

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.

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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:

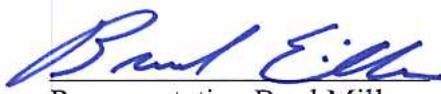
1. When did General Counsel from ATSDR or the Centers for Disease Control (CDC) receive the January 5, 2012 letter from the USMC and when was the USMC notified that ATSDR had found the legal basis for the USMC's request to be legally valid? On what grounds of legal determination and justification was 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.

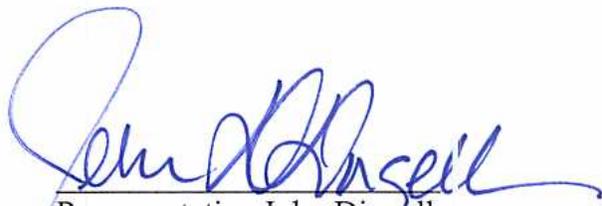
Sincerely,



Senator Richard Burr



Representative Brad Miller



Representative John Dingell



Senator Bill Nelson



Senator Marco Rubio



Senator Kay Hagan