

**MEMORANDUM OF UNDERSTANDING
BETWEEN
AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY
PUBLIC HEALTH SERVICE
AND
THE DEPARTMENT OF NAVY (DON)
ON
PUBLIC HEALTH ACTIVITIES
AT
MARINE CORP BASE CAMP LEJEUNE**

1. INTRODUCTION

1.1. This Memorandum of Understanding (MOU) serves to set forth the authorities, responsibilities, and procedures between the U.S. Department of Navy (DON) and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS) for conducting public health activities at Marine Corp Base Camp Lejeune by ATSDR as required under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund) and the Superfund Amendments & Reauthorization Act of 1986 (SARA). The public health activities performed under this MOU focus on the evaluation of, and response to, human exposures to hazardous substances and adverse health effects that could result from past Marine Corp Base Camp Lejeune operations and activities.

1.2. DON and ATSDR will make every effort to ensure that activities conducted under this MOU are coordinated and non-duplicative.

2. PURPOSE.

This MOU--

2.1. Delineates the respective responsibilities of ATSDR and DON, under Section 104(i) of the CERCLA, as amended (42 U.S.C. §9604), and Section 2704 of Title 10, United States Code (10 U.S.C. §2704).

2.2. Describes procedures for coordination between ATSDR and DON.

2.3. Promotes optimum use of Federal resources in carrying out the public health provisions of CERCLA §104 (i), including specific ATSDR requirements related to the support of the Defense Environmental Restoration Program (10 U.S.C. §2701 et seq.).

3. AUTHORITY

This agreement is made under the authority of 42 U.S.C. §9604(i) (ATSDR's CERCLA authorities); 10 U.S.C. §2704 (which provides for the transfer of funding from DON to DHHS/ATSDR for the conduct of public health activities under CERCLA at DON sites); CERCLA Sections 120 and 104(i)(17) (which concern the application of CERCLA to federal facilities); CERCLA Section 107 (which concerns liability); and Executive Order 12580 (Superfund Implementation).

4. SCOPE

This MOU formalizes and outlines the relationship between the signatories with respect to work performed by ATSDR surrounding investigation of drinking water contamination at Marine Corps Base Camp Lejeune. Specifically, this MOU sets out the parties relationship with respect to obtaining and obligating funding, process, and the planning and conduct of work carried out by ATSDR. DON agrees that it will assist ATSDR in data collection, investigation, public health study, and other ATSDR mission related activities as is set forth in this MOU. The parties agree the scope of this MOU may not include all necessary guidance or authority for conduct or processing of work contemplated by the parties. Accordingly, this MOU may be modified as appropriate and agreed by the parties. ATSDR agrees to be guided in its planning and actions by the content of this MOU and will seek input from DON for its course of action. The parties to the MOU contemplate that the collection of data, investigatory studies, and public health reports covering the drinking water contamination at Camp Lejeune will be conducted over the next sixty months and that this MOU will cover all activities through completion. Should further time to complete contemplated work projects and programs be necessary, the parties will update and review this MOU to ensure accuracy and appropriateness of its content and guidance.

5. ATSDR RESPONSIBILITIES

The ATSDR will --

5.1 Submit an APOW to DON each year. The APOW will include activities proposed by ATSDR in support of Marine Corp Base Camp Lejeune.

5.2 In consultation and cooperation with DON ensure that any needed surveillance activities, registries, health studies, and related research are conducted as defined in the APOW. These activities will be carried out in conformance with ATSDR procedures and policies to further define the extent and impact of human exposures to hazardous materials in the environment on, near or emanating from Marine Corp Base Camp Lejeune.

5.3 Conduct health studies to evaluate adverse health affects resulting from exposure to contaminants. ATSDR, prior to initiating any health surveillance program, will consult with DON as to proposed programs.

5.4. Ensure the timely preparation of public health studies for Marine Corp Base Camp Lejeune subject to public health priorities and availability of resources.

5.5. Promptly notify DON of any plans to conduct a health study on or at a site or area contingent to or located near the Marine Corp Camp Lejeune facility that may impact that facility and/or military or civilian populations associated with that facility.

5.6. Provide the health study proposal/protocols, draft reports, and interim reports pertaining to the health study to DON in a timely manner for review and comment.

5.7. Keep DON apprised of the status and progress of data collection projects and health studies including major milestones.

5.8. Respond to DON comments on the proposals, draft reports and interim reports.

5.9. Make final decisions on the content of ATSDR reports. Notify DON of the publication and/or release of any final health study or data collection report. Provide final reports to DON upon completion or just prior to official release.

5.10. Consult and coordinate with DON to develop strategies to disseminate health study results and develop public affairs plans to inform the public of study results.

5.11. Advise DON liaison when ATSDR is having difficulty obtaining required data/materials regarding Marine Corp Base Camp Lejeune (e.g., site investigations, feasibility studies, remedial investigations) in a timely manner.

6. DON RESPONSIBILITIES

DON will –

6.1 Coordinate review and provide response to ATSDR's proposed APOW.

6.2. Execute available DON funding for work performed by ATSDR as specifically defined in the final APOW.

6.3. Provide ATSDR with copies of relevant documents and data (human health, environmental, and operational data) concerning toxic substances and other related information.

6.4. Arrange for visits and access by appropriate ATSDR personnel to Marine Corp Base Camp Lejeune in a mutually agreeable time frame that supports the approved APOW.

6.5. Communicate directly between DON installations and facilities and ATSDR for the purposes of data collection and dissemination. Specifically, this is to ensure that ATSDR can obtain access to and receive appropriate site-related materials (e.g., site investigations, feasibility studies, remedial investigations) in a timely manner.

6.6. Provide ATSDR with an inventory of health- and environmental-related data, both classified and unclassified, related to ATSDR activity being conducted. If data or information required by ATSDR to fulfill a statutory or APOW requirement is classified, appropriately cleared representatives of ATSDR will be given access to review that data or information. DON will make reasonable efforts to declassify data and information ATSDR determines necessary for carrying out its activities.

6.7. Respond timely to ATSDR requests for document and record review.

6.8. Coordinate with ATSDR to approve and expedite the release of data and information to ATSDR generated under this MOU.

6.9. Make final decisions on the content of DON reports. Notify ATSDR of the publication and/or release of any final report. Provide final reports to ATSDR upon completion or just prior to official release.

7. DATA MANAGEMENT

7.1. ATSDR will be responsible for the management and protection of all data collected by ATSDR employees, its contractors, grantees, and cooperative agreement holders, including data obtained from DON. ATSDR shall ensure that any reviews of record systems containing personally identified data, undertaken as a basis for study project protocol development, are reasonably limited in scope and duration and that information collected is directed to the activities described in such project protocol plan(s).

7.2. Information provided to ATSDR under this agreement will be maintained and released in accordance with the Privacy Act (5 U.S.C. 552(a) as amended), the Freedom of Information Act (5 U.S.C. 552) and applicable regulations.

7.3. With respect to information disclosure, ATSDR has an existing routine use within SORN 09-19-001, Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances," maintained in accordance with the Privacy Act, 5 U.S.C. §552(a) and the Department of Health and Human Services (DHHS) implementing regulation, 45 CFR 5, permitting the agency to give DON access to contact information (name, address, etc.) of participants in its investigations so that DON can send these individuals a notification letter asking them to register with the DON, and additional mailings that provide information on health activities conducted by ATSDR under this MOU.

7.4. To the extent consistent with the Privacy Act and DON regulations, DON and its contractors, DON will allow ATSDR and its agents with appropriate security clearances, access to Marine Corp Base Camp Lejeune for the purpose of independently reviewing or collecting information or samples that ATSDR determines are necessary for conducting work under this MOU. DON and ATSDR will work together to develop contract clauses to be added to DON contracts to ensure the DON contractors collect and maintain information needed by ATSDR to perform the public health activities under this MOU and ATSDR and its agents have the necessary access to that information.

7.5 The timely public release of scientifically and technically accurate information is essential to the success of this project and this MOU. ATSDR and DON agree to establish procedures to ensure that information intended for release has been shared between both parties. ATSDR and DON agree to provide comments on draft materials when appropriate and to respond to such comments. Neither party to this MOU has the authority over the other party to approve the content of final information materials.

8. SECURITY CLEARANCE

The DON will inform ATSDR of the security clearance requirements for work performed under this agreement and will provide all reasonable assistance to ATSDR to ensure that ATSDR staff is able to receive appropriate security clearances in a timely manner. Upon notification by DON of the necessary security clearances required by ATSDR personnel working under this agreement, ATSDR will take all reasonable actions to ensure that its personnel obtain the necessary clearances in a timely fashion.

9. ADMINISTRATION OF THE MOU

9.1. Annual Plans of Work.

9.1.1. Marine Corps Base Camp Lejeune APOWs will contain project descriptions and schedules for activities proposed by ATSDR for accomplishment in a specified fiscal year. An APOW may be amended to cover other than a fiscal year if mutually agreed upon by DON and ATSDR.

9.1.2. Work performed under by this MOU will not commence without a signed, approved APOW.

9.1.3. In May of each year, ATSDR will submit an APOW to the DON describing the scope of work proposed by ATSDR for Marine Corp Base Camp Lejeune for the following fiscal year. The APOW will specify projects to be completed, plans for action, milestones, performance goals, and the amount of funding necessary to accomplish proposed projects. For projects requiring extended preparation or greater than one fiscal year for completion, ATSDR will provide a funding forecast for future fiscal year requirements.

9.1.4. Within 45 days of receipt of the draft, DON will review the APOW and negotiate the scope of work that will be undertaken by ATSDR for Marine Corp Base Camp Lejeune. The APOW will be finalized when approved and signed by DON and ATSDR.

9.1.5. The final APOW may be amended during the operational fiscal year if the parties jointly agree to such amendments. Joint agreement to the amendment will be evidenced by dated signatures of both DON and ATSDR.

9.2. Transfer of Resources.

9.2.1. Appropriations. DON shall seek sufficient funding through the budgetary process to carry out DON's obligations for work as delineated by the APOWs developed pursuant to this MOU.

9.2.2. Limitations. The parties to this MOU expect that the work agreed upon in the MOU and the APOWs will be funded. Any funding for ATSDR activities pursuant to 10 U.S.C. §2704 is limited to those projects delineated in APOWs which fulfill ATSDR's scope of responsibilities under 42 U.S.C. §9604(i). Any ATSDR activities undertaken for which DON funding, in whole or in part, is contemplated must be coordinated with and approved by DON in advance. During any period where funding is unavailable or insufficient to meet obligations, DON will continue to pursue funding until funding becomes available. Reimbursement for work performed under this agreement, during periods when Congress has not approved a budget, will continue under continuing resolution authority only if such authority has been provided by Congress. Nothing in this MOU shall be interpreted to require obligation by either party, nor require payment by DON pursuant to this MOU, in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

9.2.3. Funding.

9.2.3.1. Under this MOU, funding will be issued quarterly to ATSDR for work as specified in the APOW, with 4th quarter funding being provided at the beginning of the quarter. Funding will be adjusted as required to correct for reprioritized work in an amended APOW. APOW funding levels for the fiscal year will be adjusted when funds are carried over from the previous fiscal year.

9.2.3.2. DON may transfer other resources, in lieu of funding ATSDR services, to assist ATSDR in performing activities covered by this Agreement, as may be mutually agreed upon by both Parties. DON funding and use of resources for ATSDR activities is limited to activities which fulfill ATSDR's scope of responsibilities under 42 U.S.C. §9604(i), and pursuant to 10 U.S.C. §2704. Any other ATSDR activity at or for Marine Corps Base Camp Lejeune which is not delineated in an APOW for which DON funding, in whole or in part, is contemplated must be coordinated with DON in advance of any work being initiated.

9.2.4. Notification and Reporting Requirements. ATSDR will provide DON an accounting of funds and an estimate of the level of effort expended on each project quarterly. ATSDR will issue quarterly reports of activity-specific intramural (in-house) and extramural (outside contracts) obligations. ATSDR will provide DON with the actual costs recorded year-to-date as of August 15th as well as the projections for the remaining costs to complete the fiscal year. DON acknowledges that this status of funds report would be an estimate of the total fiscal year's costs. If the combination of actual recorded costs plus remaining projections is less than the DON issued ceiling amount, and if the funds have been transferred in advance, any unused funds will be returned to DON no later than August 21 of each fiscal year. DON acknowledges that the budget /project period date of September 30th of each fiscal year provides ATSDR with the legal authority to obligate funds up to and including September 30th. DON understands that there will be a final accounting after the end of each fiscal year.

9.2.5. Activity Reports. Within forty-five (45) days after the end of each quarter of the fiscal year, ATSDR shall submit to DON quarterly summaries of the activities completed by ATSDR. The 4th quarter report shall, in addition to the quarterly activities summary, provide a summary of the fiscal year activities with a comparison to APOW programmed activities.

9.2.6. Contractual Obligations. If ATSDR enters into a contract for which DON provides funding, in support of this MOU, nothing in this MOU shall be construed to create a contractual obligation or relationship between DON and the contractor. Any contract entered into by ATSDR for which DON provides funding shall be subject to audit by DON.

9.3. Duration, Modification or Termination.

9.3.1. Duration. This MOU shall become effective on the date approved by both signatories. It shall remain in effect through Fiscal Year 2013 or when all ATSDR work has been completed and may be extended by agreement of both parties.

9.3.2. Modification. This MOU may be modified if there is joint agreement as evidenced by the signatures of responsible officials representing both parties. Any amendments are effective as of the date of the final signature.

9.3.3. Termination. This MOU may be terminated upon notification by either ATSDR or DON to the other party. A minimum of ninety (90) days advance written notice of termination is required.

9.4. Dispute Resolution.

The Parties to this Agreement shall make reasonable efforts to informally resolve disputes over the scope of services performed under this Agreement, technical sufficiency of reports produced, and any other issues that lead to or generate a dispute. The dispute resolution process will initially include discussions between DON and ATSDR staff directly involved in the conduct of activities and their immediate supervisors. If resolution is not reached, the dispute may be elevated by either party to DON - NAVFAC HQ Director of Environmental Cleanup Division and ATSDR - Management Officer. If the parties are unable to reach resolution, the dispute may be elevated to the DON - Office of the Deputy Assistant Secretary of the Navy, Director of Environmental Compliance and Restoration Policy and ATSDR - Deputy Director. If a final resolution has still not been reached, the dispute may be referred in writing to DON - Deputy Assistant Secretary of the Navy, Environment and ATSDR - Director.

10.6. Litigation.

The DON and ATSDR agree to coordinate any litigation-sensitive information and actions through their respective Offices of General Counsel.

11. Points of Contact for this MOU.

11.1. ATSDR designates the following position as the point of contact for this MOU:

Title: Team Lead, Performance Integration Team (PIT)
Office of Financial and Administrative Services (OFAS)
Agency for Toxic Substances and Disease Registry (ATSDR)
Address: 4770 Buford Highway, N.E., Mail Stop F-61, Atlanta, GA 30341
Telephone: (770) 488-3970; Facsimile (770) 488-7133

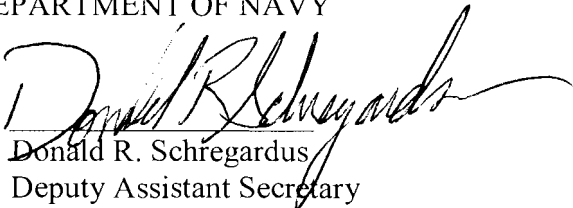
11.2 DON designates the following individual as the point of contact for this MOU:

Title: ATSDR Program Manager
Environmental Cleanup Division
Naval Facilities Engineering Command Headquarters (NAVFAC HQ)
1322 Patterson Avenue, S.E., Suite 1000
Washington Navy Yard, DC 20374-5065
Telephone: (202) 685-0096; Facsimile (202) 685-1670

12. RESPONSIBLE OFFICIALS

DEPARTMENT OF NAVY

By:



Donald R. Schregardus
Deputy Assistant Secretary
of the Navy (Environment)

Date:

2/2/09

AGENCY FOR TOXIC SUBSTANCES
AND DISEASE REGISTRY

By:


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

Date:

1/26/09