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THE ATTORNEY GENERAL'S OFFICE
12/15/89

08.02-12/15/89-00604

TO Sheila Ashton
From: Nancy Scott
(919) 733-4618

Attached is a revised draft of
the State's Reservation of Rights Section
for the Camp Lejeune Agreement to be
signed by the Department of
Environment, Health and Natural
Resources.

Also attached is a clarification for
page 20: Scope of the Agreement.

If you have any questions, please
call me.

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12/'89 Draft

XXIV. THE STATE'S RESERVATION OF RIGHTS

Nothing herein shall be construed to affect the State's rights to seek appropriate relief, to the extent authorized by law and this Agreement, against USEPA, the Marine Corps, or any other party, to obtain compliance with the law at the Site, including, but not limited to, North Carolina law (1) governing hazardous or solid waste generation, storage, treatment, or disposal, (2) concerning removal or remedial actions, or (3) liability or compliance with respect to the release of hazardous substances or other pollutants or contaminants, including petroleum.

By entering into this Agreement, the State does not waive any right or authority, it may have under North Carolina law, but expressly reserves all of the rights and authority it may have thereunder, including, but not limited to, permitting authority and the right to order abatement of an imminent hazard to the public health or the environment. The State reserves all rights it may have under Section 121 of CERCLA, 42 U.S.C. Section 9621. For work performed within the Scope of this Agreement (Section VII), the State expressly agrees to exhaust any applicable remedies provided in Section X (Consultation with USEPA and DSWM) and Section XI (Dispute Resolution) of this Agreement before pursuing any remedies it may have under the statutes which

Doc. No. 1 CLES-00604
8.02-12/15/89

provide the jurisdictional basis for this Agreement. Unless expressly waived by law, North Carolina does not waive its Sovereign Immunity by entering into this Agreement.

VII. SCOPE OF THE AGREEMENT

A. This Agreement shall apply to all releases and threats of release of hazardous substances, pollutants, contaminants or constituents for which response authorities are provided under CERCLA/SARA and Sections 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6928(h) and 6924(u) and (v). This Agreement does not extend to solid or hazardous waste generation, transportation, and/or treatment/storage/disposal requirements under RCRA outside the RCRA corrective action process, nor does it extend to discharges of oil and hazardous substances addressed under N.C.G.S. Sections 143-215.75, et seq. (the Oil Pollution and Hazardous Substance Control Act), or ^{other} releases regulated under Chapter 143 of N.C.G.S., except releases from underground petroleum storage tanks specifically addressed under this Agreement.

Articles
21, 21A,
B

B. The Marine Corps shall conduct the work identified within the scope of this Agreement in accordance with the authorities cited in Section I (Jurisdiction) of this Agreement, and all provisions of RCRA, CERCLA, and the NCP, as amended, and as provided for in pertinent USEPA or State-issued guidance or policy, and other applicable Federal or State law.

C. The USEPA and DSWM shall provide all pertinent guidance