

Congress of the United States
Washington, DC 20515

January 15, 2010

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

Dear Secretary Mabus:

We are writing with regard to the funding of health effects studies related to the contaminated drinking water at Camp Lejeune. It is our understanding that since August 25, 2009, the Department of the Navy (DON) and the Agency for Toxic Substances and Disease Registry (ATSDR) have disputed which studies deemed necessary by ATSDR should be funded under the guidelines established by the Memorandum of Understanding (MOU). It is essential that this dispute be resolved expeditiously so that ATSDR may resume its work and the studies ATSDR has deemed necessary – the mortality study and health effects survey -- are fully funded. Sadly, we are still unable to provide sufficient answers about the health effects on our marines and their families who were poisoned by the contaminated water at Camp Lejeune. If we want our marines to continue to be proud of the motto under which they so honorably served, *Semper fidelis*, we must ensure these studies are funded, without delay.

We believe DON is statutorily obligated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and 10 U.S.C. § 2704 to fund the studies ATSDR deems necessary. In this letter we will focus primarily on CERCLA. Section 107(a)(4)(D) of CERCLA provides that, as the owner and operator of Camp Lejeune, DON is obligated as the liable party to provide full funding to ATSDR for the costs of any health assessments or health effects studies that the ATSDR deems necessary under its statutory authorities in Section 104(i) of CERCLA.

Further, Section 120 to CERCLA, 42 U.S.C. 9620 clarifies that each federal department and agency of the United States government, including the executive, legislative, and judicial branches, are subject to the requirements of CERCLA to the same extent as any non-governmental entity, explicitly including liability under Section 107 of CERCLA, as referenced in the statute at 42 U.S.C. 9607.

We believe DON is obligated not only by law to fund the health studies identified in ATSDR's December 14, 2009 letter (enclosed), but also by its responsibility to the Marines and their families who have been exposed to hazardous substances released into the environment, which resulted in contamination of the water supplies at Camp Lejeune. In light of this, it is incumbent upon DON to move forward and fund the remaining studies in dispute. One month has elapsed since the Navy has received

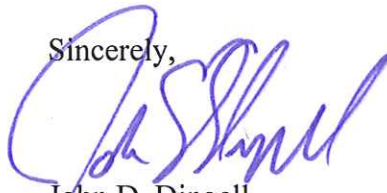
ATSDR's final request for funding under the dispute resolution procedures in the MOU between the DON and ATSDR. We regret that DON appears to continue to use dilatory tactics to further delay these important health studies. We believe that Congress has appropriated sufficient funding for the Navy's Defense Environmental Restoration Account to meet this obligation.

In light of the statutory authorities of CERCLA cited above, please respond to the following questions with respect to DON's disagreement with ATSDR over responsibility for the costs of the studies identified in ATSDR's 2010 Annual Plan of Work at Camp Lejeune:

- 1) Does DON agree that Sections 104(i), 107(a) and 120 of CERCLA obligate DON to pay for health effects studies deemed necessary by the Administrator of ATSDR at sites such as Camp Lejeune, a site listed on the National Priorities List? If not, why not?
- 2) Please cite any reasons that these statutes do not apply to the Navy or Marine Corps in relation to the U.S. Marine Corps Base Camp Lejeune.
- 3) If there are unobligated funds available within the Navy's Defense Environmental Restoration Account, is this amount sufficient to fulfill DON's statutory obligation as a liable party under Section 107(a) of CERCLA to pay the remaining disputed studies that ATSDR has determined necessary?
- 4) If the amount of unobligated funds from prior year enacted appropriations to the Navy's Defense Environmental Restoration Account is insufficient to pay the cost of the remaining disputed studies, will DON reallocate the necessary funds to fulfill its statutory obligation.
- 5) Why has one month elapsed since DON has responded to ATSDR's December 14 letter?

DON's handling of the health of former Marines, their families, and civilian employees at Camp Lejeune will continue to be a matter of ongoing oversight by the Congress. Please provide us with a response no later than January 28, 2010.

Sincerely,



John D. Dingell
Member of Congress



Bart Stupak
Member of Congress



Brad Miller
Member of Congress

cc: Thomas R. Frieden, MD, MPH, Administrator, ATSDR
Secretary Kathleen Sebelius, Department of Health and Human Services

enc.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Agency for Toxic Substances
and Disease Registry
Atlanta, GA 30333

December 14, 2009

Mr. Roger M. Natsuhara
Acting Assistant Secretary of the Navy
Installations and Environment
1000 Navy Pentagon
Washington, DC 20350-1000

Dear Mr. Natsuhara:

This letter is in response to the November 24 letter from B.P. Harrison which sets out the Department of Navy's (DON) response to requests from the Agency for Toxic Substances and Disease Registry (ATSDR) for funding of tasks in the draft FY2010 Annual Plan of Work (APOW) for Marine Corps Base, Camp Lejeune. While we appreciate DON's agreement to fully fund several of the tasks in the APOW, critical gaps in funding remain that need to be addressed. In order to resolve these matters without further delay, this letter represents the final step in dispute resolution [section 9.4 Memorandum of Understanding (MOU) between the Department of the Navy (DON) and Agency for Toxic Substances and Disease Registry (ATSDR)] for full funding of 2010 Annual Plan of Work for the U.S. Marine Base Camp Lejeune.

ATSDR provided the 2010 APOW to DON/USMC on August 25, 2009 and sent a formal dispute resolution notice on October 20, 2009. Since then, Dr. Thomas Sinks, Deputy Director of ATSDR met with General Eugene Payne, Assistant Deputy Commandant of the Installations and Logistics (Facilities), on November 5, 2009 and Mr. Richard Mach, Environmental Director, Environmental Compliance and Restoration Policy, Department of Navy on November 16, 2009. The concerns of both agencies were discussed. DON committed the following resources to the FY2010 APOW on November 24, 2009:

(1) full funding of the water modeling at a cost of \$1,864,180; (2) full funding of the case control study at a cost of \$26,358; (3) full funding of the Community Assistance Panel (CAP), where \$25,000 has already been authorized, for a remaining balance of \$159,426; and (4) full funding of the re-analysis for the 1998 Pregnancy Outcome Study at a cost of \$92,374. The health survey will be funded when a revised cost and scope that addresses 100% of the Congressional requirement is provided. A pilot study on a 10% sample with epidemiologic analysis, which was recommended by ATSDR in the draft FY2010 APOW, is not part of this requirement and we therefore do not support funding of this effort.

ATSDR agrees at this time to defer conducting the 10% pilot study and proceed as described below with the health survey. ATSDR insists, however, that full funding be provided by DON/USMC for the cohort mortality study as requested in the 2010 APOW.

The mortality study is the most time-efficient and scientifically valid method to assess the health consequences of adult exposures to contaminated drinking water at Camp Lejeune. ATSDR has previously established the need for this study. An ATSDR expert panel met February 17-18, 2005, to explore opportunities for conducting additional Camp Lejeune human health studies.¹ There was agreement among the panel members...*that a study of mortality outcomes would be feasible....* ATSDR conducted its own feasibility assessment and confirmed this conclusion.² The National Research Council has also concluded that a mortality study is...*very likely to be feasible.*³ ATSDR will require \$1,530,300 for FY 2010 to begin work on the mortality study.

ATSDR will proceed to conduct a complete health survey, pending approval of the Office of Management and Budget (OMB) (as required under the Paperwork Reduction Act) and the establishment of an ATSDR-approved external scientific review group. ATSDR remains concerned that the utility of the health survey could be compromised by considerable scientific limitations. To assure that all stakeholders are kept informed on the scientific progress of the health survey, ATSDR will create an expert panel. The panel will establish and monitor milestones of measurable scientific parameters to evaluate the utility of the health survey. Panel members will meet in a public setting several times each year. Meeting minutes and conclusions will be made available on the ATSDR website. ATSDR will modify the budget request for the health survey and provide a revised 2010 APOW shortly.

The ATSDR Administrator is vested with the discretion to determine the need and scope of research to be conducted at Superfund sites. CERCLA Section 104(i)(7)(42 U.S.C. 9604(i)(7)) states...*Whenever in the judgment of the Administrator of ATSDR it is appropriate..., the Administrator of ATSDR shall conduct such full scale epidemiologic or other studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release.* While the costs of such activities may be recovered from the Potentially Responsible Party (PRP), ATSDR is authorized to conduct its Superfund related activities independently from the PRP. ATSDR's authorities related to Federal sites are the same as they are for private sites. In addition, pursuant to 10 U.S.C. 2704:

The Secretary of Defense shall transfer to the Secretary of Health and Human Services...such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary...for other health related activities under section 104(i) of CERCLA (42 U.S.C. 9604

¹ Report of the Camp Lejeune Scientific Advisory Panel, Convened February 17-18, 2005.
http://www.atsdr.cdc.gov/sites/lejeune/panel_report.html#exec_summary.

² Bove FJ, Ruckart PZ. An Assessment of the Feasibility of Conducting Future Epidemiologic Studies at USMC Base Camp Lejeune; Agency for Toxic Substances and Disease Registry. June 2008
http://www.atsdr.cdc.gov/sites/lejeune/docs/feasibility_assesment_Lejeune.pdf.

³ Contaminated Water Supplies at Camp Lejeune: Assessing Potential Health Effects Committee on Contaminated Drinking Water at Camp Lejeune; National Research Council; page 193 (2009).

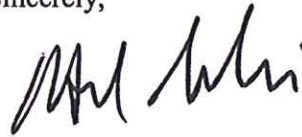
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(i)). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

As described above, it is ultimately ATSDR's responsibility to determine what public health studies and responses are warranted at Federal sites. It is the PRP's responsibility to provide necessary funding or cost recovery. Just as ATSDR studies cannot be directed by a private sector industry PRP, they cannot be directed by a Federal Agency PRP. ATSDR considers the PRP a stakeholder and provides all stakeholders the opportunity for input into our work.

ATSDR will continue to work on the projects funded by DON. ATSDR work on the Health Study Survey and the Mortality Study cannot proceed until a funding commitment has been formalized by DON/USMC.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Frumkin".

Howard Frumkin, M.D., Dr.P.H.
Director
National Center for Environmental Health/
Agency for Toxic Substances and Disease Registry

cc:
Richard Mach, DON
MajGen E.G. Payne, USMC