



DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

IN REPLY REFER TO

26 JUN 1990

From: Commander, Naval Facilities Engineering Command
 To: Commandant, United States Marine Corps

Subj: FEDERAL FACILITY AGREEMENT FOR MCB CAMP LEJEUNE, NORTH CAROLINA

Ref: (a) COMNAVFACENGCOM ltr dtd 10 Jan 90 to Commandant, USMC
 (b) R. Goldstein ltr dtd 29 Jan 90 to Lt. Col. P. Wilbur, USMC

Encl: (1) CG MCB Camp Lejeune ltr 6280 CG dtd 26 Jan 90 to COMNAVFACENGCOM
 (2) R. Goldstein ltr dtd 21 Mar 90 to Lt. Col. P. Wilbur, USMC
 (3) Col. J. Cathcart ltr dtd 27 Mar 90 to R. Goldstein
 (4) R. Goldstein ltr dtd 3 Apr 90 to N. Scott, NC Att'y General's Office
 (5) Replacement pages for FFA for MCB Camp Lejeune, NC

1. In reference (a), COMNAVFACENGCOM forwarded a Federal Facility Agreement (FFA) dtd 6 Dec 89 for MCB Camp Lejeune, NC with a copy of its accompanying Letter of Intent to Execute the FFA. In reference (b), the original Letter of Intent, which is already signed by representatives of the Environmental Protection Agency (EPA) and the State of North Carolina, was transmitted to the Marine Corps.

2. Subsequent to the transmittal of the FFA, MCB Camp Lejeune requested in enclosure (1) that the language in the FFA be amended so as to more expressly bind the State of North Carolina as a Party to the FFA. As a result, additional negotiations occurred between the Department of the Navy and the State of North Carolina. Enclosure (2) describes proposed compromise language to amend the FFA. The Staff Judge Advocate for MCB Camp Lejeune approved the compromise in enclosure (3). Enclosure (4) is the formal proposal by the Department of the Navy to the State of North Carolina.

3. We have recently received word that after review by the North Carolina Attorney General's Office, the North Carolina Department of Environment, Health, and Natural Resources, and the Governor of the State of North Carolina, the compromise has been agreed to by the State of North Carolina. As a result, enclosure (5) is a set of two pages to replace the respective pages in the FFA. We will be notifying EPA and the State of North Carolina that these two pages will be replaced in the FFA that will accompany the original Letter of Intent.

4. NAVFACENGCOM recommends that the original Letter of Intent (which has been signed already by representatives of EPA and the State of North Carolina) and the FFA for Camp Lejeune (with the two replacement pages) be forwarded to the Office of the Assistant Secretary of the Navy (Installations and Environment).



J.A. Rispoli
Assistant Commander for
Environment, Safety and Health

Copy to:
LANTNAVFACENGCOM (Codes 18, 09C)
CG MCB Camp Lejeune

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

204 # 18
IN REPLY REFER TO

6280

CG

26 JAN 1990

From: Commanding General, Marine Corps Base, Camp Lejeune
To: Commander, Naval Facilities Engineering Command, 200 Stovall
Street, Alexandria, Virginia 22322-2300

Subj: THE REQUIREMENT FOR A DoN POLICY CONCERNING THE STATUS OF STATES
AS SIGNATORIES TO CERCLA FEDERAL FACILITIES AGREEMENTS

1. During the summer and early fall of last year, a joint NAVFAC-Camp Lejeune team negotiated a CERCLA Federal Facilities Agreement (FFA) for my Command. It is my understanding that the Camp Lejeune FFA is under Headquarters review for the purpose of moving to public review in the near future. I have also been advised that this FFA is the first such agreement for the Marine Corps; but is soon to be followed by several Marine agreements on the West Coast and one in Georgia. One aspect of the FFA which causes me particular concern is form of the "Parties" provision which purports to bind only one administrative agency of the State of North Carolina rather than the entire State executive branch. For reasons which will be set out below, it would appear that (1) steps should be taken to bind the entire State and (2) a DoN policy should be established to either compel such a result or sanction bilateral agreements between individual installations and their respective EPA regions.
2. During the Camp Lejeune FFA negotiations, the State of North Carolina argued that only their Solid Waste Management Division should be bound by the agreement. The negotiations reached impasse on the issue. Later the State reluctantly agreed to be bound at the next higher (departmental) level; but the negotiations adamantly declined to bind the entire State. The State's reluctance was apparently for political reasons.
3. The Camp Lejeune FFA contains a clause which would require the "Parties" to exhaust all administrative remedies before the State could proceed to a civil action in a court of law. Under the current language of the FFA, the State administrative department listed as a "Party" would clearly be bound. A question remains whether the State's Attorney General could unilaterally initiate a civil action outside the agreement before the administrative steps were completed. This concern is all the more acute because the Attorney General is an elected official in North Carolina and may have broader discretion in such matters than would a political appointee.
4. I have been advised that the Department of the Air Force has adopted a policy which requires that a State be bound by a FFA as an entity or that the applicable Air Force installation enter into a bilateral agreement with the EPA. A similar position should be adopted as a matter of Department of the Navy policy.

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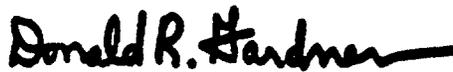
ENCLOSURE(1)

Subj: THE REQUIREMENT FOR A DON POLICY CONCERNING THE STATUS OF STATES AS SIGNATORIES TO CERCLA FEDERAL FACILITIES AGREEMENTS

5. It would appear inappropriate to release the Camp Lejeune FFA for public review until this issue is resolved. If the issue is resolved in favor of requiring States to be parties vice their subordinate administrative agencies, Camp Lejeune negotiations should either be reopened at the Headquarters level or correspondence articulating DoN policy should be provided my Command for further negotiations at the field level.

6. If the State is negotiating in good faith, it should be willing to be bound as an entity. If the opposite is the case, it would appear that the best interests of the Department of the Navy sould be best served by bilateral agreements between individual installations and their respective EPA regions.

7. Your assistance in resolving this issue would be greatly appreciated.


DONALD R. GARDNER

Copy to:
HQMC (CL)
CG FMFLANT

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DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

IN REPLY REFER TO



March 21, 1990

LtCol P. Wilbur
Associate Counsel
(Environment)
Office of Counsel for the
Commandant (Code: CL)
Headquarters, U.S. Marine Corps
Washington, DC 20380-0001

Peter Kushner
Environmental Law Office
Legal Services Support Group
Office of the General Counsel
U.S. Department of the Navy
Crystal Plaza 5, Room 368
Washington, DC 20360-5110

LtCol J. Wellington
Eastern Area Counsel Office
Marine Corps Base
Camp LeJeune, NC 28542-5001

John Wittmann
Naval Facilities Engineering
Command, Atlantic Division
Norfolk, VA 23511-6287

Col J. Cathcart
Staff Judge Advocate
Marine Corps Base
Camp LeJeune, NC 28542-5001

Re: Camp LeJeune FFA

Dear Counsel:

I have finally received a counter-proposal from Nancy Scott at the North Carolina Department of Justice to modify the Camp Lejeune FFA. They propose that the following two sentences be added as the second and third sentences to Section II ("Parties"):

"The North Carolina DEHNR is entering into this Agreement with the approval of the Governor of the State of North Carolina. The terms of this agreement shall apply to and be binding upon the State of North Carolina in accordance with N.C.G.S. Sections 130A-310.21, 130A-310.22, 130A-299, 130A-305 and 143B-7."

In addition to the signature by Edythe McKinney, the Attorney General of the State of North Carolina would sign the FFA "for form and format". There would be no other changes to the FFA or to the Letter of Intent. (I am assuming that they have internally resolved their concern that the FFA does not clearly bind the Department of the Navy.)

As I predicted, their proposal is a slight re-working of the language from the Robins AFB FFA. Their proposal is contingent upon its acceptance by the Governor. If we accept their proposal, I assume that the Marine Corps and the Navy could provide some support in this regard for their efforts with the Office of the Governor.

ENCLOSURE(2)

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I am interested in your comments on their counter-proposal. Frankly, I think that this is the best offer that I can get negotiating at this level. I appreciate your cooperation in this matter and look forward to hearing from you.

Sincerely yours,



RAY GOLDSTEIN
Assistant Counsel (Environmental)

cc: Bob Warren
Sheila Ashton
Bill Judkins

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REPRODUCED AT GOVERNMENT EXPENSE



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

IN REPLY REFER TO
6280.45
SJA4

27 MAR 1990

Mr. Ray Goldstein
Assistant Counsel, Environmental
Naval Facilities Engineering Command
200 Stovall Street
Alexandria, VA 22333-3300

Dear Mr. Goldstein:

This is to acknowledge receipt of your letter of March 21, 1990, regarding the Camp Lejeune Federal Facilities Agreement (FFA). I understand the previous misunderstanding on the letters. I have discussed this matter with Lt. Col. Wellington, and he agrees that I will be the primary spokesman for the position of the Commanding General, Marine Corps Base, Camp Lejeune. You can rest assured that he will be actively consulted in all matters pertaining to this FFA. You should not hesitate to continue to discuss this matter with him as you have in the past.

I have examined the most recent proposal in your letter. I have no objection to this language. The signature of the Attorney General as proposed is satisfactory. I sincerely hope the State will sign this agreement and that we can submit the FFA for public comment soon. I appreciate your efforts in these negotiations.

If direct efforts are needed with the Governor, please discuss the details with me as they become available. I cannot speak for the General in this area, but I will be more than happy to present the need to him if it arises. I, of course, will need to know specifics prior to approaching General Gardner.

Sincerely,

JAMES A. CATHCART
Colonel, U.S. Marine Corps
Staff Judge Advocate

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ENCLOSURE(3)



DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

IN REPLY REFER TO

April 3, 1990

Nancy Scott
Associate Attorney General
North Carolina Department
of Justice
P.O. Box 629
Raleigh, NC 27602

Re: Federal Facility Agreement for
Marine Corps Base Camp LeJeune

Dear Nancy:

I have authority from my clients to propose the following changes to the Federal Facility Agreement (FFA) for Marine Corps Base (MCB) Camp Lejeune which would resolve the differences regarding the issue of the representation of the State of North Carolina. This proposal is significantly different in form from the previous proposal in my letter dated Feb. 2, 1990 to Edythe McKinney, Assistant Secretary for Environmental Protection, North Carolina Department of Environment, Health and Natural Resources.

I propose that the following two sentences be added as the second and third sentences of Section II ("Parties") of the FFA for MCB Camp Lejeune:

"The North Carolina DEHNR is entering into this Agreement with the approval of the Governor of the State of North Carolina. The terms of this Agreement shall apply to and be binding upon the State of North Carolina in accordance with N.C.G.S. Sections 130A-310.21, 130A-310.22, 130A-299, 130A-305 and 143B-7."

In addition to the signature by Edythe McKinney, the Attorney General of the State of North Carolina will sign the FFA "For Form and Format". There would be no other changes to the FFA or to the Letter of Intent. If I have transcribed it correctly, I believe that this proposal is what you and I informally discussed during our last telephone conversation.

If the State of North Carolina agrees to this proposal, I will need a confirmation letter from your office. After I have received that letter, we will insert two replacement pages into the FFA, sign the Letter of Intent and return the original documents to EPA so that the public comment process can begin. I would like to complete these last formalities as soon as possible.

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REPRODUCED AT GOVERNMENT EXPENSE

ENCLOSURE(4)

Please feel free to contact me to discuss this matter further, if necessary. I appreciate your cooperation in this matter and look forward to hearing from you.

Sincerely yours,



RAY GOLDSTEIN
Assistant Counsel (Environmental)

cc: Beverly Spagg
Gordon Davidson
Robert Warren
Col J. Cathcart
LtCol J. Wellington
LtCol P. Wilbur
Sheila Ashton
John Wittmann
William Judkins
Peter Kushner

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ENCLOSURE(5)

December 6, 1989; Section II
(Revised June 1990)

II. PARTIES

The Parties to this Agreement are the USEPA, the North Carolina DEHNR, and the Marine Corps. The North Carolina DEHNR is entering into this Agreement with the approval of the Governor of the State of North Carolina. The terms of this Agreement shall apply to and be binding upon the State of North Carolina in accordance with N.C.G.S. Sections 130A-310.21, 130A-310.22, 130A-299, 130A-305 and 143B-7. The terms of this Agreement shall apply to and be binding upon the Parties, and their agents and employees and all subsequent owners, operators and lessees of the Camp Lejeune/New River Complex. The Marine Corps will notify USEPA and DEHNR of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This section shall not be construed as an agreement to indemnify any person. The Marine Corps shall take reasonable steps to notify its agents, employees, response action contractors for the Site, and all subsequent owners, operators, and lessees of Camp Lejeune/New River of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

December 6, 1989
(Revised June 1990)

IT IS SO AGREED:

FOR U.S. DEPARTMENT OF THE NAVY

By: _____ Date: _____

Jacqueline E. Schafer
Assistant Secretary of the Navy
(Installations and Environment)

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND
NATURAL RESOURCES

By: _____ Date: _____

Edythe McKinney
Assistant Secretary for Environmental Protection
Department of Environment, Health and Natural Resources

For Form and Format:

By: _____ Date: _____

Lacy H. Thornburg
Attorney General for the State of North Carolina

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____

Greer C. Tidwell, Regional Administrator
Region IV

DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

IN REPLY REFER TO

June 26, 1990

Nancy Scott
 Assistant Attorney General
 Attorney General's Office
 P.O. Box 629
 Raleigh, NC 27602

Re: FFA for MCB Camp Lejeune, NC

Dear Nancy:

This letter is to confirm that after review by the North Carolina Attorney General's Office, the North Carolina Department of Environment, Health and Natural Resources, and the Governor of the State of North Carolina, the State of North Carolina has accepted the proposal to amend the draft Federal Facility Agreement (FFA) for Marine Corps Base (MCB) Camp Lejeune, North Carolina as set out in my letter to you of April 3, 1990. I am enclosing for your files a copy of the two replacement pages for the FFA which will accompany the Letter of Intent to Execute the FFA for MCB Camp Lejeune, North Carolina. I have enjoyed working with you on this matter. It is my hope that the Department of the Navy will be in a position to sign the Letter of Intent in the very near future. I appreciate your cooperation in this matter.

Sincerely yours,



RAY GOLDSTEIN
 Assistant Counsel (Environmental)

cc: Beverly Spagg
 Elaine Lavine
 Gordon Davidson
 Robert Warren
 Col. J. Cathcart
 Lt. Col. J. Wellington
 Lt. Col. P. Wilbur
 Sheila Ashton
 John Wittmann
 William Judkins
 David Olson
 Peter Kushner

December 6, 1989; Section II
(Revised June 1990)

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December 6, 1989
(Revised June 1990)

IT IS SO AGREED:

FOR U.S. DEPARTMENT OF THE NAVY

By: _____ Date: _____

Jacqueline E. Schafer
Assistant Secretary of the Navy
(Installations and Environment)

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND
NATURAL RESOURCES

By: _____ Date: _____

Edythe McKinney
Assistant Secretary for Environmental Protection
Department of Environment, Health and Natural Resources

For Form and Format:

By: _____ Date: _____

Lacy H. Thornburg
Attorney General for the State of North Carolina

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____

Greer C. Tidwell, Regional Administrator
Region IV