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UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542-5001

IN REPLY REFER TO:
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MEMORANDUM FOR THE RECORD

From: Captain M. J. K. Maher, Jr.
To: Deputy Staff Judge Advocate for Environmental Matters

Subj: COMPLIANCE WITH NORTH CAROLINA WATER QUALITY STANDARDS REGARDING CUSTOMER NOTIFICATION OF UNREGULATED SYNTHETIC ORGANIC CHEMICAL (SOC) MONITORING

Encl: (1) ltr to State
(2) ltr to AC/S
(3) Notice Form

1. Purpose. The purpose of this memorandum is to ensure compliance with North Carolina Water Quality Standards (10 NCAC 10D.1600) regarding customer notification of unregulated Synthetic Organic Chemical (SOC) Monitoring.

2. Background

a. The Safe Drinking Water Act (SDWA) provides for state regulation and enforcement responsibility of public water systems (PWS) that are located on Federal facilities. 42 USCA section 300j-6 states that a Federal agency shall comply with state provisions regarding safe drinking water, whether substantive or procedural. The Code specifies that this includes reporting requirements and any other requirements designated. Paragraph (a) of that section states that Federal immunity is waived. The SDWA mandates Federal agency compliance with state regulations as long as the state laws are no less stringent than the National Drinking Water Regulations (NDWR) promulgated by the Environmental Protection Agency (EPA). 42 USCA section 300g-2.

b. As a result of the 1986 SDWA amendments, the Federal Government established requirements for monitoring public water systems for thirty-six unregulated SOCs. 42 USCA section 300j-4. The SDWA provided for state primary enforcement responsibility with regard to the unregulated SOC monitoring as well. 10 NCAC 10D.1638 duplicated 40 CFR section 141.40 in that it required all public water systems serving over 10,000 customers to monitor for the unregulated SOCs beginning in 1988. (Federal provisions mandated monitoring no later than 1 January while state provisions required monitoring by 1 June.) These provisions also required that systems serving between 3,300 - 10,000 customers begin monitoring during the first quarter of 1989, while those systems serving less than 3,300 customers begin monitoring in the first quarter of 1991. Both Federal and North Carolina law require availability of results notice. 10 NCAC 10D section .1640.

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c. The EPA decided that monitoring for the unregulated SOCs was necessary to determine whether regulation of these contaminants should be implemented. 52 FR 25709. To effect this purpose, Congress amended the SDWA (42 USCA 300j-4) which laid the foundation for the North Carolina Rules referred to in the letter. This 1986 amendment to the SDWA mandates unregulated SOC monitoring, requires that the results be forwarded to the primary enforcement authority and finally that the PWS customers be notified of the availability of the results. North Carolina opted to use 40 CFR section 141.40 as a model for the Rules that would govern unregulated SOC monitoring in the State. These Rules, 10 NCAC 10D sections .1638, and .1640 are the ones referred to in the letter and the ones with which compliance is required.

d. A Natural Resources and Environmental Affairs Division (NREAD) letter dated 11 April 1989, detailed NREAD's knowledge of these requirements and further indicated their compliance with the monitoring portion (though no mention was made of the customer - notification requirements). A copy of this letter was noted and filed in the Base Office of the Staff Judge Advocate (OSJA) SDWA folder.

e. On 19 May 1989, Assistant Chief of Staff, Facilities, requested that OSJA and NREAD coordinate regarding a letter received from the North Carolina Department of Human Resources. The letter detailed North Carolina requirements for unregulated SOC monitoring and for notice to the public water system customers of the availability of the results for review. The letter further stated that a copy of the customer notice must be forwarded to the State. Though the Department did not state that Camp Lejeune had failed to comply with State law, the letter concluded by providing remedial guidance in the event it was needed.

3. <u>Discussion</u>

a. As noted above, the SDWA requires Federal agency compliance with all state drinking water provisions regardless of whether substantive or procedural in nature. Further, short of a Presidential determination that national security interests are at stake, sovereign immunity is waived. 42 USCA section 300g-2 delegates primary enforcement responsibility to the states as long as that state has adopted regulations that are no less stringent than the NDWR. North Carolina complies with this SDWA requirement, as NCGS section 130A-327 evidences. This State statute indicates that North Carolina has the authority necessary to assume primary enforcement responsibility under the SDWA.

b. The 10 May 1989, North Carolina Department of Human Resources letter directs compliance with North Carolina laws regarding safe drinking water. Specifically, the letter addresses the requirement for unregulated SOC monitoring in PWS and the provision to notify the public of the availability of the results for review. Since the SDWA directs Federal agency compliance with all state promulgated drinking water requirements, and North

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Carolina has primary enforcement responsibility as delegated under the SDWA, the PWS aboard Camp Lejeune (and its satellite installations) is subject to North Carolina regulation. Therefore, compliance is required with the Rules delineated in the State's letter.

c. The Rules referred to in the State's letter can be divided into three basic requirements.

(1) Monitoring. 10 NCAC 10D section .1638 requires monitoring for thirty-six unregulated SOCs while the State has discretion to require monitoring for an additional fifteen. A Federal provision relevant here is 42 USCA section 300j-4(3), which provides that States may add contaminants to the monitoring list, but not to the point of increasing Federal expenditures beyond those authorized. The letter reflects that currently North Carolina only requires monitoring for thirty-six unregulated SOCs, however, the letter indicates some confusion as to when monitoring was to begin at Camp Lejeune.

As discussed earlier, the date monitoring was to begin depended upon the PWS size. Systems serving more than 10,000 customers were to begin monitoring in 1988, while systems serving less than 10,000 customers were to begin monitoring in either 1989 or 1991. In a conversation I had with Elizabeth Betz, Supervisory Chemist, EC&MS, Soil, Water and Environmental Branch, NREAD on 14 June 1989, she stated that Camp Lejeune and its surrounding installations have six PWS and none of these fall within the 3,300 - 10,000 customer range. Ms. Betz stated that three of the PWS serve over 10,000 customers while three serve less than 3,300 customers. The current size of the various systems results from two systems being shut-down, thereby causing those customers to draw water from another system. Ms. Betz also stated that the three systems serving over 10,000 customers were monitored for the unregulated SOCs during the last quarter of 1987 and that all six PWS were placed on the same monitoring schedule beginning with the first quarter of 1989. (This is also supported by the 11 April 1989 NREAD letter filed in the SDWA folder.) The monitoring conducted in 1987, in conjunction with the schedule established for all six systems in 1989, meets the requirements of 10 NCAC 10D section .1638 and resolves any confusion which may have resulted from the State's letter.

(2) Reporting. The second requirement of the North Carolina Rules is to send the State a copy of the results of the monitoring. Camp Lejeune meets this requirement through its contract with a State certified laboratory. The laboratory analyzes the samples taken from the PWS and forwards a copy of the results to the State. Ms. Betz stated that this was done with the 1987 results and is currently being done with any samples taken, thus complying with the North Carolina Rules.

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(3) Customer Notification. The final requirement, customer notification of the availability of monitoring results, was not complied with and is the probable reason for the State's letter. 10 NCAC 10D section .1640 requires the water supplier (Marine Corps Base) to notify the PWS customers of the availability of the results either by including notice with water bills or by written notice within three months of receipt of the results. The North Carolina provision duplicates the requirements promulgated in 40 CFR section 141.35(d). Both the Federal and State Rules require the water supplier to identify a person and furnish a telephone number to contact for information about the monitoring. This was not done after the 1987 monitoring. However, the 1989 monitoring results were received in early April, and the time period for reporting those results has not yet lapsed.

The State's 10 May 1989 letter adds confusion to the problem by suggesting a solution which is not provided for in 10 NCAC 10D section .1640. In the letter, section .1640 is cited as permitting customer notification of the availability of the results by newspaper. However, that North Carolina Administrative Code section only provides for written notification or inclusion of a notice with the water bills. The written notice must be made within three months of receipt of the results. Paragraph (a) of that section further supports this by stating that the Rule (.1640) only applies to unregulated SOC monitoring. Therefore, the State's recommendation to publish notification in the newspaper would meet neither the NCAC's provisions, nor those listed at 40 CFR section 141.35(d).

d. The final concern that requires discussion is the necessary remedial action. The NREAD complied with the critical aspects regarding the unregulated SOC monitoring, but failed to comply with the customer notification provisions for the 1987 monitoring results. On 15 June 1989, Ms. Betz stated that she was preparing the customer notification for the 1989 monitoring results. If this notice is disseminated to the PWS customers prior to the expiration of the three month time period the regulation allows (by early July), then NREAD will have met all the provisions detailed under 10 NCAC sections .1638 and .1640 for the 1989 monitoring.

e. The customer notice logistics present a significant problem. As stated above, neither Federal nor State law provide for notice by publication in a newspaper. Yet, because the PWS at Camp Lejeune serve so many people, written notice distribution is impractical. Not only do the PWS serve those that live on the base, but also those that live off the base and use the PWS only while at work. Therefore, if the State would permit newspaper publication of the notice both time and money could be saved over the direct mail system.

f. Finally, customer notification of availability of the 1987 monitoring results is still required. Ms. Betz is currently preparing a notice for publication, however, this may not completely remedy the situation. 42 USCA 300j-4 provides penalties

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for failure to comply with any provision of the section. One of the provisions of the section is that customer notification be made within three months of receipt of the results. Thus, even when the customer notice for the 1987 monitoring results is made the penalties may still be applicable.

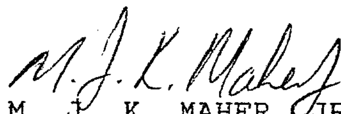
4. Recommendation:

a. Seek clarification from the State regarding the possibility of publishing the customer notice in the newspaper. A recommended letter is enclosed.

b. Send a memorandum to NREAD detailing the legal requirements that must be complied with regarding unregulated SOC monitoring and the subsequent customer notification. A recommended memorandum is enclosed.

c. That NREAD comply with the customer notification requirement for the 1989 monitoring prior to the three month grace period expiration. A recommended notice form is enclosed.

d. That NREAD make customer notification of availability of results for the 1987 monitoring.



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