

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, Jr., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
TOM ALLEN, MAINE
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
DARLENE HOOLEY, OREGON
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER
RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADDEG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

February 28, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHCHILD, CHIEF COUNSEL

Julie Louise Gerberding, M.D., M.P.H.
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333

Dear Dr. Gerberding:

Under Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the circumstances surrounding the production, review, and withholding of a study entitled, *Public Health Implications of Hazardous Substances in the Twenty-Six U.S. Great Lakes Areas of Concern* (referred to hereinafter as the Great Lakes Report), and the treatment of its lead author. The Committee has jurisdiction over interstate and foreign commerce generally, public health, biomedical programs, and environmental protection, among other matters.

A recent article published by the Center for Public Integrity, *Great Lakes Danger Zones*, reported that officials employed by the Agency for Toxic Substances and Disease Registry (ATSDR), a division of the Centers for Disease Control and Prevention (CDC), have blocked the publication of a scientific study of environmental contamination in the Great Lakes region, i.e., the Great Lakes Report cited above. This study was completed in July 2007, following several years of work and extensive scientific peer review. According to documents purported to be excerpts from the report, ATSDR scientists found a "co-occurrence" of elevated rates for cancer mortality, infant mortality, low birth weight, and premature births on the one hand, and environmental contamination by hazardous waste, including dioxins, polychlorinated biphenyls (PCBs), pesticides, lead, and mercury, on the other.

If the conclusions of this study are accurate and correct, the health of millions of people in the Great Lakes region may be at risk. Moreover, ATSDR's apparent withholding of this report raises grave questions about the integrity of scientific research at CDC and ATSDR, as well as the treatment of its scientists.

The validity of the findings of this report deserves a fair and open debate within the scientific community. That cannot occur if this report is withheld from publication; accordingly, the report should be released.

In addition, to aid in our investigation of this matter, please provide the following information and records:

1. A copy of the July 2007 study, including all drafts, exhibits, and appendices, and the accompanying compact disc containing maps of the study areas.
2. Who made the decision to withhold publication of the report? What was the basis for withholding publication?
3. Copies of all records pertaining to the decision to withhold or delay release of the report, including all communications between and among you, Dr. Howard Frumkin, Dr. Christopher De Rosa (the lead scientist responsible for the Great Lakes Report), all other CDC and ATSDR employees, the Office of the President of the United States, all other government agencies, and all private persons.
4. Copies of all peer reviews and other comments on the study, including those from scientists within CDC, and reviews performed by U.S. Environmental Protection Agency employees, other Federal agencies, State governments, the International Joint Commission, and universities.
5. According to the article cited above, the study was reviewed by three outside experts, including Dr. Peter Orris, a professor at the University of Illinois School of Public Health, who subsequently wrote a letter to ATSDR asking that the study be released. Please provide copies of all communications between Dr. Orris and CDC/ATSDR pertaining to the release of the study.
6. It is our understanding that this article may also have been informally reviewed by various State and local agencies and officials. Please provide copies of all communications between and among CDC employees or contractors and any State, Federal, or local agency or official concerning this report.
7. According to the article cited above, Dr. Christopher De Rosa was demoted after pushing for release of the Great Lakes Report and other studies. Please provide copies of: (a) all records of personnel actions regarding Dr. De Rosa from January 1, 1999, to the date of this letter, including all communications received by CDC and ATSDR from Dr. De Rosa and all responses; and (b) all records pertaining to requests by Dr. De Rosa for release of the Great Lakes Report and other studies and information.

8. According to information that we have received, Dr. De Rosa received an official copy of his demotion and or performance review from Dr. Frumkin while both were attending a conference in Italy. Please provide all records relating to this incident as well as all travel records for Dr. Frumkin from September 1, 2005, to date.
9. All records of communications to and from Dr. Frumkin and you and any other Federal, State, local, or private entity related to this study and its release.
10. Copies of all appointment calendars for you and Dr. Frumkin from January 1, 2005, to the date of this letter.
11. Copies of all records related to the circumstances surrounding the death of Dr. David Ayers, including all records related to disputes between Dr. Frumkin and Dr. Ayers.

As noted above, very serious allegations have been made about the basis upon which this report has been withheld from release and the treatment of ATSDR scientists involved in the study. To investigate these matters, we may make additional requests for records and information in the future. Additionally, at our direction Committee investigators will interview Department of Health and Human Services (HHS), CDC, and ATSDR employees and other witnesses. It is our desire to conduct this investigation in a manner that limits the disruption to the orderly function of these agencies and the work of its employees. However, we believe that added steps should be taken to ensure the full cooperation of all CDC and ATSDR employees who may have information critical to our inquiry.

Accordingly, the Committee requests that you immediately remind all CDC and ATSDR employees of their right to communicate with Congress and that it is against the law to deny or interfere with their rights to furnish information to Congress. Specifically, 5 U.S.C. 7211, provides that:

“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

We also request that you remind all CDC and ATSDR officials that, pursuant to 5 U.S.C. 2302(b)(8), it is a violation of Federal law to retaliate against whistleblowers. That law states:

“Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

- (A) any disclosure of information by an employee or applicant which the employee

or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, . . .

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation”

In addition, pursuant to 18 U.S.C. § 1505, it is against Federal law to interfere with a Congressional inquiry:

“Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress”

Finally, we request that you immediately preserve all records pertaining to the study cited above; all records pertaining to the issue of publishing such study; and all records pertaining to Dr. Christopher T. De Rosa and Dr. Howard Frumkin. To be clear, no such records shall be destroyed, modified, altered, deleted, removed, relocated, or otherwise negligently or intentionally handled so as to make them inaccessible to the Committee. Please note that if the practices of your agency involve the routine destruction, deletion, recycling, relocation, alteration, or removal of such materials, such practices should be halted immediately and all records should be preserved.

Please provide unedited and unredacted copies of this letter to all employees and contractors of CDC and ATSDR and confirm in writing that this has been accomplished.

Please deliver the requested information and records to the Subcommittee on Oversight and Investigations, room 316 Ford House Office Building, by no later than the close of business on Tuesday, March 25, 2008.

In responding to this request, please be advised that the terms “records” and “relating to” are defined in the attachment to this letter.

Julie Louise Gerberding, M.D., M.P.H.
Page 5

If you elect to assert a privilege or objection to the production of the foregoing records or information, please provide a privilege log fully identifying each record withheld and the legal basis asserted for withholding the record from a Congressional committee of competent jurisdiction.

Should you have any questions regarding this request, please contact us or have your staff contact John Arlington with the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Oversight and Investigations

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.