Daszak that state "no further samples will be brought out of China and that the sequences are already in EcoHealth's possession?"

V. **EcoHealth's Current Relationship with the WIV**

Dr. Daszak testified that, despite the WIV being debarred, he still maintains contact with them and, in fact, relies upon them for data to meet the aims of EcoHealth's renegotiated and reinstated grant.

**Dr. Peter Daszak (May 1, 2024)**

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<sup>17</sup> Daszak Hearing, *supra* note 1.

- Q. So you have to count on the goodwill of the Wuhan Institute of Virology in order to meet your grant requirements. How does that not violate the terms of the Wuhan Institute of Virology's debarment?
- A. Well, we don't work with them. They're debarred.
- Q. So you have no further contact with them?
- A. What I said is we don't work with them. We do—
- Q. Do you have further contact with them?
- A. Of course, we have contact. Under the terms of my renegotiated R0 [grant] with NIH, we have to publish data from that work. Of course we have to send copies of drafts of papers, get them to check and make sure that they've included everything, that we've got everything correct. So of course we have contact with them.<sup>18</sup>

1. At the time NIH certified EcoHealth's compliance and NIAID renegotiated the grant, was NIH aware that EcoHealth would still be in communication with the WIV?
2. At the time NIH certified EcoHealth's compliance and NIAID renegotiated the grant, was NIH aware EcoHealth would rely on data from the WIV to meet the aims of the grant?
3. Does NIH consider this ongoing relationship and reliance on the WIV as violating the WIV's debarment?
4. Is the NIH certain that no federal funds have been obligated to the WIV or in furtherance of the WIV's research activities since it was debarred?

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The Select Subcommittee is eager to uncover the true sequence of events and has identified multiple occasions where Dr. Daszak directly contradicts NIH's or NIAID's assertions. To the extent that NIH believes Dr. Daszak has been untruthful before either this Select Subcommittee or to the NIH or has mischaracterized NIH's actions or policy, the Select Subcommittee requests that you come prepared to discuss such specific instances. The Select Subcommittee appreciates your cooperation and preparation for the upcoming hearing.

Thank you for your attention to this very important matter.

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<sup>18</sup> *Id.*

Lawrence A. Tabak, D.D.S., Ph.D.

May 9, 2024

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Sincerely,

A handwritten signature in blue ink, appearing to read "Brad R. Wenstrup", written over a horizontal line.

Brad R. Wenstrup, D.P.M.  
Chairman

cc: The Honorable Raul Ruiz, M.D., Ranking Member  
Select Subcommittee on the Coronavirus Pandemic