12.02-08/07/86-00551 CL-3.01

07 AUG 1986

MEMORANDUM FOR FILES

Subj: NACIP PROGRAM MEETING AT MCB CAMP LEJEUNE OF 31 JUL - 1 AUG 86

Encl: (1) Agenda
(2) List of Attendees
(3) Draft Conference Committee Languages, CERCLA Reauthorization

1. I attended a meeting at Camp Lejeune that was requested by EPA so they could comment on the material we sent them last spring. The meeting agenda is provided as enclosure (1); enclosure (2) is a list of attendees.

2. First, EPA had no technical comments on ESE's first round report, the accompanying data, or our round two SOW. We explained that the ESE report was an interim progress report, not the final product of our study. Their general comments are as follows:

a. Our end result should meet the requirements of the NCP. Guidance along these lines should be filtering down from DOD.

b. We should accelerate our study for highly-contaminated sites.

c. Camp Lejeune will definitely make the NPL. It takes about a year after the scoring process has begun.

d. They recommend the modified Appendix VIII (or priority pollutants?) scan be done at each site before deleting it from the program. This should also satisfy the RCRA 3004u requirements for SWMUs. Mathis suggested we sample the most downgradient well as a worst-case.

e. We may want to consider stainless steel (SS) wells if low levels of contaminants are detected (for example, use SS for one well at a site). We can check on the RCRA protocol with John Dickenson (NC RCRA). If we elect not to use SS wells, we should discuss in the report that we considered the need and made our decision based on engineering judgement.

f. We should ask ESE to evaluate the SOW from the RI/FS perspective. (Per Bob Gregory, our CS end result will be pretty much the same as an RI/FS).

3. We discussed briefly the USGS groundwater study. Bob Alexander summarized the scope and mentioned that the data would be useful to ESE. EPA stated that they didn't want USGS to look at contamination problems because, historically, they haven't been very cognizant of EPA regulations or very cooperative with the agency.

4. Bob Gregory reviewed the SOW for round two sampling and characterization/feasibility in the Hadnot Point area.

5. Junior Johnson discussed CLEJ's water distribution system. Their wells tap into the Castle Hayne aquifer at depths ranging from 150 to 250 feet.

(The country wells tap another aquifer approximately 500' deep). Average yield is 250 gpm, however, TT wells yield only 90 gpm. The Tarawa Terrace system is now being supplemented by the Holcomb Boulevard system through an 8" raw water main. CLEJ may abandon all the TT wells due to the low yields.

6. Rick Shriver reviewed the state's progress on the Tarawa Terrace investigation. They determined that ABC Cleaners had been discharging chlorinated solvents through their septic tank system since the early 1950's. The state has issued a NOV to the owner and put the site on their CERCLA inventory. Their legal people have the next move, however, the state will probably ask the owner to conduct a study to determine the extent of the contamination and perhaps, to remove the septic tank and sludges. (This would entail destruction of the building, since the septic tank drainfield is underneath it). EPA said the state was proceeding properly and they would check with their CERCLA people on the site status. They recommended the government (i.e., CLEJ) look at filing suit for restitution for the contaminated wells, however, base personnel were reluctant to take any action. It seems they are in the midst of acquiring additional acreage and are adamant about not generating any more adverse publicity.

7. EPA was most anxious to talk about SWMUs. They're planning to go back to their legal staff to find out how to open CLEJ's permit to apply 3004u. They stated that should we wait for permit reissuance in the 1990's, the RCRA people may dismiss our NACIP data as being too old. EPA distributed a draft of conference committee language on CERCLA reauthorization (Encl (3)). It seem these sections have already been agreed on by the conferees. In the draft document, the 3004u provision is applied to all facilities, even those not seeking Part B permits. EPA will expect the same IRP process to be followed for all SWMUs and urged CLEJ to request their permit be reopened to include these. I pointed out that we have yet to receive any guidance from DOD on how the 3004u process will be funded and implemented, so it would be premature for CLEJ to request permitting for these units. I also asked if we will have to work with both EPA's RCRA and CERCLA people for the duration of the NACIP program. It seems EPA headquarters has not yet determined which branch will have the lead.

8. On August 1, we toured the NACIP sites by car. After an out-briefing, we adjourned at 2:00 pm.

Cherryl Barnett
Cherryl Barnett
Environmental Engineer

AGENDA

REVIEW OF N.A.C.I.P. PROGRAM

MARINE CORPS BASE

CAMP LEJEUNE

31 JULY 1986

Thursday, 31 July

0830-0840	Welcome & Introductions	COL Dalzell, Asst. Chief of Staff, Facilities
0840-1030	U.S.E.P.A. Comments	Region IV Staff
1030-1200	Confirmation Study Update	LANTDIV and Envir. Science & Engr.
1200-1300	Lunch, No host	
1300-1400	Tarawa Terrace Update	N.C. Div. of Env. Mgt.
1400-1500	Review of Drinking Water Systems	Base Utilities Branch
1500-1600	Review of RCRA Regulations	EPA/State Staff

Friday, 1 August

0800-1200	Tour of N.A.C.I.P. Sites
1200-1330	Lunch, No host
1330-1400	Outbrief, Bldg 1

N.A.C.I.P. Review

Camp Lejeune, NC

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DRAFT 3/28/86
Draft II

I. CONFERENCE LANGUAGE

SEC. 120 FEDERAL FACILITIES

(a) IN GENERAL - Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120 FEDERAL FACILITIES

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT. -

"(1) IN GENERAL - Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as an nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES. - All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under the this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priority List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned and operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department,

agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS. - This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS. - State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorites List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE. - Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET. -

"(1) The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket which shall contain all information submitted under section 3016 of the Solid Waste Disposal Act regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

"(2) Information submitted by the department, agency, or instrumentality under 3005 or 3010 of such Act.

"(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

Such docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every six months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding

three-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

"(d) ASSESSMENT AND EVALUATION. - Not later than eighteen months after the date of enactment of the Superfund Improvement Act of 1985, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator sahll where appropriate -

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases.

"(2) include such facilities on the National Priorities List maintained under such plan. Such evaluation and listing shall be completed not later than 30 months after such date of enactment.

Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

"(e) REQUIRED ACTION BY DEPARTMENT. -

"(1) RIFS. - Not later than six months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consulation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The agreement shall provide for a timetable and deadlines for commencement and expeditious completion of such investigation and study.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT. - The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study.

"(3) COMPLETION OF REMEDIAL ACTIONS. - Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare and the environment and identify the specific consequences of failure to begin and complete remedial action. All such interagency agreements shall comply with the public participation requirements of section 104(j). For purposes of public participation in accordance with section 117, the proposal of a plan for remedial action in an interagency shall be treated as the proposal of a plan for remedial action and the adoption of such an agreement shall be treated as the adoption of a final plan.

"(4) CONTENTS OF AGREEMENT. - Each interagency under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(5) ANNUAL REPORT. - Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall includes, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A report on progress in conducting investigations and studies under paragraph (1).

"(D) A report on progress in conducting remedial actions.

"(E) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

"(F) A brief summary of the public comments regarding each proposed interagency agreement.

"(G) A description of the instances in which no agreement was reached.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached.

The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affect States.

"(6) SETTLEMENTS WITH OTHER PARTIES. - If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122. Following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(7) STATE AND LOCAL PARTICIPATION. -

"(A) the Administrator shall consult with the relevant officials of the State and locality in which the facility is located and shall consider their views in selecting the remedial action to be carried out at the facility.

"(B) Each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and formulation of the remedial action, including but not limited the review of all applicable data as it becomes available and the development of studies, reports, and action plans.

"(f) TRANSFER OF AUTHORITIES. - Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES. -

"(1) NOTICE. - After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any control for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS. - Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS. - After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain -

"(A) to the extent such information is available on the basis of a complete search of agency files -

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that-

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken befor the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party (as defined in section 122(j) with respect to such real property.

"(h) OBLIGATIONS UNDER SOLID WASTE ACT. - Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(i) NATIONAL SECURITY. -

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS. - The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments of 1985 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed 1 year.

Additional exemptions may be granted each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed 1 year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(2) CLASSIFIED INFORMATION. - Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments of 1985.

"(j) CITIZENS SUITS - [language to be provided to clarify in the statute that the Federal facilities provisions of the Act are subject to citizens' suits.]

II. STATEMENT OF MANAGERS

§120(c): COMPLIANCE DOCKET: "Following notification under Section 103, where the EPA Administrator concurs that a response to source, special nuclear or byproduct material (as defined by the AEA) is being conducted in accordance with the NCP under other Federal statutes, docketing under (c)(1)(C) is not required."

§120(d): ASSESSMEMT AND EVALUATION: "The provision requires placement of all qualifying Federal facilities on the National Priorities List no later than 30 months after the date of enactment. This deadline is intended to be an outside limit and establish the latest date on which facilities can be listed. Federal agencies and departments, working in conjunction with EPA, should make every effort to propose and list facilities in installments as soon as possible during the 30 month period, as the facilities are evaluated under the Hazard Ranking System."

§120(h): OBLIGATIONS UNDER SOLID WASTE ACT: "The phrase 'corrective action requirements' includes RCRA section 3004(u) requirements as set forth in EPA's recodification rule of July 15, 1985 and the interpretation published on March 5, 1986."

§120(i): NATIONAL SECURITY: "The national security waiver should be applied only on a site-specific and instance-specific basis, and with appropriate restraint. The waiver is intended to protect the legitimate national security interest of the United States. The waiver was included--as it has been

in other major Federal environmental laws--because the Departments of Defense and Energy expressed concern that operation of their facilities, vital to national security, could be seriously interfered with, particularly in time of war and other national emergencies. The national security waiver is not intended to routinely exempt response actions at Federal facilities from the public health and environmental standards imposed under the Act. Furthermore, the duration of the national security waiver is not intended to continue beyond the time required to protect legitimate national security interests. Such response actions should be conducted in an expeditious and sound manner that provides protection of human health and the environment."

§120(?): FEDERAL LAND MANAGERS: "The conferees intend that the Administrator shall take into account the special ecological and environmental missions of certain Federal land managers, such as the Fish and Wildlife Service, when fulfilling the requirements of this section. The Administrator shall consider closely the plans for remedial actions recommended by these Federal officials to ensure that response actions undertaken pursuant to this act are compatible with the ecological and environmental responsibilities of these other Federal agencies."