[redacted] Mr. Thomas Townsend

13 November 2000

Ms. Phyllis P. Harris
Regional Counsel/Div. Environmental Accountability Dir.
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

COPY

SUBJ: Federal Facilities Agreement, MCB/CLNC of 6 Dec. 1989
Ref: (a) Your letter of 1 November 2000, Same Subject

Dear Ms Harris,

Thank you for your letter, noted above, and the "Five Year Review". Your letter does however arise several questions as to the role played by USEPA 4 in the CLNC program. The first involves the deletion of the requirement for submission of quarterly action reports by the Marine Corps of quarterly written action reports to USEPA and NCDEHNR as required by Section XIV of the 1989 FFA. Your letter noted this action/amendment was agreed up by USEPA 4, the State of North Carolina and MCB/CLNC.

Section XXXV of the FFA does allow for amendments with the "unanimous written agreement of the parties". MCB/CLNC was not a signatory/party to the FFA nor was it a delegated agent of the Department of the Navy to enter into such an amendment. The FFA was originally signed by an Assistant Secretary of the Navy for the Department of the Navy (DON). Later, the DON delegated responsibility to plan and implement response action at all Navy and Marine Corps installations to the Commander, Naval Facilities Engineering Command. This delegation is spelled out in the Navy Marine Corps Installation Recovery Manual under the "Lead Agency" concept (IR Manual, Chapter 1, Sec. 1.1.5)

Does EPA 4 Counsel have written unanimous confirmation from the Administrator USEPA 4, the State of North Carolina, and Commander NAVFAC ENGCOM agreeing to amend the quarterly reporting requirement? CLW

The rationale for the decision because of "dyplication of effort", is supported by the fact that USEPA 4 has an on-site project manager as does the Marine Corps and perhaps, from time to time, a North Carolina overseer.

That however does not change the fact that the FFA is the controlling CERCLA related document along with the ROD's, that USEPA is the federal agency responsible for CERCLA, SARA et al enforcement and the public, that is interested, expects compliance with the FFA by all the signatories. MCB/CLNC as the PRP was certainly not a signatory nor was it in a position of delegated authority to suggest or amend the FFA for its partial benefit.

I find this situation unsettling and raises the possible charge of favoritism by USEPA to a PRP for a federal NPL site.

Since USEPA 4 is the regulatory agency responsible for ensuring compliance with the FFA would you please advise what other amendments may have been made to date to the FFA since its inception in 1989 and whether they met the consent requirements of section XXXV of the FFA.

There is a growing public interest in the contamination issue at Camp Lejeune since the incident information is becoming more public. I suspect that questions about EPA's role, the FFA and compliance therewith will become more frequent.

Your statement on page 2 of your letter referring back to possible "subsequent agreement between the parties to the FFA that transcends the provisions agreed to in the 1989 FFA" causes me to question the EPA 4 role as the CERCLA oversight administrator/regulator as well as a FFA signatory/party.

If the office of the USEPA 4 Counsel doesn't know specifically of the authorized amendments or the "agreements" that may have been worked out between the players (authorized or unauthorized) who does? The concept of "there may be a subsequent agreement ---" is most disturbing. Not that amendments cannot be done, but that their existence and public knowledge of them seems very nebulous.

CLW

I realize that USEPA 4 has a Remedial Project Manager at CLNC and Ms. Grant-Howard is the federal facilities coordinator at Atlanta. Many activities in the restoration/mitigation phases can be informally coordinated, EPA knows from it's on site overseer what MCB/EMD is doing and the remediation goes forward. My concern is that all these informal arrangements are in absolute compliance with the terms agreed upon by the FFA parties/signatories and not eroding the intent of the CERCLA and other environmental legislation and the formal procedures specified in the FFA and subsequent ROD's.

I find no evidence to suggest the contention that the MCB/CLNC Administrative Record File is current. Since that ARF is not a USEPA responsibility I shall take up that issue with the DoN. But even a look at the EPA Index for MCB/CLNC and identified by EPA ID number seems to end in 1995. It is as if all formal written communication ceased and all business between 1995-2000 has been transacted sans a written public record.

A last item. The Five Year Review on page 1-2 makes reference under section 1.3 to an FFA signed in February 1991. Is this an administrative error whence the author perhaps meant the FFA of 6 December 1989 or what?

cc: Senator Crapo
SecNav
CMC (ILX)(LFE)
LANTDIV, NAVFACENGCOM

Regards,
[signature]
MAJOR, USMC (Retired)

CLW
0000003369