

Testimony of:
J. M. Ensminger

████████████████████
Elizabethtown, N. C. 28337
Email: ██
Phone: ████████████████████

Good morning, I would like to thank the chairman and the ranking member for offering me this opportunity to appear here today. I am here to testify on why access to information through FOIA matters to me and others from Camp Lejeune and about the extreme secrecy we have encountered in trying to expose the truth.

My name is Jerry Ensminger and I served my country faithfully for 24 years in the United States Marine Corps. My daughter Janey, the only one of my four children to be conceived, carried, or born while living aboard Camp Lejeune was diagnosed with leukemia in 1983 at the age of six. Janey went through hell and all of us who loved her went through hell with her. I watched my daughter die a little bit at a time for nearly 2 ½ years before she finally lost her fight. The leukemia won. Janey died on 24 September 1985.

Shortly after Janey's diagnosis, I began to wonder why. Why was she stricken with this disease? I researched mine and her mother's family histories and I could find no other child that had been diagnosed with leukemia or any type of cancer. It wasn't until August of 1997, three years after I had retired from the Marine Corps that I heard of a report indicating that the drinking water at Camp Lejeune had been contaminated during the time we lived there with chemicals suspected of causing childhood cancers and birth defects. That was the beginning of my journey on a search for answers and the truth. Little did I realize how difficult it would be getting the truth out of an organization which supposedly prides itself on honor and integrity!

None of what I'm about to say is speculation. It is all facts which are borne out by the Department of the Navy (DON) and United States Marine Corps (USMC) own documents. Throughout the history of this situation and to this very day, representatives of the DON/USMC have knowingly provided investigating/studying agencies with incorrect data, they have omitted data, they have obfuscated facts, and told many half-truths and total lies. They had DON/USMC contractors create a password protected electronic portal where they stashed all of the information/data pertaining to the massive gasoline pollution in the ground near drinking water supply wells. The Agency for Toxic Substances and Disease Registry (ATSDR) began their work at Camp Lejeune in 1991. They inadvertently uncovered the existence of this password protected electronic portal in 2009.

The DON/USMC's latest attempt to block the truth and foil justice is being done by defining key information being utilized by the ATSDR in their study reports concerning the base's contaminated tap water as "critical infrastructure information" or CII. They also slapped a label of "FOR OFFICIAL USE ONLY" (FOUO) on all documents relating to the contamination. Most of these documents and information they are labeling CII have been in the public domain for more than a decade and some for nearly 50 years. Mr. Chairman, the ATSDR estimates that as many as 1 million people were exposed to horrendous levels of carcinogenic chemicals through their drinking water at Camp Lejeune. These people need the uncensored truth concerning their exposures so they can be more vigilant about their and their family's health.

The United States Marine Corps, in their public statements, claim that they are working with the ATSDR and supporting ATSDR's efforts to answer the questions being asked by the exposed population. The only problem with that statement is that behind the scenes activities by DON/USMC aimed at subverting and undermining ATSDR's studies belie their words! The most recent attempt by the DON/USMC to suppress the public's knowledge

regarding ATSDR's Camp Lejeune studies came on 5 January of this year in the form of a letter (Encl.) from the USMC to the ATSDR. Without any public interest balancing test having been executed, key information was redacted from a critical report which experts are now saying will greatly diminish its scientific value/credibility (Encl.). This was labeled CII by the DON/USMC, but the legal justifications they cited for requesting these redactions were dubious at best. They notably did not mention the new law now governing what ultimately can be withheld from the public under the Freedom of Information Act by DoD to protect CII which was signed into law last December in the National Defense Authorization Act (NDAA) for Fiscal Year 2012.

It has also been reported that the ATSDR is currently in the process of "scrubbing" their Camp Lejeune website of key data/information published in previously released reports. This is all being done without any consideration of the public's need, interest, or right to know. For many of the exposed Camp Lejeune population, this information could literally mean life or death.

Mr. Chairman, the last thing we need is more secrecy disguised as a concern for the security of critical infrastructure. Any exemption must be very narrowly defined as it is in the new CII FOIA exemption for DOD. There must be an enforced public interest balancing test to ensure that any security interests outweigh other public interests—like health and safety, and there must be adequate reporting and oversight on how the exemption is used.

I want to thank Chairman Leahy and Representative Maloney for narrowing the blanket exemption to FOIA for critical infrastructure information that DOD was seeking in the National Defense Authorization Act for Fiscal Year 2012. Now all we need is oversight to ensure the law is implemented and followed! The hearing to day is a good start! Thank you.

Enclosures (7)



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:

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JAN 5 2012

Dr. Thomas Sinks
Deputy Director
National Center for Environmental Health/
Agency for Toxic Substances and Disease Registry.
4770 Buford Highway, NE
Atlanta, GA 30341

Dear Dr. Sinks:

Over the years force protection vulnerabilities have been unintentionally created in some Camp Lejeune products, to include the upcoming Chapter B report. The purpose of this letter is to request your assistance to mitigate security risks involved in this situation.

In the years since your agency began working on Camp Lejeune drinking water research initiatives, the security environment has significantly changed and there is now a greater need to provide robust and effective force protection for Marines, Sailors, civilian employees and their families who live or work aboard our bases and installations. Force Protection includes not only physical protection measures (e.g., gates and fences), but also measures to protect the security of sensitive asset and infrastructure information (e.g., water systems information).

Broad force protection efforts to identify vulnerabilities are ongoing across the Marine Corps and the other services. The attached page includes a synopsis of some of the governing regulations.

Recognition that these force protection concerns intersected with information contained in your Camp Lejeune reports first arose during a July 2010 Data Mining Technical Workgroup meeting held at Camp Lejeune. In August 2011, the new commander at Camp Lejeune requested a security review of the type of information that was included in previous water modeling reports. This security review concluded that the release of some of the specific information pertaining to active drinking water systems aboard Camp Lejeune potentially places those who live or work aboard the base at risk.

Our respective staffs discussed these issues and the conclusions from the security review. Your staff rightly requested references to assist their understanding and to provide concise guidance about release of sensitive water system information into the public domain.

I know that some sensitive information has already been released into the public domain in such places as some Marine Corps and other government agency websites. Changing security threats and evolving

Encl. (1)

policy, however, compel us to continuously evaluate information available in the public domain. To that end, I request that we work together to review our public domain materials and take appropriate steps to protect critical infrastructure information.

More specifically, after consulting with our security experts, I have provided the following guidance to my staff. I encourage you to provide this information to your staff, too:

- 1) Review new information carefully to avoid releasing location information for active potable water wells, raw or treated potable water lines, water treatment plants or water storage tanks which may not be released to the public in coordinate, map, or other form.
- 2) Review information on active potable water wells, raw or treated potable water lines, water treatment plants or water storage tanks that have been released in the past and, to the extent possible, remove that information from existing web sites.
- 3) Release without restriction, where and when otherwise appropriate, the location information for inactive or demolished potable water wells or non-potable monitoring wells in coordinate, map, or other form.

The Marine Corps understands the need to share information with the scientific community. Prudence requires, however, that information sharing be within the rubric of responsible force protection. I greatly appreciate your cooperation and look forward to working with you in this on-going effort to protect our forces and families.

Sincerely,



J. A. KESSLER
Major General
Assistant Deputy Commandant
Installations and Logistics
(Facilities)

Attachment
References to Protection of
Critical Assets

References to Protection of Critical Assets

DoDI 2000.16: Department of Defense (DoD) Instruction 2000.16 (DoD Antiterrorism Standards) requires DoD components to identify critical assets, and subsequently develop and implement risk mitigation measures to reduce the vulnerabilities of DoD critical assets (e.g., water distribution infrastructure). Since July 2010, the Marine Corps has been conducting Mission Assurance Assessments on its bases and installations in order to identify and formally catalog all of our critical assets and infrastructure. Our consolidated Mission Assurance/All Hazards Risk Assessment Program integrates all aspects of Mission Assurance to include the identification of assets and infrastructure critical to mission execution. After the completion of these assessments, the Marine Corps will publish a policy document that addresses specific actions that will be taken to reduce risk and ensure the protection of our personnel and infrastructure.

U.S. Code Title 18, PART I, CHAPTER 37, Sec. 795 (a): "Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military post, camp, or station, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary." Further, Exemption 9 of the Freedom of Information Act (FOIA) broadly exempts disclosure of information pertaining to "geological and geophysical information and data, including maps, concerning wells."

SECNAV M-5510.36 requires that "a security and policy review shall be performed on all official DoD information intended for public release including information intended for placement on publicly accessible websites or computer servers."

SECNAV M-5510.36, Department of the Navy Information Security Program Chapter 8: requires commanders to safeguard information pertaining to critical assets and infrastructure.

On 22 April 2011, the Commandant of the Marine Corps published guidance to all commanding Generals, all Commanding Officers, and All Officers in Charge on Information Protection. In that "White Letter" the Commandant directed a range of actions to improve operational security and protection of sensitive information and IT systems.

Congress of the United States
Washington, DC 20515

January 27, 2012

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

Dear Dr. Frieden,

We have been following with great interest the progress of studies being conducted by the Agency for Toxic Substances and Disease Registry (ATSDR) on the effects of water contamination at Marine Corps Base Camp Lejeune, North Carolina. Recently, we were made aware of a letter from the United States Marine Corps (USMC) to ATSDR regarding concerns about the content of ATSDR's Chapter "B" report and "force protection vulnerabilities" for Camp Lejeune's infrastructure the USMC claimed might be at risk if information in the report was not redacted. The USMC letter raises several serious questions and concerns that we believe warrant your timely attention.

The men and women who served at Camp Lejeune are seeking answers to questions about how they were affected by contaminated drinking water. An open and transparent process is essential to this scientific endeavor and it is particularly important for the ongoing and future studies on Camp Lejeune's water contamination. Without an open and transparent process, questions about the validity of the ATSDR studies could be raised in the future. The USMC's most recent concerns regarding these studies - conveyed in writing only days before the Chapter "B" report was to be released - have raised serious questions about the legal basis for their claims of force protection vulnerabilities. As you know, the Department of Navy's history of withholding statutorily required funding for ATSDR's studies and their past lack of cooperation and transparency in providing all necessary data to ATSDR have not been viewed favorably by Congress. This most recent request from the USMC to ATSDR asking ATSDR to redact portions of a statutorily required report has only heightened our concerns.

We are aware that ATSDR released Chapter "B" of the Hadnot Point-Holcomb Boulevard Reports on January 19, 2012 and did so after agreeing with the Marine Corps that redacting the current locations of Camp Lejeune's active installation water system infrastructure was in the public's interest due to national security concerns. We were told by ATSDR that your agency determined the redactions of this information will have no effect on the conclusions contained in the report or on a lay reader's understanding of the report. However, we remain concerned that these redactions may have established a legal precedent for withholding information from scientific studies for reasons of national security without adequate legal justification that the information pertains to "critical infrastructure" or "sensitive information" that is excluded by current law.

Encl (2)

We specifically question whether the USMC's request to redact this information and ATSDR's acquiescence are legally sound, as Congress has not prohibited the release of this information in the past, the information has not been classified as falling under a FOIA exemption, and the information has been publically available for several years. For these reasons, we would like a response from your agency to the following questions:


1. When did General Counsel from ATSDR or the Centers for Disease Control (CDC) receive the January 5, 2012 letter from the USMC and when was the USMC notified that ATSDR had found the legal basis for the USMC's request to be legally valid? On what grounds of legal determination and justification was the request found to be valid? Did ATSDR staff provide any assurances to USMC that the USMC's concerns stated in the letter would be agreed to, prior to ATSDR's receipt of the letter?
2. Did ATSDR or CDC counsel confer with their counterparts in the USMC, Department of Navy, or Department of Defense before validating the letter's legal justifications under Department of Defense internal instructions and FOIA Exemption 9 and, if so, was there any discussion of the ramifications and implications of redacting information not previously found to be "critical infrastructure" or "sensitive information" under the law?
3. Are there codified procedures, besides interagency Memorandums of Understanding, that have been used by ATSDR and/or CDC for past ATSDR studies containing unclassified, but potentially sensitive information, to determine if that information should or should not be withheld from the public? If so, please provide a copy of those procedures and advise us if they were applied and followed in this case? If they were not applied and followed, would those procedures apply in this case and why or why not?
4. What determination has been made by ATSDR or CDC that withholding the information redacted from Chapter "B" will not render the report invalid by peer reviewers and on what was that determination based?
5. In addition to peer review, did your agency also consider potential longer term ramifications from this most recent decision to redact information, to the extent it may encourage future requests from Department of Defense to redact information in the public's interest by invoking a national security concerns or adversely affect future FOIA requests from the public?

We appreciate your attention to this important matter and look forward to your response. Given the significance of the issues we have raised, we request an official response be provided to our offices no later than February 17, 2012.


Sincerely,




Senator Richard Burr




Representative Brad Miller




Representative John Dingell



Senator Bill Nelson



Senator Marco Rubio



Senator Kay Hagan

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

February 15, 2012

The Honorable Brad Miller
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Miller:

Thank you for your letter regarding the Agency for Toxic Substances and Disease Registry's (ATSDR) investigations at United States Marine Corps Base Camp Lejeune (Camp Lejeune). Your ongoing support of our Camp Lejeune investigations has allowed us to move forward in a scientifically comprehensive and valid manner. I have addressed your concerns below, and enclosed answers to your specific questions.

Please be assured that we are fully committed to maintaining an open and transparent process in our work at Camp Lejeune. ATSDR has developed feasibility assessments, study protocols, and study reports for its investigations and water modeling of Camp Lejeune volatile organic compound contamination in drinking water. ATSDR has subjected these plans and reports to review by experts outside the agency and the affected public using expert panels, peer review, and a Community Assistance Panel (CAP). The CAP sessions are open to the public and are live streamed on the internet. The ATSDR website hosts detailed information, meeting notes, and Camp Lejeune reports. We have not altered our efforts to ensure transparency and openness, and will not do so. If the United States Marine Corps (USMC) attempts to compromise our work or its transparency, we will invoke the dispute clause included in our memorandum of understanding with the Department of Navy (DON).

As you mentioned, on January 5, 2012, ATSDR received a letter from the USMC/DON raising installation security concerns at Camp Lejeune if certain information was published. The letter asked that we "*Review new information carefully to avoid releasing location information for active potable water wells, raw or treated potable water lines, water treatment plants with water storage tanks which may not be released to the public in coordinate, map, or other form.*" On January 19, 2012, ATSDR released a report titled *Chapter B: Geohydrologic Framework of the Brewster Boulevard and Castle Hayne Aquifer Systems and the Terawa Terrace Aquifer*. In keeping with the USMC request, ATSDR redacted longitude and latitude coordinates of active drinking water infrastructure from the report.

The security of military personnel and installations is a serious matter. ATSDR does not have the expertise to evaluate installation security at Camp Lejeune and cannot agree or disagree with the USMC that locations of active installation water system infrastructure are a national security concern. We made the limited redactions to the document because including the longitude and latitude coordinates of active drinking water infrastructure was scientifically unnecessary for the purpose of the document. The redactions are consistent with a U.S. Environmental Protection

Encl (3)

Agency (EPA) position related to security risks of active public drinking water infrastructure.¹ EPA has concluded that it is prudent to restrict from public dissemination the latitude and longitude coordinates of well intakes, source water areas, and source water assessment program data. Redacting the document allowed us to balance the USMC base security concerns with our public health mission and resulted in the release of Chapter “B” within days of receiving the USMC letter from Major General Kessler. Since the redactions in the report were not made in response to a Freedom of Information Act request, ATSDR did not review in detail the legal basis for the USMC claims of force protection vulnerabilities. ATSDR has recently received a Freedom of Information Act (FOIA) request for the Chapter “B” information. Prior to making a final determination regarding redacting the longitude and latitude coordinates in accordance with the FOIA, ATSDR will consult with USMC/DON and review in detail the legal basis for USMC’s claims of force protection vulnerabilities, pursuant to FOIA and Department of Health and Human Services regulations.

We greatly appreciate your leadership and assistance with the ATSDR Camp Lejeune investigations and are committed to completing these investigations in an open, timely, and transparent manner using the best science available to us. If you have any additional questions about the Camp Lejeune investigations, please feel free to contact Dr. Richard Weston in the Centers for Disease Control and Prevention’s (CDC) Washington office at rtw8@cdc.gov or (202) 245-0600. The cosigners of your letter will also receive this response.

Sincerely,



Thomas R. Frieden, M.D., M.P.H.
Director, CDC, and
Administrator, ATSDR

Enclosure

¹ April 4, 2005: *Policy to Manage and Access to Sensitive Drinking Water Related Information*. USEPA, Office of Water.
<http://water.epa.gov/infrastructure/watersecurity/lawsregs/upload/policytomanageaccesstosensitivedwrelatedinfoApril2005.pdf>

1. *When did General Counsel from ATSDR or the Centers for Disease Control (CDC) receive the January 5, 2012 letter from the USMC and when was the USMC notified that ATSDR had found the legal basis for the USMC's request to be legally valid? On what grounds of legal determination and justification was the request found to be valid? Did ATSDR staff provide any assurances to USMC that the USMC's concerns stated in the letter would be agreed to, prior to ATSDR's receipt of the letter?*

The CDC/ATSDR Office of General Counsel received a copy of the letter on January 5, 2012. Although we were aware of USMC's concerns prior to receiving this letter, we did not provide assurances to DON that we would agree to the USMC concerns before January 5, 2012.

The DON and CDC/ATSDR Offices of General Counsel initially discussed the issue of sensitive installation drinking water infrastructure during the summer of 2010. At that time, we did not identify a legal basis for defining the type or extent of information required to be released or withheld in an ATSDR document and the issue was referred back to appropriate program officials for further review. DON first defined the information they considered sensitive during a video conference call with ATSDR on December 9, 2011. We responded by e-mail stating "*While we are evaluating [your] concerns, we will not alter our reports until we receive specific requests we can act upon in writing.*"

We take the security of military personnel and installations very seriously. ATSDR does not have the expertise to evaluate installation security at Camp Lejeune and we are not in a position to agree or disagree with the USMC that locations of active installation water system infrastructure are a national security concern. We made the limited redactions to the document because including the longitude and latitude coordinates of active drinking water infrastructure was scientifically unnecessary for the purpose of the document. We have not made a determination that USMC's request is legally valid.

2. *Did ATSDR or CDC counsel confer with their counterparts in the USMC, Department of Navy, or Department of Defense before validating the letter's legal justifications under Department of Defense internal instructions and FOIA Exemption 9 and, if so, was there any discussion of the ramifications and implications of redacting information not previously found to be "critical infrastructure" or "sensitive information" under the law?*

CDC/ATSDR counsel did not confer with USMC, DON, or DOD counterparts about the letter before we released the redacted version of Chapter "B." We follow FOIA procedures when releasing information requested by the public under FOIA. The release of this report, however, was not in response to a FOIA request, but part of ATSDR's public health work at the site. We are continuing to work with DON to address issues of disclosure of information that may impact installation security while preserving the integrity and transparency of our activities. ATSDR has recently received a FOIA request for the Chapter "B" report, including the redacted drinking water infrastructure information, i.e., the well longitude and

latitude coordinates. Prior to making a final determination regarding redacting the longitude and latitude coordinates in accordance with the FOIA, ATSDR will consult with USMC/DON and review in detail the legal basis for USMC's claims of force protection vulnerabilities, pursuant to FOIA and Department of Health and Human Services regulations.

- 3. Are there codified procedures, besides interagency Memorandum of Understanding, that have been used by ATSDR and/or CDC for past ATSDR studies containing unclassified, but potentially sensitive information, to determine if that information should or should not be withheld from the public? If so, please provide a copy of those procedures and advise us if they were applied and followed in this case? If they were not applied and followed, would those procedures apply in this case and why or why not?*

We are not aware of any codified procedures specific to ATSDR studies. Our memorandum of understanding with DON includes a dispute clause, which we will not hesitate to invoke if we feel that USMC is attempting to compromise our work or its transparency. We are committed to our public health mission and have not altered our efforts to ensure transparency and openness, nor will we do so.

- 4. What determination has been made by ATSDR or CDC that withholding the information redacted by Chapter "B" will not render the report invalid by peer reviewers and on what was that determination made?*

ATSDR documents go through an internal and external peer review process before they are released to the public. Peer reviewers analyzed an unredacted draft of Chapter "B," which was the basis for the review comments they provided to ATSDR. Following the peer review and subsequent suggested redaction, all involved ATSDR staff agreed that including detailed geographic locations of active drinking water infrastructure was not scientifically necessary for the purpose of this document and that the redactions would not diminish its scientific integrity.

- 5. In addition to peer review, did your agency also consider potential longer term ramifications from this most recent decision to redact information, to the extent it may encourage future requests from the Department of Defense to redact information in the public's interest by invoking national security concerns or adversely affect future FOIA requests from the public?*

Using the 2005 EPA memorandum as a guide, we are developing a policy on managing and accessing sensitive drinking water related information to ensure a long-term resolution of this issue. We are committed to following FOIA procedures and will invoke the dispute resolution in our memorandum of understanding with DON if we disagree on an issue, including national security concerns. Please be assured that the issue of base security does not affect how we conduct our work to determine human health risks from exposures to historic contaminated drinking water at Camp Lejeune.

Christopher J. Portier, Ph.D.
Director, NCEH/ATSDR
4770 Buford Highway, N.E
Building 106, Mail Stop F-61
Atlanta, Georgia 30341-3717

February 19, 2012

Dear Dr. Portier:

As the Hydrologist/Civil Engineer under contract to Eastern Research Group, Inc. (ERG), I am the sole author of ATSDR's Hadnot Point-Holcomb Boulevard Chapter B report, herein referred to as Chapter B. Oversight and review of Chapter B was provided by Mr. Morris L. Maslia, Project Officer for all of the ATSDR Camp Lejeune water-modeling activities. The purpose of my letter to you is to point out specific misleading statements in Dr. Frieden's letter of February 15, 2012, wherein he replies to the several Senators and Congressmen who questioned ATSDR's redaction of well coordinate data from the publicly released version of the Chapter B report.

I thought Dr. Frieden's letter was informative and generally to the point. However, several statements in Dr. Frieden's letter that comment on the scientific content of Chapter B are false and misleading. As the author of Chapter B, I consider it my ethical and professional responsibility to inform you of these misleading statements and I retain the hope that, at some future time, CDC/ATSDR will inform Congress of same.

The second sentence of paragraph 4 (page 1) of Dr. Frieden's letter states that "*We (ATSDR) made the limited redactions to the document (Chapter B) because the longitude and latitude coordinates of active drinking water infrastructure was scientifically unnecessary for the purpose of the document*".

This sentence is patently false on its face and, from a scientific point-of-view, borders on the inane and silly. The quoted statement also implies that an unprofessional or unethical endeavor was somehow in effect during the writing of Chapter B. Why would well coordinate data be included in the Chapter B report if not to support and document the scientific results and interpretations published therein?

Because well coordinate (control point) data were redacted from tables used to construct most of the top and thickness maps published in Chapter B, any attempt to reproduce the published maps using just the publicly released data would result in failure. Such failures would be increasingly pronounced with increasing depth of occurrence of the particular geohydrologic unit. For example, consider the map and related control point data for the Upper Castle Hayne aquifer-River Bend unit, a major water-bearing unit for supply wells in the study area (Figure B17, Table B15). Fully **33 percent** of the control points used to create Figure B17 were redacted from the publicly released version of Chapter B. Such deletions could not help but to change the published interpretations of the surface and

Encl (4)

thickness of this unit. Similar changes for similar reasons would accrue to the published results for the Middle Castle Hayne aquifer (Figure B25, Table B19), perhaps the most significant water-bearing unit for supply wells, where almost **50 percent** of the useful control point data were redacted. Redactions amounting to **33 percent** and **50 percent** of useful data are **NOT** the “*limited redactions*”, as stated in Dr. Frieden’s letter to Congress.

As you know, the geohydrologic unit control point data published in Chapter B were directly transferred, to the geohydrologic framework established for all Hadnot Point-Holcomb Boulevard groundwater-flow models. Thus, the redaction of well coordinate data from the publicly released version of Chapter B also significantly compromises any effort to reproduce the geohydrologic framework assigned to the project groundwater-flow models. These redaction issues, in my opinion, now call into question the reproducibility and scientific integrity of: (1) my analyses, (2) the Chapter B report in its entirety and (3) subsequent water-modeling reports for the Camp Lejeune historical reconstruction analyses.

In response to question #4 from the Congressmen and Senators (page 2?), Dr. Frieden’s letter states that “*Following the peer review and subsequent suggested redaction, all involved ATSDR staff agreed that including detailed geographic locations of active drinking water infrastructure was not scientifically necessary for the purpose of this document (Chapter B) and that the redactions would not diminish its scientific integrity.*”

This statement is false and egregiously disingenuous, as I interpret it, or perhaps just poorly worded. Regardless, the uninformed reader is left with the impression that redactions of well coordinate (control point) data from Chapter B were a recommendation of the peer review process. As the author of Chapter B, I read and responded to **all** of the several peer review summaries regarding Chapter B, including those from Camp Lejeune and U.S. Navy personnel, and no peer reviewer ever recommended or even suggested that well coordinate data be redacted from the Chapter B report. (The ATSDR Project Officer, Mr. Morris Maslia, and the NCEH/ATSDR Deputy Director, Dr. Tom Sinks also reviewed all of the peer review summaries and my response to same in their entirety.)

In addition, the quote from Dr. Frieden’s letter states that “*all involved ATSDR staff*” agreed with or supported a decision to redact well coordinate data from Chapter B. Although the verbiage “ATSDR Staff” is somewhat ambiguous and I am just the author of Chapter B and not an employee of ATSDR, I want to state for the record herein that, as a matter of professional ethics and common sense, I did and do totally disagree with ATSDR’s policy decision to redact data. Furthermore, I believe that Mr. Morris Maslia, ATSDR’s Camp Lejeune Project Officer, forcefully expressed this same opinion to you and other ATSDR policy makers.

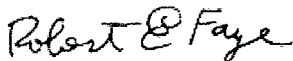
Dr. Portier, I believe my comments in the previous paragraphs substantially contradict the parts of the quoted statement regarding scientific necessity and the notion that redactions would not “*diminish*” the scientific integrity of the Chapter B report. In summary, I

strongly suggest that the redactions of well coordinate data, as evidenced in the publicly released version of Chapter B, do indeed **substantially compromise the technical and scientific integrity of Chapter B, and possibly, by extension, the results of the forthcoming water-model simulations.**

In passing, I note that well coordinate locations in Dr. Frieden's letter are consistently referred to in terms of latitude and longitude. Please note, that **ALL** well coordinate data in Chapter B are stated in North Carolina State Plane Coordinates, North American Datum of 1983. Even a casual reader of Chapter B would have realized that State Plane coordinates were the locators of choice. I am sure that if I or ATSDR's Camp Lejeune Project Officer had been given an opportunity to review the final draft of Dr. Frieden's letter for content and accuracy, this error would have been pointed out.

I hope these comments are helpful.

Sincerely,



Digitally signed by Robert Faye
DN: cn=Robert Faye, o, ou,
email=refaye@windstream.net, c=US
Date: 2012.02.19 20:27:22 -05'00'

Robert E. Faye P.E. MSCE

copy to:

Dr. Thomas Frieden, Director, CDC
Mr. Morris L. Maslia, P.E., DEE, ATSDR Project Officer

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COMMITTEES:
FINANCIAL SERVICES

OVERSIGHT AND
GOVERNMENT REFORM

JOINT ECONOMIC COMMITTEE



Congress of the United States

House of Representatives

Washington, DC 20515-3214

February 24, 2012

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WEBSITE: <http://maloney.house.gov>

The Honorable Leon E. Panetta
Secretary
U.S. Department of Defense
100 Defense Pentagon
Washington, DC 20301

Dear Mr. Secretary,

I write with great concern regarding recent reports of a Department of the Navy request to redact information from an Agency for Toxic Substances and Disease Registry (ATSDR) report about water contamination at the U.S. Marine Corps base, Camp Lejeune—where for three decades, thousands of Marines and their families consumed tap water contaminated with toxic chemicals that likely led to cancers and other illnesses, but have yet to receive justice.

I authored a provision that was included in the House-passed version of H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012 that requires the application of a public interest balancing test by the Department of Defense (DoD) when exempting clearly-defined, sensitive, but unclassified “Critical Infrastructure Security Information,” or CISI, from responses to Freedom of Information Act (FOIA) requests. As you know, the final, compromise language that was passed as part of the FY12 NDAA conference report, which was signed into law on December 31, 2011, would permit the withholding of CISI under the Freedom of Information Act (FOIA) only when the public interest is outweighed by the interests in security. This determination is to be made in writing by the Secretary of Defense, or designee, and then made public.

Given the documented history of secrecy surrounding the Camp Lejeune investigation, the Department of the Navy’s actions raise serious concerns regarding the legal justifications for its most recent request for redactions from the Camp Lejeune report, particularly in light of the new CISI statutory exemption to FOIA. As you well know, ultimately all federal government information is public and available through a FOIA request unless classified or exempted through FOIA or the Privacy Act.

Certainly some CISI should not be made public due to security concerns interests that outweigh other public interests. However, all DoD components need guidance clarifying that CISI will only be truly secure if it can be properly be withheld under FOIA. Therefore, treatment of CISI should be governed by the DoD CISI exemption—not the host of other unrelated laws, regulations, and instructions cited by the Navy in its letter to ATSDR.

Encl (5)


I request that you provide the following information regarding the proper implementation of the new law:

- What measures is DoD undertaking to properly implement the use of the CISI exemption to FOIA?
- When does DoD plan to initiate the rulemaking process, and to clarify the appropriate usage of the exemption and how it may relate to existing instructions, regulations, or statutes relating to critical infrastructure information security?
- How will you ensure the public interest balancing test is appropriately and consistently applied and that requesters are given an opportunity to present the public interest in question once DoD has determined the requested information is CISI?
- How will DoD conduct oversight over the use of the CISI exemption?
- How will DoD ensure public access to determinations to withhold information using the CISI exemption?
- Finally, given the great public interest in information related to the Camp Lejeune water contamination, what measures are you taking to ensure that information is made publicly available?

We must protect certain CISI to keep our defense operations, properties and facilities safe from terrorists and others who would do harm to American interests. But in our efforts to do so, we also must strike the necessary balance between safeguarding security interests and the public's right to know – and prevent another Camp Lejeune from happening.

Thank you for your prompt attention to this matter, and I look forward to your reply.

Sincerely,


CAROLYN B. MALONEY
Member of Congress

United States Senate

WASHINGTON, DC 20510

March 7, 2012

Daniel Levinson
Inspector General
Office of the Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Inspector General Levinson:

I write today with concerns regarding the Agency for Toxic Substances and Disease Registry (ATSDR) decision to redact information from one of ATSDR's recent reports on the Marine Corps Base Camp Lejeune water contamination. ATSDR is issuing a series of reports this year as part of the battery of studies the agency has been collecting data for since 1991. These statutorily mandated studies are the culmination of decades of diligent and tireless scientific investigation by ATSDR into the largest human exposure to toxins on record at a domestic Department of Defense (DoD) installation. The hundreds of thousands of veterans and their families who lived at Camp Lejeune are anticipating that the ATSDR reports will provide them with the information they need to become informed about the scope and severity of the water contamination and educate them on the possible association between their exposures and current and future health effects.

On January 27, 2012, I and five other Members of Congress sent a letter to the Director, Centers for Disease Control and Prevention (CDC) asking for an explanation of ATSDR's decision to redact specific information from ATSDR's Hadnot Point-Holcomb Boulevard Chapter "B" Report (hereinafter referred to as "Chapter B") after the USMC sent a letter to ATSDR on January 5, 2012, that cited internal Department of Navy instructions and a Freedom of Information Act exemption as justification for this specific redaction. Dr. Frieden responded to the Congressional letter on February 15, 2012, and indicated that neither ATSDR nor CDC General Counsels had reviewed the legal rationale for the USMC's January 5, 2012, request and instead relied on Environmental Protection Agency (EPA) guidance in determining that the information could be redacted. Dr. Frieden further justified his decision by stating the redactions would not dilute or diminish the scientific merit or accuracy of Chapter B.

Since the redactions were made in Chapter B and the report was released in January, one of the two researchers responsible for Chapter B has formally disagreed with the decision by ATSDR leadership to redact a portion of the report and sent a letter to the ATSDR Director stating that

Encl (6)

the redactions removed specific data and information essential to the scientific process and conclusions within the report and “significantly compromises” the scientific value of the report (enclosed).

This issue is garnering significant attention in Congress and increasing in its urgency. Later this month, the Senate Judiciary Committee will hold a hearing to examine the issue of the Department of Defense (DoD) asserting various Freedom of Information Act (FOIA) exemptions to prevent public disclosure of what DoD refers to as “critical infrastructure/information” or CI/I. It is my understanding that the information redacted from Chapter B was not covered by the FOIA exemption cited by USMC, had not been formally identified by DoD as within CI/I, had already been available in the public domain for several years, and remains in the public domain on at least one government agency website and in reports published by government agencies.

I have the honor to serve as the Ranking Member of the Senate Veterans’ Affairs Committee and as a member of the Senate Health, Education, Labor, and Pensions Committee, which has jurisdiction over ATSDR and CDC. Moreover, I take seriously my oversight responsibility of ensuring the transparency and integrity of our nation’s public health programs and the agencies charged with investigating environmental exposure incidents and protecting the health of the American people, especially programs that have a direct impact on our nation’s veterans and their families. Consequently, I am deeply troubled by the lack of formal legal review conducted prior to ATSDR’s decision on redactions in Chapter B and I am concerned ATSDR may now be in the process of cooperating with DoD to redact information critical to public health from past, pending, and future Camp Lejeune reports. Therefore, I respectfully request that you investigate the prior and ongoing policies and practices at ATSDR and CDC with respect to the issues raised above. I further request that you examine the degree of formal and informal ATSDR and CDC communications with DoD, including Department of Navy and USMC representatives, regarding redactions of ATSDR reports on the Camp Lejeune water contamination in an effort to determine if the concerns I have raised have merit, and what, if any, actions should be taken by ATSDR and CDC to address these concerns.

Thank you in advance for your timely attention to this serious matter.

Sincerely,



Richard Burr
United States Senator

Enclosure: Letter from Robert E. Faye to Dr. Portier, ATSDR Director, dated February 19, 2012

United States Senate

WASHINGTON, DC 20510

March 7, 2012

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

Dear Dr. Frieden,

I write out of continued concern regarding the integrity of the Agency for Toxic Substances and Disease Registry's (ATSDR) Camp Lejeune water contamination reports. I received your letter of February 15, 2012, regarding your decision to comply with a request from the United States Marine Corps (USMC) to redact public information from the Chapter "B" report based on USMC concerns about disclosure of "critical infrastructure/information" for reasons of national security. You stated that CDC and ATSDR General Counsels did not conduct any legal review of the USMC request before you agreed to redact this information from Chapter "B".

Your decision to redact that information has raised concerns about both the scientific integrity and merit of the report and its findings, as well as the Department of Defense's (DoD) role in this matter. As you are likely aware, the Senate Judiciary Committee will hold a hearing this month to look into the government's process for determining if information already made public, like that redacted from Chapter "B", is in fact "critical infrastructure/information" and should be withheld from future disclosure. One of your own researchers and the co-author of Chapter B has formally objected to the statements you made in your February 15 letter and raised significant questions about the internal process that led to those decisions (enclosure). I am concerned that ATSDR may be faced with additional requests from DoD to redact information from its reports on Camp Lejeune and that your decision on Chapter "B" may set an overly accommodative precedent with significant implications for the scientific integrity of the Chapter "B" report as well as future research based on this report's findings.

I met with you in 2010 to discuss the studies of water contamination at Camp Lejeune and the delays ATSDR was encountering to obtain funding from the Department of Navy (DoN) for those studies. I told you then that I would help ensure ATSDR was able to conduct and complete its studies unimpeded by the DoN. Those studies will be released this year and their scientific integrity is vital to the hundreds of thousands of veterans and their families waiting for answers. In an effort to ensure your agency is executing its mission properly and preserving the scientific integrity of these reports, I have requested that the Inspector General of the Department of Health

Encl (7)

and Human Services examine ATSDR's activities in this matter. I've taken this cautionary step because we are nearing a critical period in which the transparency, integrity, and ultimately the merit of the ATSDR reports will be essential to maintain the public's faith and confidence in the government's scientific process.

As the Administrator of ATSDR, you are personally responsible for the integrity of ATSDR's analysis and report on the Camp Lejeune water contamination. Therefore, before any pending or future reports on the Camp Lejeune water contamination are finalized and released this year, I would like you to personally assure me that all past, present, and future ATSDR reports on Camp Lejeune meet the highest standards of scientific completeness and credibility, that CDC or ATSDR is not prematurely deciding what information should be redacted from those reports for the sake of expediency at the behest of the Department of Defense, or one of its Service Components, and that any and all redactions approved and made by your agency have and will conform with legal precedent and the Freedom of Information Act.

Sincerely,



Richard Burr
United States Senator

Enclosure: Robert E. Faye letter to ATSDR Director, dated February 19, 2012

ENCL (7)