



ATTORNEY WORK PRODUCT: NOT FOR PUBLIC RELEASE

UNITED STATES MARINE CORPS

MARINE CORPS BASE
PSC Box 20004
Camp Lejeune, NC 28542-0004

IN REPLY REFER TO:
5800
BSJA4

MEMORANDUM

From: Environmental Law Attorney
To: Mr. Neal Paul, Director, Installation Restoration Division
Via: Assistant Staff Judge Advocate, Civil Law *JMC*

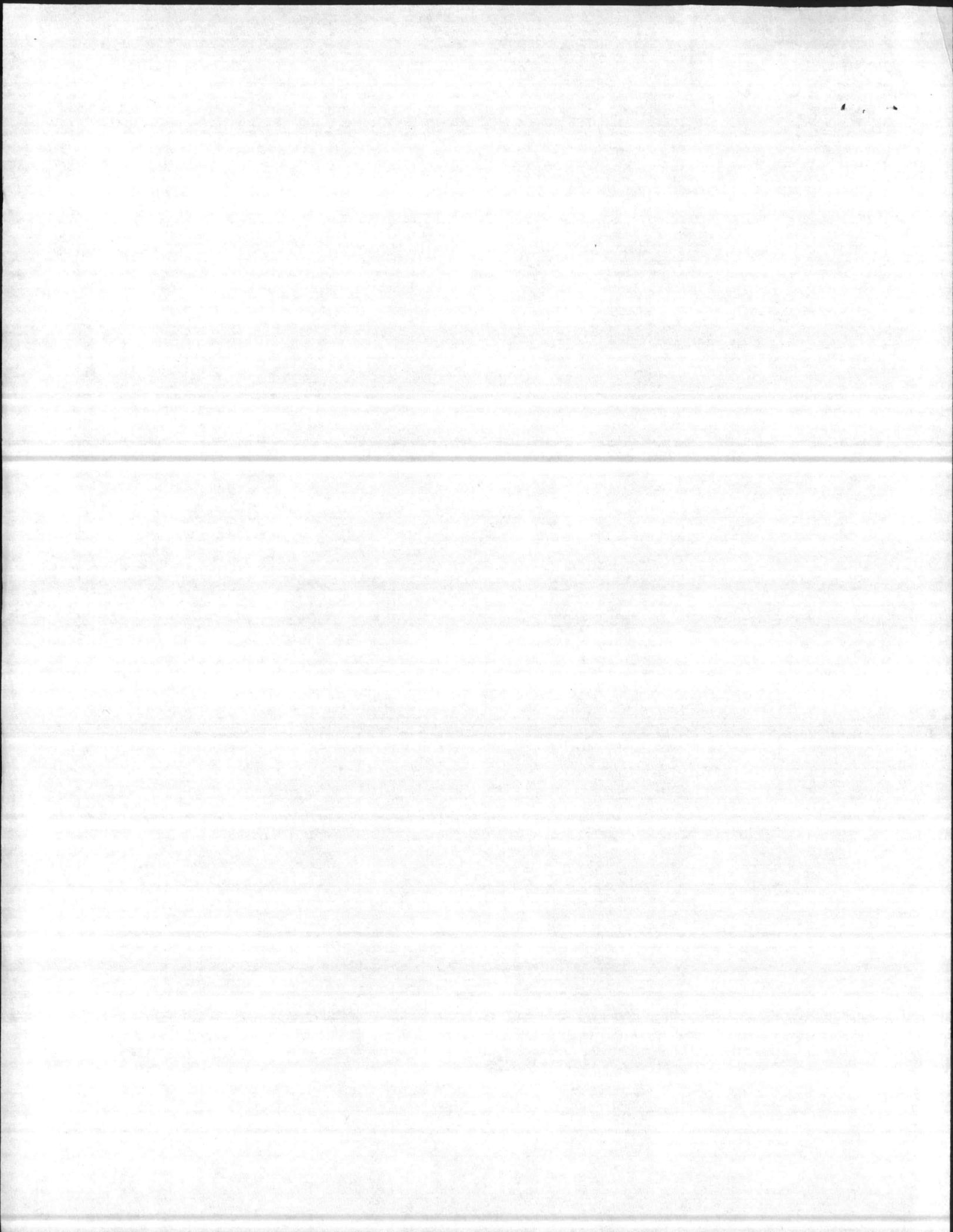
Subj: Potential Civil Liability of Camp Lejeune Employees For
Decision Not to Shut Off Drinking Water Wells Between
1982-85.

Ref: (a) 28 U.S.C. § 2679, Liability Reform Act of 1988.
(b) United States v. Smith, 499 U.S. 160 (1991).
(c) United States v. Gilman, 347 U.S. 507 (1953).
(d) Taylor v. Lopez, 35 F.3d 557 (4th Cir. 1994).
(e) Riek v. United States, 1998 U.S. Dist. LEXIS 15109,
(M.D. N.C)

1. Issue: Can Marine Corps Base Camp Lejeune ("MCB") employees be held personally liable in civil court for damages because of their decision not to shut off two MCB drinking water wells until 1985.

2. Short Answer: No. Reference (a) makes suit against the federal government the exclusive remedy for the negligent or wrongful acts or omissions of a federal employee, as long as the federal employee was acting within the scope of his duties at the time of the act or omission.

3. Background: In 1982, the chemical substances TCE and PCE were found in two Camp Lejeune drinking water wells. At the time of the discovery, there were no federal or state drinking water standards for safe levels of TCE and PCE, and no standards were created until 1991. Uncertain of the danger, if any, of TCE and PCE at the 1982 levels, MCB employees kept the wells open until 1985. ATSDR is presently studying whether certain individuals could have been injured by the presence of TCE or PCE in the water between 1982 and 1985. On 2 February 1999, MCB Installation Restoration requested an opinion from MCB SJA on the potential personal liability, if any, of these employees. Accordingly, this memorandum is provided.



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4. Discussion: In 1988, Congress passed reference (a). Reference (a) states that the exclusive remedy for a federal employee's negligent or wrongful conduct, while in the scope of duty, is a suit in Federal Court against the United States. Pursuant to reference (a), when a plaintiff files suit against a federal employee, the U.S. Attorney will review the case and make a determination whether the employee was acting within the scope of the employee's duties.

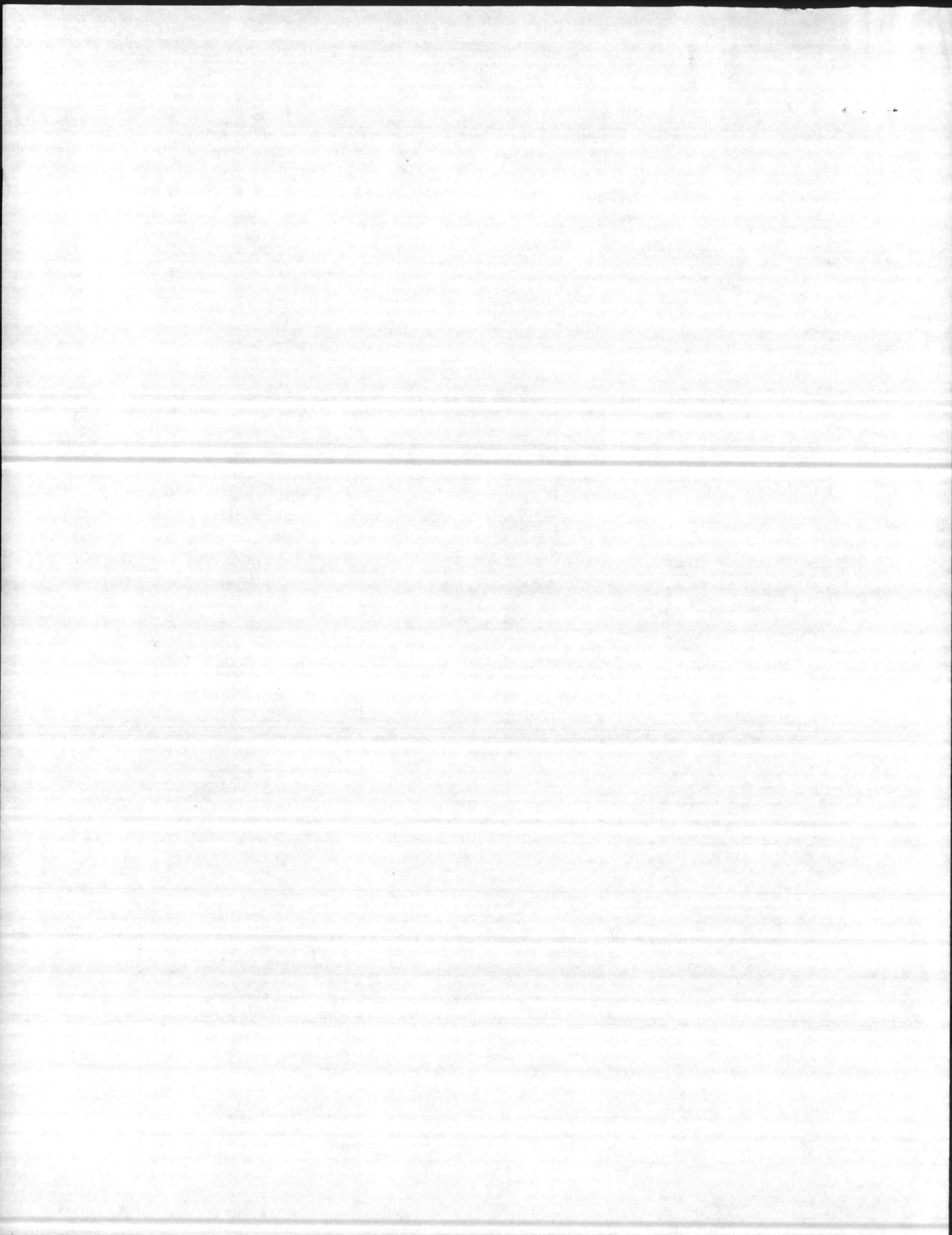
If it is determined that the employee was within the scope of his duties, the United States will be substituted as the defendant, and the case will be removed from state to Federal District Court. Once this determination is made, the employee faces no personal liability from the lawsuit. Even if the plaintiff is left without a remedy because their lawsuit against the United States is defective, the employee is nevertheless protected from suit by reference (a) and (b). Moreover, because the employee was within the scope of his duties, the Department of the Navy could not seek an affirmative claim against the negligent employee for contribution per reference (c).

If the U.S. Attorney decides that the employee was not within the scope of his duties, the employee can appeal that decision to the Federal District Court and the Circuit Court of Appeals. The reviewing courts will then consider the issue anew. Per reference (d), (4th Circuit Court of Appeals reversing determination of the District Court and U.S. Attorney and holding that federal employee was within the scope of his duties at the time of accident).

The determination whether an employee is within the scope of his duties is made using the law of the state where the act or omission of the employee occurred. Per references (d), (e). Therefore, North Carolina law determines whether the MCB employees were within the scope of their duties when they decided not to shut off the two water wells. Under North Carolina law, an employee is acting within the scope of his duties if: the employee's act or omission was expressly authorized by his employer, or, the employee's act or omission was in furtherance of his employer's principal business, or, the employee's act or omission is ratified by the employer after the fact, per reference (e).

MCB employees were within their scope of duties when they took no action to turn off the TT and Hadnot Point water wells. Between 1982 and 1985 because all three of the foregoing criteria were present.¹ The decision to take no action was

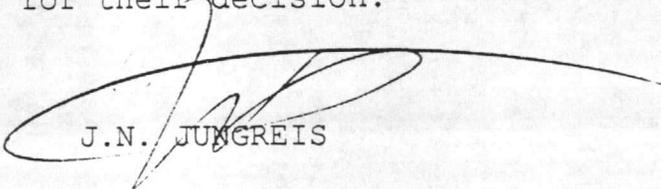
¹ It is worth noting that the result might be entirely different if federal employees were actually involved in the illegal dumping of TCE or PCE onto MCB land. This would present



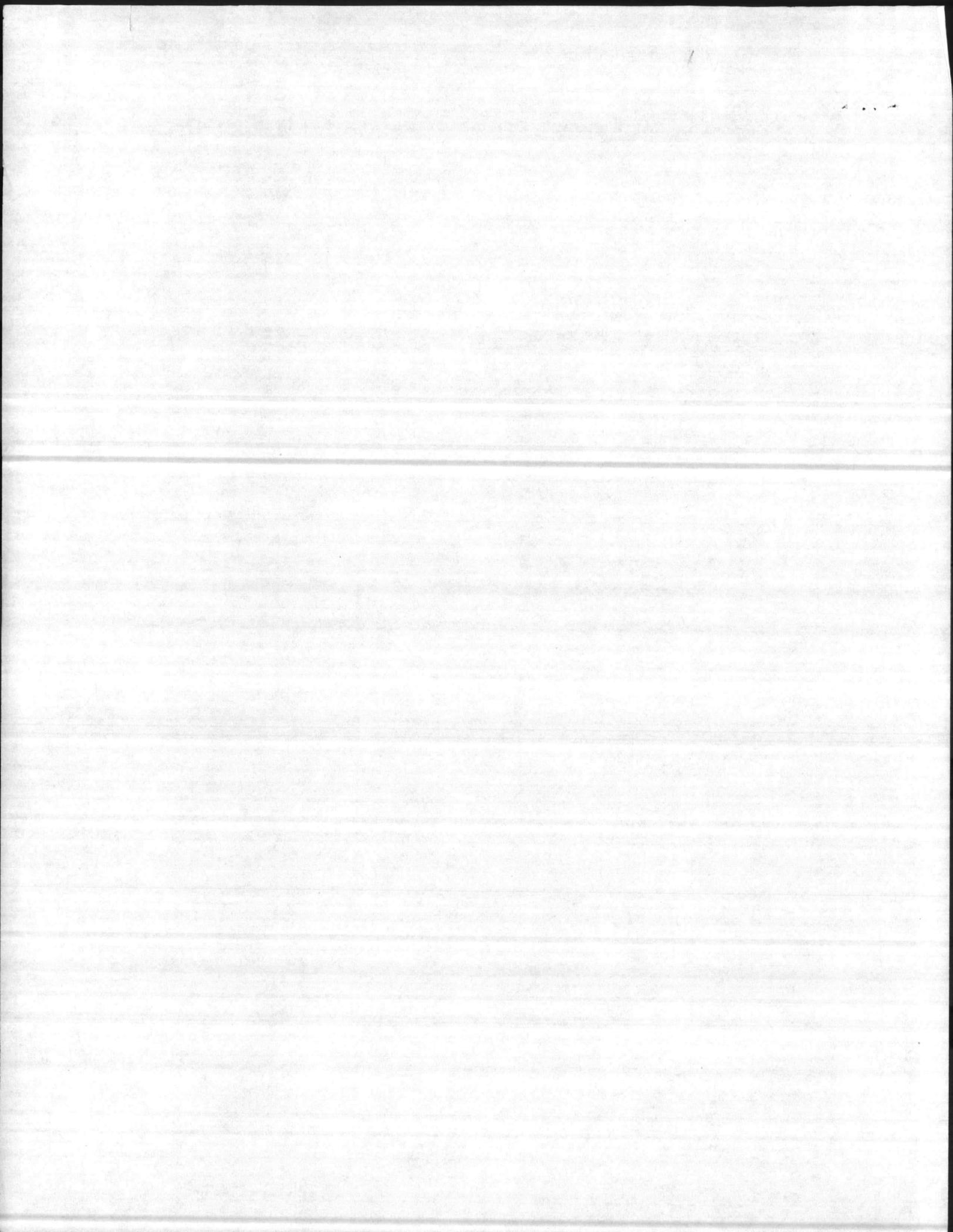
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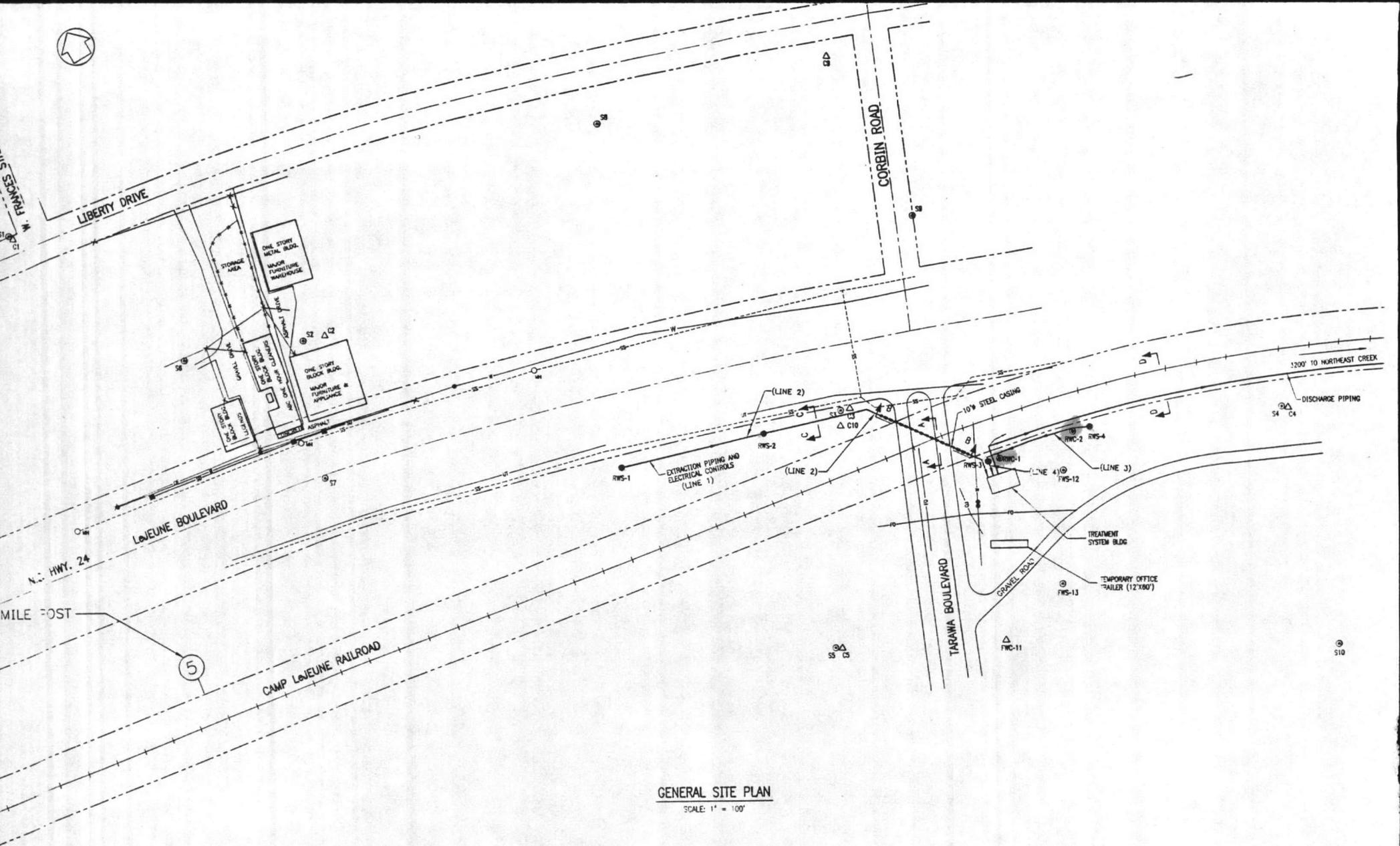
authorized. The principal duties of the employees, as authorized by the Department of the Navy, was to maintain and run the drinking water system aboard MCB, obeying all applicable state and federal regulations. As there were no regulations for TCE and PCE in 1982-85, and the dangers, if any, of such substances were largely unknown, these employees exercised what they thought was permissible discretion in declining to shut down the wells. It was part of their assigned jobs to make such decisions. This action was also ratified by MCB because although MCB officials knew of the TCE and PCE, the employees were never directed to turn off the water. The employees were within the scope of their duties when they declined to shut the wells down sooner.

5. Conclusion: As MCB employees were within the scope of their duties when they made the decision not to shut down the TT and Hadnot Point drinking water wells, they can not be held personally liable in court for their decision.


J.N. JUNGREIS

illegal dumping of TCE or PCE onto MCB land. This would present a much more difficult scenario for an employee seeking to establish he was acting within the scope of his duties.





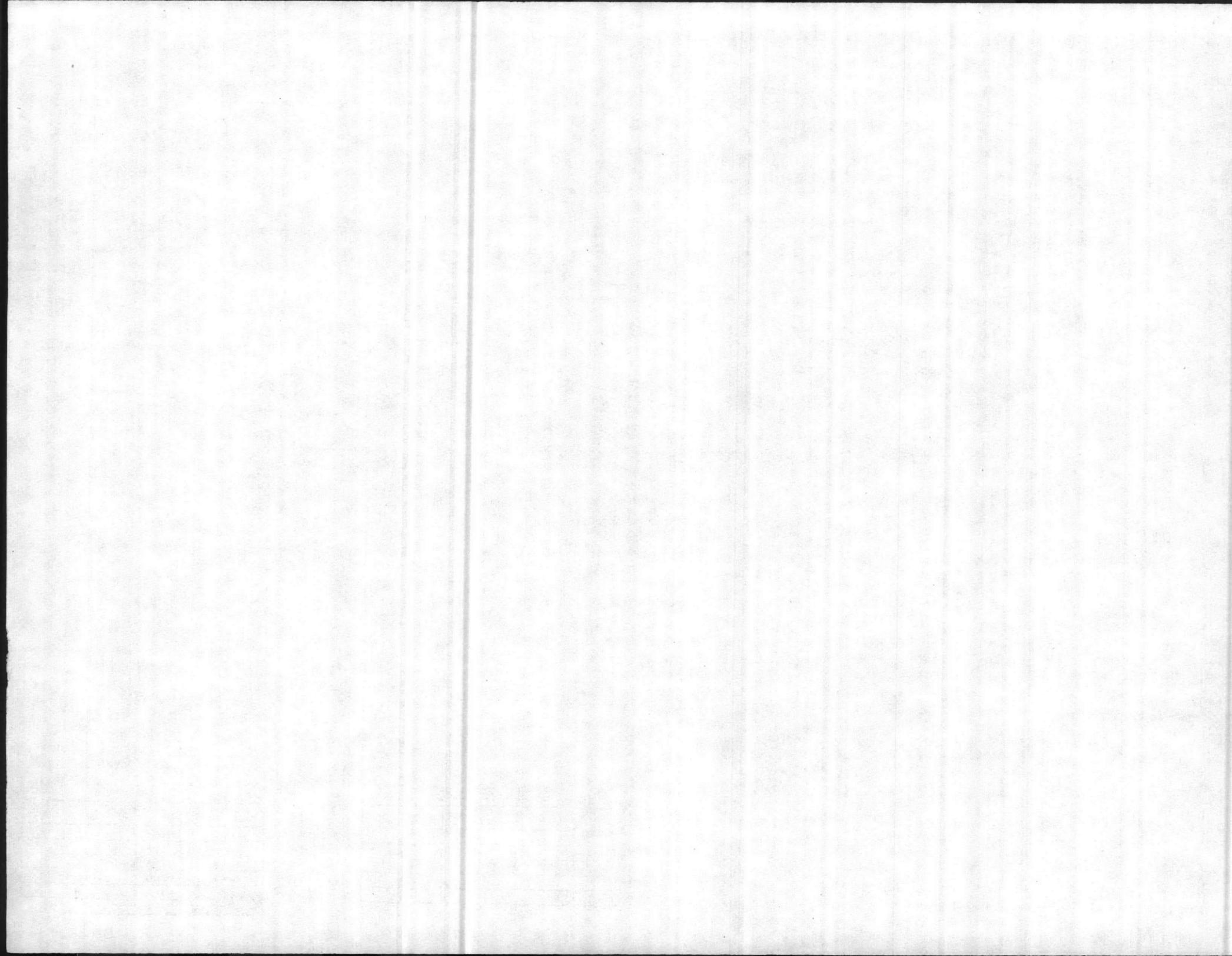
GENERAL SITE PLAN
SCALE: 1" = 100'

PIPELINE SCHEDULE

LINE No.	PIPE SIZE (INCHES)	PIPE MATERIAL
LINE 1	2	HDPE
LINE 2	3	HDPE
LINE 3	4	HDPE
LINE 4	4	HDPE
DISCHARGE LINE	4	HDPE

WELL S

RECOVERY WELL No.	COORDINATES		WELL (INCH)
	NORTHING	EASTING	
RWS-1	364447.93	2491123.86	4
RWS-2	364375.66	2491352.98	4
RWS-3	364140.23	2491646.48	4
RWS-4	364109.11	2491821.97	4
RWC-1	364134.69	2491720.08	6
RWC-2	364116.61	2491793.93	6



MEMORANDUM

From: Director, Environmental Planning

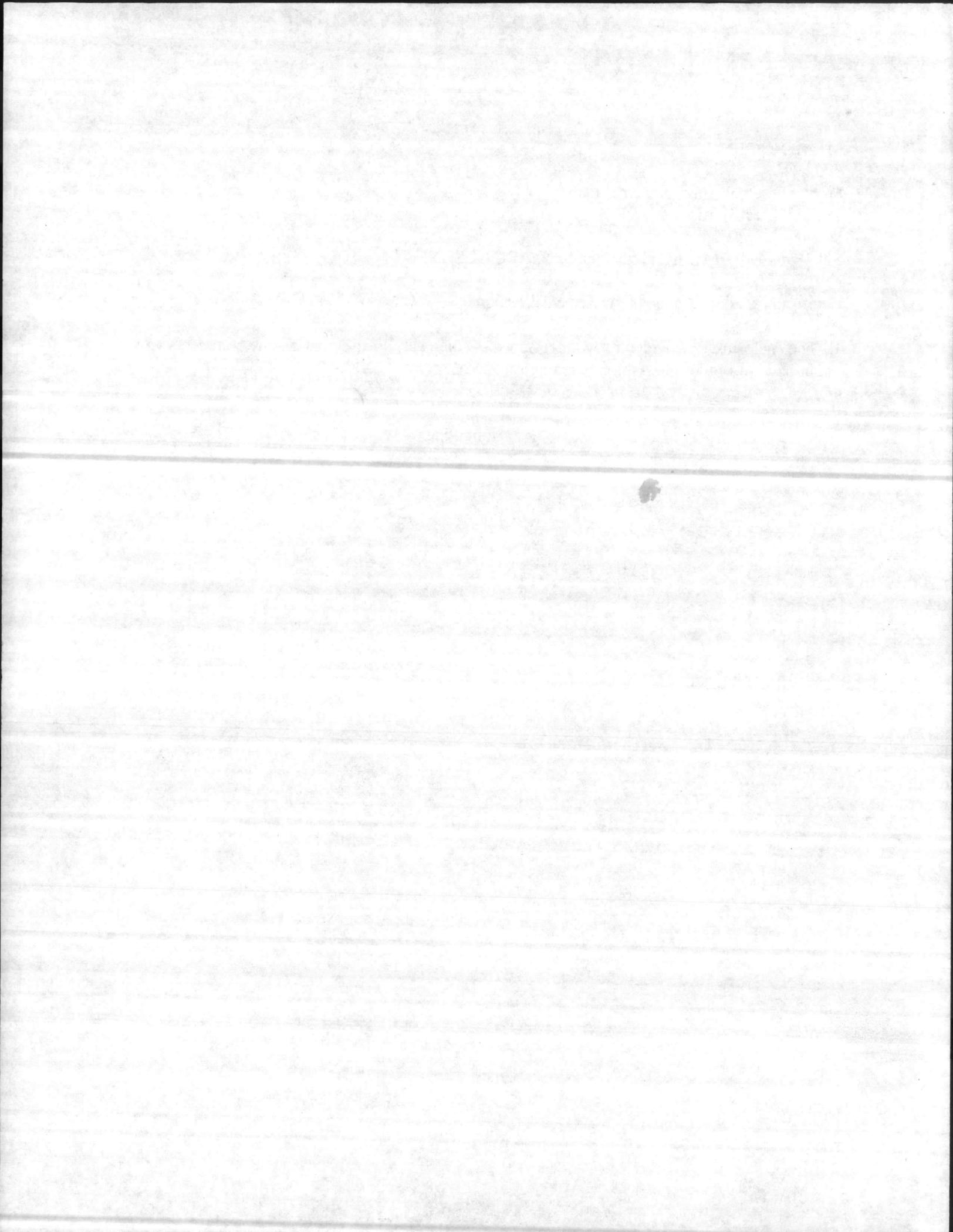
To: Director, Installation Restoration

Subj: REMEDIAL ACTION DESIGN, ABC CLEANERS

Encl: (1) Design Drawings for Remedial Action

1. The enclosure is provided for your review and comment. Please provide any comments you might have to Mr. Brynn Ashton at extension 5063.

Doug Piner



CONTAMINATION

WELL	CONSTR	SAMPLED	CONTAMINATE	CLOSED	REMARKS
TT-26	1952	Jul-84	TCE (3.9 ppb)	8-Feb-85	
TT-52	1962			14-Jan-87	
TT-53	1962			14-Jan-87	
TT-54	1962			14-Jan-87	
TT-27	1972			14-Jan-87	
TT-31	1973			14-Jan-87	
TT-25	1982	Jul-84	TCE (trace)	8-Feb-85	
TT-23	1984	Jul-84	TCE (37 ppb)	8-Feb-85	
601	1941	4-Dec-84	TCE (207 ppb)	6-Dec-84	DCE 88 ppb
602	1941	30-Nov-84	TCE (1600 ppb)	11/30/84	DCE 630 ppb, benzene 121 ppb, TCA 24 ppb
603	1941	4-Dec-84	TCE (4.6 ppb)	5-May-85	
608	1941	4-Dec-84	TCE (110, ppb)	6-Dec-84	DCE 5.4 ppb
634	1960	10-Dec-84	Methylene	14-Dec-84	Chloride 130 ppb
637	1970	10-Dec-84	Methylene	14-Dec-84	Chloride 275 ppb
651	1972	4-Feb-85	PCE (400 ppb)	4-Feb-85	TCE 18,900 ppb,
653	1978	4-Feb-85	TCE	8-Feb-85	
645					

CONTAMINANTS

WELL	COMPLET	SAMPLED	CONTAMINATE	OF CONC	REMARKS
11-26	197	11-26-82		11-26-82	
11-27	197	11-27-82		11-27-82	
11-28	197	11-28-82		11-28-82	
11-29	197	11-29-82		11-29-82	
11-30	197	11-30-82		11-30-82	
11-31	197	11-31-82		11-31-82	
12-1	197	12-1-82		12-1-82	
12-2	197	12-2-82		12-2-82	
12-3	197	12-3-82		12-3-82	
12-4	197	12-4-82		12-4-82	
12-5	197	12-5-82		12-5-82	
12-6	197	12-6-82		12-6-82	
12-7	197	12-7-82		12-7-82	
12-8	197	12-8-82		12-8-82	
12-9	197	12-9-82		12-9-82	
12-10	197	12-10-82		12-10-82	
12-11	197	12-11-82		12-11-82	
12-12	197	12-12-82		12-12-82	
12-13	197	12-13-82		12-13-82	
12-14	197	12-14-82		12-14-82	
12-15	197	12-15-82		12-15-82	
12-16	197	12-16-82		12-16-82	
12-17	197	12-17-82		12-17-82	
12-18	197	12-18-82		12-18-82	
12-19	197	12-19-82		12-19-82	
12-20	197	12-20-82		12-20-82	
12-21	197	12-21-82		12-21-82	
12-22	197	12-22-82		12-22-82	
12-23	197	12-23-82		12-23-82	
12-24	197	12-24-82		12-24-82	
12-25	197	12-25-82		12-25-82	
12-26	197	12-26-82		12-26-82	
12-27	197	12-27-82		12-27-82	
12-28	197	12-28-82		12-28-82	
12-29	197	12-29-82		12-29-82	
12-30	197	12-30-82		12-30-82	
12-31	197	12-31-82		12-31-82	