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ATTORNEY WORK PRODUCT**

MCBCL 5801/15

BUCK TAG REF	SJA DUE DATE	ACTION SECTION	<i>Civil Law</i>
SECTION CASE NO. <i>88-338</i>	SECTION DUE DATE	AO/COUNSEL	<i>Don</i>
SUBJECT <i>LEAD IN DRINKING WATER # II</i>		SSIC	<i>6280</i>
AO COMMENTS:			
REFERENCES CHECKED <input type="checkbox"/>	CURRENT <input type="checkbox"/>	ATTACHED <input type="checkbox"/>	<div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;"> <i>4/11</i> </div>
PRIOR SJA OPINIONS ATTACHED <input type="checkbox"/>	FYI <input type="checkbox"/>	DSR <input checked="" type="checkbox"/>	
REMARKS:			
<p><i>1. DSR and case # plz. RD 4/8</i></p> <hr/> <p><i>TO SJA</i></p> <p><i>1. We test for lead at the six distribution points, but scientific evidence discloses most lead contamination occurs after that point. I recommend we advise AC/s, Fac to test at random tap locations in addition to the distribution points. - Agree -</i></p> <p><i>2. I equate this issue to any other landowner liability issue. All of us who drink water here at CL are "invitees", and accordingly, the landowner has the minimum duty to inspect for reasonably foreseeable risks. ^{v/r} 4/8</i></p> <p><i>3. I consider this as a separate issue from public notice req'ts, so a separate memo.</i></p>			

(CONTINUED ON REVERSE)

DSJA/SJA COMMENTS:

4/11 (M) 4/11/88

To: CLIO

- 1. Good idea - although they won't like it.*
- 2. Smooth it.*

SJA

4/12/88

Signed.

SJA

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NOT TO BE RELEASED OUTSIDE OF OSJA WITHOUT SJA'S EXPRESSED PERMISSION

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SECTION CASE NO. 88-338	SECTION DUE DATE	Civil Law
SUBJECT	AO/COUNSEL	Don
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	PRIOR SJA OPINIONS ATTACHED <input type="checkbox"/>	ATTACHED <input type="checkbox"/>
REMARKS:	FYI <input type="checkbox"/>	DSR <input checked="" type="checkbox"/>
		SMOOTH <input checked="" type="checkbox"/> 4/11

1. DSR and case # plz. 8/11 4/8

TO SJA

1. We test for lead at the six distribution points, but scientific evidence discloses most lead contamination occurs after that point. I recommend we advise AC/s, Fac to test at random tap locations in addition to the distribution points. - Agree -
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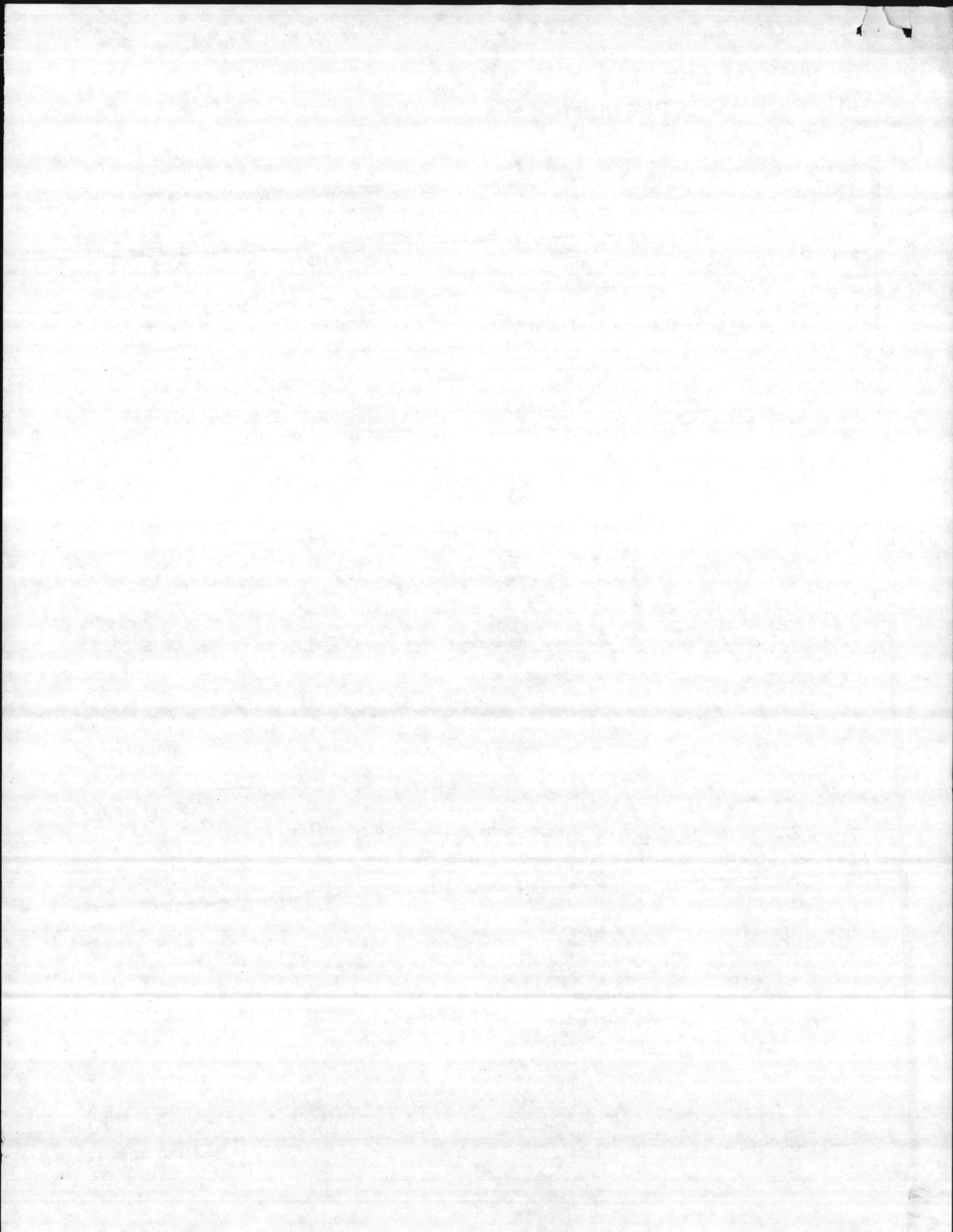
(CONTINUED ON REVERSE)

DSJA/SJA COMMENTS:

4/11 (M) 4/11/88
TO: CLLO

1. Good idea - although they won't like it.
2. Smooth it.

SJA
4/12/88
Signed
SJA



88-280
Caldwell
Safe Drinking
Water
6280
SJA41

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12 APR 1988

From: Staff Judge Advocate, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Facilities, Marine Corps Base,
Camp Lejeune

Subj: LEAD IN DRINKING WATER

1. In reviewing your recommendations regarding the public notice requirements regarding lead in drinking water as mandated by the Safe Drinking Water Act (SDWA), I had to conduct research into both the legal and technical aspects associated with the SDWA. An issue separate from the "public notice" requirement has arisen and requires analysis and coordination between this Office and your Department.

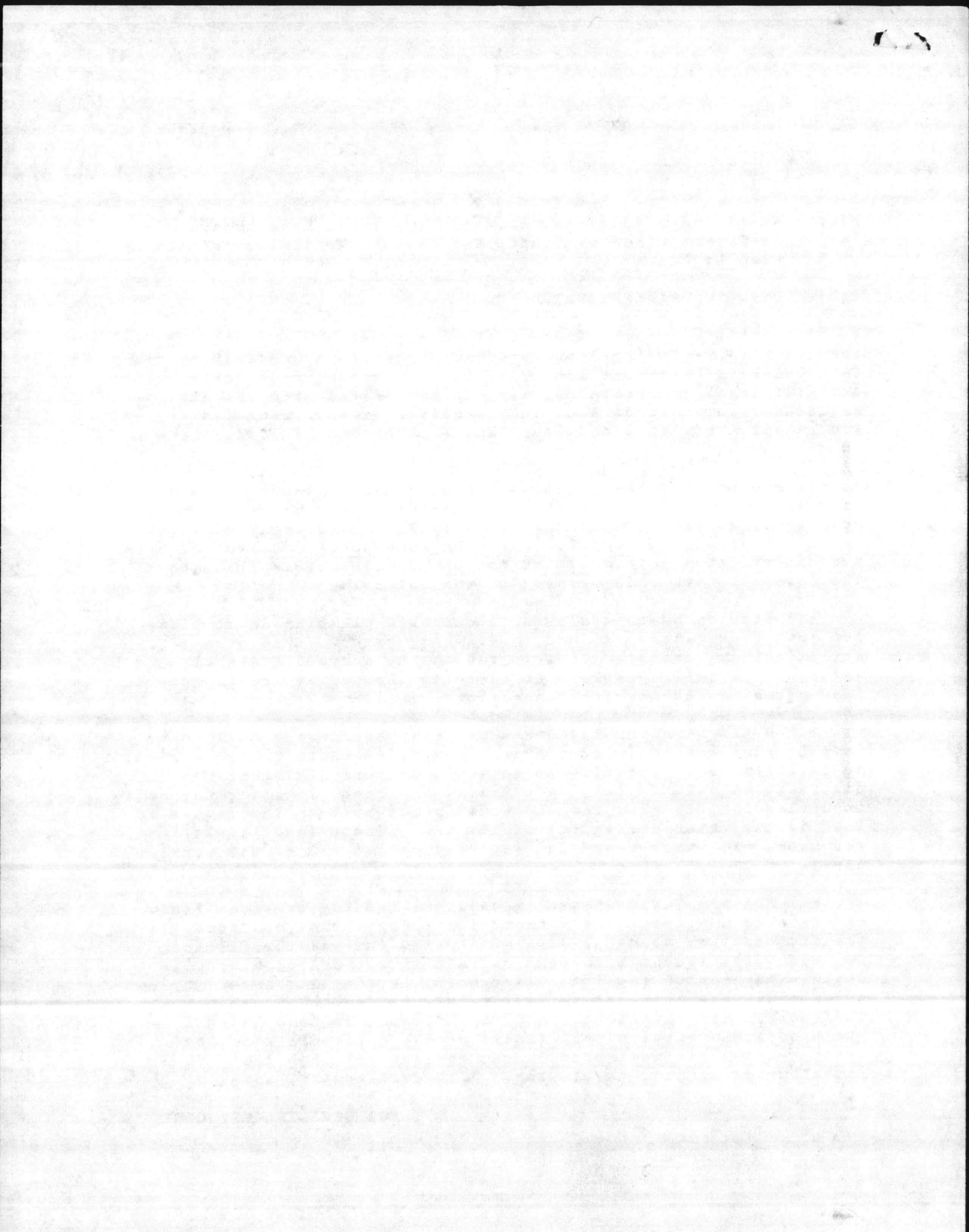
2. Specifically, the issue is "Whether Camp Lejeune has a legal duty to conduct its monitoring for lead at the tap instead of monitoring at the point of distribution?" Based on my research on this topic, in my opinion, Camp Lejeune should monitor at both the distribution points and at various tap locations throughout the Base. I base this opinion on the following:

a. Studies demonstrate that household plumbing is to blame for most occurrences of lead in drinking water. Even when utilities take drastic steps to reduce the corrosiveness of water, it is still possible for lead to show up at the tap due to lead plumbing and service connections.

b. Notifying Camp Lejeune consumers that levels of lead at Camp Lejeune are well below EPA standards is technically correct, as it is industry practice to conduct monitoring at the distribution point. But, in a sense, any such statement may well be misleading, in that Camp Lejeune is not sure of the levels of lead in the water coming out of the tap. Those lead levels, as you know, will vary depending on the type and age of the service pipes.

c. EPA and environmental groups are feuding over the issue of where to monitor. Environmentalists argue that monitoring at the distribution plant is like monitoring for water pollution upstream of a sewage treatment outfall line. EPA counters by saying they cannot regulate homeowners, lacking the authority to go onto private property to tell people to replace plumbing. This debate is inapplicable to Camp Lejeune, as Camp Lejeune has dominion and control of all facets of the water distribution system - from the well-head in the aquifer, through the distribution plants, to the tap. With such control comes a

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concomitant duty to protect the users from lead contamination. Such protection, in my opinion, begins with an inspection, namely, conducting random sampling of drinking water at various locations on base: old and new barracks; housing areas; old and new workplaces. In my opinion, it would be a breach of the appropriate standard of care to fail to conduct such random tap monitoring, the Base having knowledge of the risks associated with lead contamination and the likely sources of such contamination.

d. The Base's next step would depend on the results of the tap monitoring. If the levels are within EPA limits, no action would be required. If lead levels in the drinking water exceed EPA limits, the Base would have to carefully identify and apply the appropriate standard of care. Will warnings and advisements to avoid certain taps suffice? Should the Base shut off water service to those areas with unacceptable lead levels? Will the Base be required to replace all plumbing in areas associated with unacceptable limits? These are questions which may have to be answered in the future, especially if EPA bows to public pressure and lowers the lead limit to the 10-20 ppb level.

2. Accordingly, I recommend that if the contract for 1988 heavy metal monitoring has not yet been consummated, it include random tap monitoring at cross sectional locations aboard the Base. If it has been consummated, I recommend the contract be modified to include such monitoring. I also recommend including provisions in the contract which prohibit the contractor from disclosing the results of the tap monitoring to anyone other those specified in the contract. This Office will assist you in drafting such a contract or modification to ensure any negative results are disclosed to only the appropriate officials and in the method the Command desires.

A. P. TOKARZ

Drafter: Capt Dougherty, CivLaw, 5177
Typist: Cpl Torres, 4/11/88

