

OFFICE OF THE STAFF JUDGE ADVOCATE
Marine Corps Base
Camp Lejeune, North Carolina 28542

SJA/JAJ/jms
4 Oct 1978

MEMORANDUM

From: Captain J. A. JANECA
To: Staff Judge Advocate

Subj: Proposed Notice of Violation of Bacteria Level

Encl: (1) Proposed Notice from State EPA
(2) Redrafted Notice

1. General. On 3 October 1978 personnel from Base Maintenance (Natural Resources Division) requested comments/assistance from this office concerning enclosure (1). They came at the request of both the Maintenance Officer and the Assistant Chief of Staff, Facilities. Specifically, they requested:

a. Information concerning the format of enclosure (1): Can it be varied or must it say what it now says.

b. Alternate language describing the violation--something less pointed.

2. Background Information

a. During routine water samplings at Courthouse Bay, one of the scullery sink faucets gave water which contained a higher than normal level of coliform bacteria. Coliform bacteria are not disease carrying bacteria themselves; however, the presence of coliform indicates that conditions are right for the presence of disease carrying organisms. Coliform bacteria are commonly found in the intestinal tract of any warm-blooded animal, including man, and also on plant life. At this point, it is futile to speculate as to how the water at this tap become contaminated, especially since subsequent samplings from the same source indicated no further problems. The law simply requires that if an abnormal level of coliform is found, certain reports and notices are required.

3. The Law. The basic law being applied is §1412 of the Public Health Service Act as amended by the Safe Drinking Water Act (Pub.L. 93-523), 42 U.S.C. §300g-1, et seq. The specific implementing regulations are at Title 40 CFR Part 141. A brief synopsis of these regulations follows:

a. §141.21 requires periodic analysis of water samples for coliform bacteria.

b. §141.14 provides directions as to methodology to be followed in obtaining and testing the water samples.

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c. §141.31 requires notification of the State within 48 hours after a violation is found. There is some discussion as to which agency, state or federal, is the appropriate enforcing agency. The regulations say that the state is, even though North Carolina's water plan is not yet approved by the Federal EPA. In any case, the report of the violation is required by law. It is safer for us at this point to report to the state, not only because of what the regulations say, but because they are much more reasonable and low key than the Federal EPA.

d. §141.32 requires the water supplier (the Base) to give the following notices in case of a violation:

(1) Publication in a newspaper or newspapers served by the water system. In our case this would be the GLOBE.

(2) Furnish a copy of the written notice to JPAO for possible release to local radio and television stations.

4. I talked to Mr. Charles Rundgren of the N. C. Safe Drinking Water office this morning and was told that the form of the notice is not specific. Therefore, I have developed enclosure (2). Mr. Rundgren stated that the general content of enclosure (2) as I read it to him is sufficient for purposes of the law. We both agreed that since the "violation" was a quirk, it would be best to handle the case in a low key manner so as not to create an unfounded panic about "diseased water." Enclosure (2) is drafted to comply with the law and keep emotions at a minimum.

Very respectfully,


J. A. JANECA

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"SUGGESTED MODEL NOTIFICATION OF BACTERIOLOGICAL MAXIMUM CONTAMINANT LEVEL VIOLATION"

PUBLIC NOTICE

WATER EXCEEDS BACTERIA LIMIT

The (Water System Name) reports that analyses of samples taken during (Month) showed a coliform bacteria concentration above the maximum contaminant level listed in the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations.

Although there is no routine laboratory procedure for determining the presence of specific disease - producing bacteria in drinking water, coliform bacteria which is normally found in the intestinal tract of man or other warm blooded animals can be readily detected. Therefore, the presence of this non-disease producing bacteria is used to indicate that some contamination has occurred.

The (Water System Name) has taken the following action to correct this problem:

Examples:

The System has been disinfected and repeat samples show the water to be free of coliform bacteria.

or

The Water Company is currently flushing water lines in an effort to clear the system.

or

The Water Company is working with the Department of Human Resources, Sanitary Engineering Section to correct the problem.

If you have any questions concerning this notice, please contact

(Your name, address and phone#).

*The underlined phrases should be replaced with pertinent data from your supply.

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