

Exhibit 4

From: [Mirsky, Sara J. \(CIV\)](#)
To: [J Edward Bell](#); [Turner, Joseph B. \(CIV\)](#); [Zina Bash](#); [Dawn Bell](#); [Kevin Dean](#); [Matthew D. Quinn](#); [Lipscomb, Bridget \(CIV\)](#); [Bain, Adam \(CIV\)](#); [Ryan, Patrick J. \(CIV\)](#); [Adams, Jennifer E \(CIV\)](#)
Subject: RE: Camp Lejeune-ATSDR files
Date: Friday, February 2, 2024 4:28:00 PM
Attachments: [image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
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[image018.png](#)
[image019.png](#)
[image020.png](#)
[image021.png](#)
[Alabama CIS ATSDR DUA.pdf](#)
[Colorado CIS ATSDR DUA.pdf](#)
[NDI-Sample-Application.pdf](#)

Ed,

Thank you for the additional information regarding your requests for, and form of production of, ATSDR project files.

Before addressing the substance of the matter, the United States believe it is important to briefly lay out the history of the relevant requests.

1. In October 2023, Plaintiffs began issuing their Requests for Production. ATSDR has spent – and continues to spend – significant time and resources responding to the broad requests included therein. This has included the production of numerous datasets and thousands of pages of documents. Documents continue to be produced in response to these requests on a rolling basis.
2. By no later than November 4, 2023, the United States invited Plaintiffs to a meet and confer on ESI-related issues, pursuant to the jointly submitted ESI Protocol (CMO No. 8). These invitations continued over the following month.
3. The Parties met and conferred on custodial ESI on December 4, 2023. The Parties acknowledged the need to meet and confer to discuss non-custodial ESI separately, and the United States invited such a discussion via, *inter alia*, the email I sent on December 12, 2023.
4. On December 5, 2023, Plaintiffs deposed a 30(b)(6) witness from ATSDR about the existence, accessibility, and location of documents and information at ATSDR related to Camp Lejeune. Leading up to this deposition, ATSDR expended significant time and resources to prepare and make this 30(b)(6) witness available at Plaintiffs' request.
5. Over the course of December, the DOJ and ATSDR expended significant time and resources gathering information regarding Plaintiffs' custodial ESI requests. During this time, Plaintiffs never engaged in a discussion of non-custodial ESI.
6. Plaintiffs withdrew their requests for custodial ESI on January 3, 2024.
7. Plaintiffs made their initial request for the non-custodial ESI contained in the water modeling and health effects "project files" on January 8, 2024.
8. The United States produced key datasets related to certain health effects studies on February

1, 2024. The United States has also committed to beginning production of the entire water modeling project files pursuant to the ESI Protocol as soon as possible, with a completion of those files within 45 days. Considering the Track 1 Order contemplates 135 days of fact discovery, the United States' production of the entire water modeling files will be complete with 90 days of fact discovery left.

As to the substance of the project file productions, the United States reiterates its position that the Stipulated Order Establishing Protocol for Document Collection and Production (CMO No. 8) is applicable to **all** discovery in this case. Paragraph 2 of the Protocol makes this point clear: "This Order will govern the discovery, collection, and production of documents, **including ESI**, in the Action." (emphasis added). The water modeling and health effects project files are indisputably non-custodial ESI within the meaning of the Protocol, see ¶¶ 1(d) and 1(i), and production of these files must be made in compliance with the Protocol and the attached Specifications. Magistrate Judge Jones has found that jointly submitted discovery agreements like the ESI Protocol are "the product of serious discussion and contemplation by two counseled parties and that it reflects the interests of the parties. Moreover, it is not evident on its face that the agreed-to plan runs afoul of or purports to supersede the local rules of practice or the presiding judge's individual practice and [the party seeking discovery] has not argued that it does. Therefore, the court finds no reason to override the parties' agreement." *Eshelman v. Puma Biotechnology, Inc.*, 2017 U.S. Dist. LEXIS 108328, at *10-11 (E.D.N.C. July 13, 2017) (Jones, J.) (citations omitted).

Plaintiffs have offered no explanation suggesting that compliance with the form of production described in the Specifications is unworkable for the project files. The United States intends to honor the agreements made in the Protocol, and expects Plaintiffs to do the same. Indeed, compliance with the Protocol and the Specifications will yield much the same results as outlined in Plaintiffs' most recent proposal. This is evidenced by the United States' production, made prior to your email of February 1, of 34 exemplar ATSDR health effects project files (Bates nos. CLJA_HEALTHEFFECTS-0000000001 – 0000000959). That production was processed and produced in accordance with the Protocol and Specifications, and included:

1. A load file (corresponds to your requests no. 4 and 5, below) in .dat format, containing all available metadata, including the file name (FILENAME), Bates number (i.e. BEGDOC), and the original file path (FILEPATH)
 1. The load file complies with ¶¶ 2 and 3 of the Protocol.
 2. The load file also contains all of the "three key fields" highlighted in your request no. 6, below.
2. A load file in .opt format that, once loaded into a document review platform, provides the information necessary to link the imaged files to their extracted data
 1. The .opt file complies with ¶ 2.c of the Protocol.
3. Image files
 1. Static image files were provided for all processable data.
 2. The file names are "bates-referenced" (as per your request no. 3, below).

4. Text files

1. Pursuant to ¶ 2 of the Protocol, extracted text/OCR was provided in single text files corresponding to the BEGDOC of each document.

5. Native files for datasets (.sav and Excel files in this instance)

1. Native files were provided for spreadsheets and data files, which complies with ¶¶ 10 and 15 of the Protocol.
2. The file names are “bates-referenced” (as per your request no. 3, below) in accordance with ¶ 16 of the Protocol.

As noted in the cover letter accompanying the February 1 production, the United States intends to produce the remaining project file data in the same format as its February 1 production, which complies with the Protocol and Specifications. Moreover, this production format obviates the need, noted in your email below, to convert the load file to a “virtually bates stamped” spreadsheet to facilitate file name and number cross-referencing. Rather, as is the industry-standard practice, the United States’ productions build in this functionality via the creation of a load file for loading to a document review platform, which automatically numbers and links native files for review.

Even if it were feasible and complied with the Protocol and Specifications, Plaintiffs’ proposal does not facilitate “almost immediate” production of the project files. As you know, the water modeling project files alone total nearly 2TB of data. No robust e-discovery process is “almost immediate.” Simply copying data of that volume requires an appreciable amount of time, to say nothing of processing the data, creating the load files, producing them, and copying/transmitting the resulting production files. The United States’ offer to produce this data at an accelerated pace and within 45 days is realistic and reasonable; Plaintiffs’ demand for “immediate” production is not.

The United States is in the process of gathering the water modeling project files and expects to begin producing it within the next week, continuing on a rolling basis. We again invite you to designate certain parent-level folders for prioritized production; otherwise, we will proceed with processing and production in the order we deem most expedient.

As to the health effects project files, ATSDR is still reviewing the best way to produce this information to Plaintiffs. We can confirm that the health effects project files that are not impacted by potentially protected data will be produced in their entirety, in the same manner as the United States’ proposal for the water modeling files. In the interim, attached are two sample Data Use Agreements from Alabama and Colorado for Plaintiffs’ review. We also attach a sample application for the National Death Index. The confidentiality agreement begins on page 10. We also point Plaintiffs to *Akzo-Nobel et al v. United States, et al.*, No. 00-30834 (5th Cir. May 25, 2001), as an example of courts enforcing 42 U.S.C. 242m(d) to preclude production of data from the National Center for Health Statistics. This is not an exhaustive representation of these matters, but we are sending them to Plaintiffs now for your consideration.

We hope that Plaintiffs will agree that the United States' proposal and continued strenuous efforts will provide Plaintiffs with the documents requested in a reasonably expeditious manner that is consistent with the jointly submitted ESI Protocol. We do not believe that the Court needs to expend its resources on this issue at this time. If you would like to set up a time to discuss, please let us know.

Thank you,
Sara



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From: J Edward Bell <jeb@belllegalgroup.com>

Sent: Thursday, February 1, 2024 2:03 PM

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Subject: [EXTERNAL] Camp Lejeune-ATSDR files

Good Afternoon Sara,

I appreciate your email of January 30, 2024, concerning the PLG's request for the ATSDR's "water modeling" and "health effects" complete project files (the "project files"). Unfortunately, however, we believe that the government's position on this matter fails to satisfy the discovery rules and is generally insufficient. **We request that the government produce the projects files immediately.**

Further, we are presently considering whether this matter must now be addressed with the Court. That said, in the interest of continuing our discussion, we are providing the following response to your referenced email.

First, we are writing to propose the PLG’s virtual bates-labeling proposal for the project files. The process would involve the following:

1. The ATSDR project files would be cloned.
2. The cloned ATSDR project files would be processed as any other ESI document collection. This would assign bates numbers, gather file metadata, and create a load file.
3. The end product of Step 2 would be that all of the names of the files from the ATSDR project files would be converted to bates-referenced file names.
4. The ESI process would also create what is known as a load file. A load file organizes a document collection and associated metadata so that the production can easily be exported and ingested into a separate e-discovery database.
5. The load file can be converted to a spreadsheet which would have three key fields: (1) File (original name), (2) bates number of that file, and (3) the original file path. This is the “virtual bates stamping” in that three data points allow any file from the native ATSDR project files to be cross-referenced with the bates number to which it has been assigned. The file name and path would create a unique identifier for that file which would allow the original files to be found in the native ATSDR project files set.
6. Below is an fictious example. The yellow column headings are the three key fields.

SOURCE ID (BOOK)	CUSTOMER	REGDOC#	ENDDOC#	GROUPID	PARENTID	DOCDATE	FILENAME	APPLICATION	FILE EXTENSION	FILEPATH	FOLDERID
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000110	ATSDR_D1_CLW000000110	ATSDR_D1_CLW000000		4/30/2010	00368.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\CERCLA Administrative Record\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000111	ATSDR_D1_CLW000000111	ATSDR_D1_CLW000000		4/30/2010	01272_Appel_1.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\CERCLA Administrative Record\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000112	ATSDR_D1_CLW000000112	ATSDR_D1_CLW000000		4/30/2010	CLW 1393.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\CLW Documents\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000116	ATSDR_D1_CLW000000116	ATSDR_D1_CLW000000		4/30/2010	CLW 1594.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\CLW Documents\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000120	ATSDR_D1_CLW000000120	ATSDR_D1_CLW000000		4/30/2010	CLW 4367.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\CLW Documents\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000124	ATSDR_D1_CLW000000124	ATSDR_D1_CLW000000		4/30/2010	CLW 4369.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\CLW Documents\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000128	ATSDR_D1_CLW000000128	ATSDR_D1_CLW000000		4/30/2010	BaseMasterPlan_1983	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000132	ATSDR_D1_CLW000000132	ATSDR_D1_CLW000000		4/30/2010	Base MasterPlan_1983.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\BaseMasterPlan_1983	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000136	ATSDR_D1_CLW000000136	ATSDR_D1_CLW000000		4/30/2010	CLW_0056_3.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\BaseMasterPlan_1983	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000140	ATSDR_D1_CLW000000140	ATSDR_D1_CLW000000		4/30/2010	Navinstp_ActrIn.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\BaseMasterPlan_1983	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000144	ATSDR_D1_CLW000000144	ATSDR_D1_CLW000000		4/30/2010	Navinstp_ActrIn.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\US Marine Corps\BaseMasterPlan_1983	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000160	ATSDR_D1_CLW000000160	ATSDR_D1_CLW000000		4/30/2010	0566.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\TT_Underground Storage Tanks\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000164	ATSDR_D1_CLW000000164	ATSDR_D1_CLW000000		4/30/2010	0449.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\TT_Underground Storage Tanks\	
ATSDR Disk 1	ATSDR	ATSDR_D1_CLW000000169	ATSDR_D1_CLW000000169	ATSDR_D1_CLW000000		4/30/2010	0567.pdf	Adobe Portable Document Format	pdf	F:\Camp Lejeune\ATSDR Disk 1\Disk1\Documents\TT_Underground Storage Tanks\	

The PLG believes that any person with ESI experience will understand the steps

above and appreciate how the Excel format load file would serve as the virtual bates-stamp reference for the native version of each ATSDR project file. We have consulted with the PLG's technical and ESI consultants, who believe that this approach is practical, will preserve all metadata, and will enable the parties to track the government's production. Further, this process can be completed quickly and allow production of the complete project files almost immediately—in stark contrast to the government's proposal, which would seemingly take at least 45 days.

In short, the PLG's virtual bates-labeling proposal would address the concerns of both the PLG and the government and should therefore be adopted. If helpful, the PLG will make a technical consultant available to answer any questions about this proposal.

Second, you agreed to investigate whether the government can provide an example of the "data use agreements" discussed during our meet and confer of January 29, 2024. Please let us know when the government will provide such an example "data use agreement" so that we can evaluate the government's concerns with respect to the "health effects" portion of the project files.

Third, we request that the government promptly provide a report (such as a Tree-size report) of the project files, detailing the name and size of all items contained in the project files. We asked for such a report in the PLG's email of January 29, 2024. This report can be generated quickly and would not divulge any confidential information. The report should be produced without delay.

We look forward to your prompt response. The present email does not respond to each issue raised in your email of January 30, 2024.

Sincerely,

Ed Bell



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