

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897**

IN RE:)
CAMP LEJEUNE WATER LITIGATION)
)
)
This Document Relates To:)
ALL CASES)
)

DECLARATION OF AARON BERNSTEIN, MD, MPH

I, Aaron Bernstein, do hereby declare as follows:

1. I currently serve as the Director of the National Center for Environmental Health at the Centers for Disease Control and Prevention (CDC) and the Director of the Agency for Toxic Substances and Disease Registry (ATSDR).

2. I assumed my current responsibilities on May 21, 2023.

3. In the exercise of my official duties, I have been made aware of this litigation. I understand that ATSDR’s public health work related to Camp Lejeune exposures is of interest to litigants in this case.

4. I submit this Declaration (1) in support of a deliberative process privilege assertion over a yet-to-be published and non-final ATSDR study referred to as “Evaluation of cancer incidence among Marines and Navy personnel and civilian workers exposed to contaminated drinking water at USMC base Camp Lejeune: a cohort study” (hereafter the “Cancer Incidence Study”), including but not limited to (i) all draft reports, analyses, results, and conclusions; (ii) databases and analytical data files; (iii) peer review comments and related revisions; and (iv) related communications; and (2) in response to the Plaintiff Leadership Group’s request of ATSDR to produce the same.

5. In the exercise of my official duties, I have control over this matter and have personally reviewed the relevant materials identified in the attached privilege log. For the reasons explained below and detailed in the attached privilege log, I have personally concluded the deliberative process privilege applies and is asserted over a yet-to-be published and non-final ATSDR study referred to as the “Cancer Incidence Study,” including but not limited to (i) all draft reports, analyses, results, and conclusions; (ii) databases and analytic data files; (iii) peer review revisions and comments; and (iv) related communications; and (2) in response to the Plaintiff Leadership Group’s request of ATSDR to produce the same.

6. The purpose of the Cancer Incidence Study is to determine whether residential or workplace exposures to the drinking water contaminants at Camp Lejeune are associated with increased risks of specific cancers in Marines/Navy personnel and civilian employees. The study includes Marines and Naval personnel who began service during 1975-1985 and were stationed at Camp Lejeune anytime during this period. Civilian employees who worked at Camp Lejeune anytime during October 1972 through December 1985 are also being studied. A comparison group from Camp Pendleton is included in the study.

7. The draft Cancer Incidence Study report is currently undergoing external peer review, in compliance with ATSDR’s authorizing statute, the Comprehensive Environment Response, Compensation, and Liability Act (CERCLA), section 104(i)(13) (42 U.S.C. 9604(i)(13)), which requires “studies and results of research” to be peer reviewed prior to being reported or adopted. Specifically, CERCLA requires that all studies and results of research ATSDR conducts or funds—other than health assessments—undergo external peer review that meets certain statutory requirements prior to reporting or adoption. CERCLA also directs that no less than three and no more than seven reviewers must conduct the review. The reviewers

(1) are selected by the ATSDR Administrator, (2) are scientific experts without a perceived or real conflict of interest (e.g., employment; financial benefit, personal, or professional), (3) have a reputation for scientific objectivity, and (4) have no institutional ties with any person involved in conducting the study or research under review. ATSDR study authors will review and respond to peer reviewers' comments on the report, make any necessary revisions based on the reviewer comments, and, when recommended, may undertake additional analyses. This is an important, mandatory step to protect the scientific process and integrity of the study to be published.

8. Following external peer review, and per standard decision-making processes, the Cancer Incidence Study report will be submitted to the CDC scientific clearance system for ATSDR and CDC review and approval. ATSDR study authors will review and respond to comments on the report and make any necessary revisions based on the reviewer comments. However, because the current Cancer Incidence Study draft report remains non-final and is undergoing deliberative and pre-decisional review, ATSDR is asserting the deliberative process privilege and withholding the study and related materials as they currently stand.

9. ATSDR is also withholding and asserting the deliberative process privilege over the related underlying study data and analytical files because the data and analytical files are part of the deliberative review and intertwined with the Cancer Incidence Study's analysis. Release of the data would reveal much of the agency's deliberation about the study findings. The collection and management of this data is also intertwined in the ATSDR study authors' preliminary analysis and draft conclusions. Furthermore, the collection and management of data is required under the relevant CERCLA requirements and is part of the standard decision-making process ATSDR undertakes in this type of study.

10. Disclosure of (i) the draft Cancer Incidence Study reports, analyses, results, and conclusions; (ii) databases and analytical data files; (iii) peer review comments and related revisions; and (iv) related communications would be inconsistent with the CERCLA peer review requirements and standard ATSDR decision-making process, cause potential confusion among interested stakeholders both prior to and after release of the final report, and undermine the public's trust in and credibility of ATSDR's scientific products. It would also suppress the routine scientific review process and have a chilling effect on the deliberations.

11. In response to the requests for production of documents received in the above-captioned litigation, ATSDR is in the process of querying custodians and searching for additional materials and information, some of which may fall within the categories listed above related to the Cancer Incidence Study. ATSDR preserves the opportunity to supplement this Declaration and the accompanying privilege log to assert the deliberative process privilege over any additional files or information related to the Cancer Incidence Study that are subsequently identified, collected, and reviewed.

EXECUTED this ____ day of _____ 2023, Atlanta, GA.

Aaron Bernstein -S Digitally signed by Aaron
Bernstein -S
Date: 2023.12.08 18:42:48 -05'00'

Aaron Bernstein, MD, MPH
Director NCEH/ATSDR