

United States Senate

WASHINGTON, DC 20510

January 14, 2010

The Honorable Robert Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20350-1000

Dear Secretary Gates:

I am writing to express my deep concern regarding the Department of Navy's continued unwillingness to fulfill its statutory responsibilities under Title 42 of the United States Code by funding necessary scientific studies of the water contamination at Marine Corps Base Camp Lejeune, North Carolina. Attached please find previous written communications with the Department of the Navy on this matter.

Under Title 42, Department of Navy (DON) is the Primary Responsible Party (PRP) for the contamination at Camp Lejeune, an Environmental Protection Agency (EPA) designated National Priority List (NPL) site. Title 42 clearly states that Agency for Toxic Substances and Disease Registry (ATSDR) is authorized to "...conduct full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release..." at NPL sites. Under Title 42, DON, as PRP for the contamination at Camp Lejeune, "...shall be liable for...the costs of any health assessment or health effects study...". DON is not the arbiter of which ATSDR studies are necessary, yet DON continues to withhold required funding for a critical ATSDR study as a means of influencing the scope of ATSDR's future work. This is akin to a known polluter in the private sector attempting to influence how Federal or State environmental agencies will conduct studies of pollution caused by that corporation.

It has been four months since I met with the Secretary of Navy to discuss this issue. As of last week, he could not provide me with any assurance that DON will fulfill its statutory responsibilities and commit to funding all the necessary ATSDR studies proposed for FY 2010. Given the Navy's continued intransigence in this matter, I intend to use such procedural tools and legislative remedies as are necessary to prompt the Navy to fulfill its obligations under the law and to Navy and Marine veterans and family members affected by the contaminated water at Camp Lejeune.

Sincerely,



Richard Burr
United States Senator

Enclosure (1): Letter from Senator Burr to Secretary of Navy dated December 21, 2009
Enclosure (2): Letter from Secretary of Navy to Senator Burr dated January 4, 2010

Copy to:

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Ray Mabus
Secretary of Navy
Department of the Navy
1000 Navy Pentagon
Washington, DC 20350-1000

Thomas R. Frieden, MD, MPH
Director, Centers for Disease Control and Prevention
Administrator, Agency for Toxic Substances and Disease Registry
1600 Clifton Road
Atlanta, GA 30333

General James T. Conway
Commandant of Marine Corps
Headquarters, Marine Corps
3000 Marine Corps Pentagon
Washington, DC 20350-3000

United States Senate

WASHINGTON, DC 20510

December 21, 2009

The Honorable Ray Mabus
Secretary of Navy
1000 Navy Pentagon
Washington, D.C., 20350-1000

Dear Secretary Mabus:


I am writing to express my dismay concerning the Department of Navy's (DON) continued delay in committing to fully fund the Agency for Toxic Substances and Disease Registry's (ATSDR) FY-2010 Annual Plan of Work (APOW) for Camp Lejeune and the continued questions concerning DON's May 1, 2009, contract with the National Research Council (NRC).

On September 9, 2009, you briefed me on the status of DON funding for ATSDR's FY10 APOW and assured me that two studies, a Mortality Study and a Health Survey, would be fully funded for FY10. The only issue unresolved was DON's use of the NRC in an advisory capacity to review the scope of the Health Survey. It is now late December, and I was shocked to learn that representatives from your staff briefed my staff on December 18, and stated that DON has not made a commitment to fund the Mortality Study and that DON wants additional information from ATSDR explaining the necessity of this study.

As you well know, the Department of the Navy has no statutory role in determining which ATSDR studies DON will fund. It appears DON is attempting to assert such a role.

The continued delay in committing to fund a statutorily required study and the questions concerning the feasibility of the NRC review are troubling. Given the time that has elapsed since our September 9 meeting, I expect a favorable response from you no later than January 4, 2010, with respect to the DON's commitment to fund ATSDR's Mortality Study in FY10. Also, I expect an explanation of the "way ahead" to resolve the questions regarding the DON-NRC contract. If I do not receive favorable responses by January 4, I will take this matter to the Secretary of Defense.

Sincerely,



Richard Burr
United States Senator



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

January 4, 2010

Senator Richard Burr
United States Senate
Washington, DC 20510-3308

Dear Senator Burr:

This responds to your letter of December 21, 2009, wherein you express concern with the length of time involved in the continuing discussions between the Department of the Navy (DON) and the Agency for Toxic Substances and Disease Registry (ATSDR) over funding for the FY-2010 Annual Plan of Work (APOW).

Discussions between DON and ATSDR continue over the APOW. In fact, on the same day you sent your letter, ATSDR forwarded a revised APOW that provided new information on their proposed way ahead, both as a function of scope of work and cost. We are currently reviewing this most recent proposal, and will work with ATSDR to reach agreement as expeditiously as possible. I regret that you are displeased with the length of time involved in the process, but we are dealing with multiple, complicated issues, and we must address—and at times reconcile—conflicting expert opinions prior to committing to the APOW.

At our meeting in September, I advised you and Senator Hagan that DON agreed to fund the first four of six funding categories listed in the August 2009 version of the draft APOW, but had to work with ATSDR to resolve certain issues tied to the final two categories: the mortality study and the health survey. I provided no assurance of full funding for these efforts. Following that meeting, our respective staffs worked together to record the key discussion and action items from the meeting. I regret the confusion, but suggest that the best course of conduct now is to work diligently to resolve the outstanding issues of mutual concern.

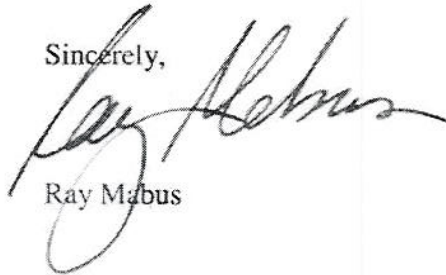
Your letter seeks DON commitment for full funding of the mortality study. I cannot provide that commitment; at least, not currently. While it is true that on December 14, 2009, ATSDR—for the first time—provided correspondence suggesting that a mortality study was “necessary” and therefore should be funded under Title 42 of the United States Code, that position appears squarely at odds with the June 2009 NRC Report that questions the value of such a study. (As you are aware, DON was directed in the 2007 National Defense Authorization Act to fund NRC’s Report; we all must now address the conclusions of this Congressionally directed effort.) Accordingly, we will work with ATSDR in an effort to square their position with that of the NRC Report. I would ask you to recognize that DON efforts on the historic Camp Lejeune water contamination issue have gone well beyond the minimum required under Title 42. To date, DON has spent more than \$15M and thousands of man hours in support of this effort. We intend to continue in this regard; we will support health initiatives and scientific studies that are likely to produce useful information, as well as those that are mandated by law. At issue currently is whether the mortality study falls within either of these two categories.

Finally, you ask for an explanation of DON's "way ahead" regarding use of the NRC in an advisory capacity. I am pleased to do so, and would preface my explanation with the comment that this "way ahead" has not changed since we met in September. DON has contracted with the NRC to conduct a letter report review of the ATSDR health survey proposal. The purpose of this review is to solicit NRC's expert opinion on the best way to conduct the Congressionally-mandated health survey. We will solicit NRC's position as an independent expert entity, and strongly believe that this effort will make for a better health survey: the goal of the congressional mandate.

Please note that Dr. Thomas Sinks, Deputy Director, National Center for Environmental Health, ATSDR, describes a cooperative working relationship between the NRC and ATSDR in his December 22, 2009 letter to Dr. Ralph Cicerone, President, National Academy of Sciences. In this letter Dr. Sinks states: "Our intention is to conduct science of the highest quality. We greatly respect the NRC and routinely cooperate with NRC studies and reviews. The NRC has an important role in advising multiple Federal agencies, including the Department of Navy. ATSDR's cooperation in NRC studies is not in doubt."

I will continue to report to you on progress between DON and ATSDR as we consider ATSDR's recently provided revised APOW. Thank you for your continued interest in this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Mabus", written in a cursive style.

Ray Mabus