



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D.C. 20380-0001

IN REPLY REFER TO:
6280
LFL/U-143
JUN 12 1991

From: Commandant of the Marine Corps
To: Executive Director, East Coast Regional Review Board,
Marine Corps Base, Camp Lejeune, North Carolina 28542

Subj: CITIZEN SUITS FOR CLEAN WATER ACT VIOLATIONS

Ref: (a) EXEC DIR, EAST COAST RRB, MCB CAMP LEJEUNE ltr EACO
902030.M01 of 17 May 91
(b) EXEC DIR, EAST COAST RRB, MCB CAMP LEJEUNE ltr EACO
902030.N04 of 13 Nov 90
(c) CMC ltr 6280 LFL/U-141 of 22 May 91

1. The following comments have been prepared in response to reference (a). Issues raised in reference (b) reflect the complex nature of Clean Water Act (CWA) regulations and the serious threat of citizen suits for non-compliance with these requirements. As you know, during 1990, the Natural Resources Defense Council sued the Marine Corps Combat Development Command because of numerous violations of its National Pollutant Discharge Elimination System permit. On the eve of trial, settlement was reached providing that the installation would return to compliance with its permit and undertake specified actions to improve the wastewater treatment system performance. Among those actions, the installation will hire an Environmental Compliance Coordinator, will engage an expert consulting firm to assist in the plant's operation, and will conduct both short-term and long-term studies to improve the plant's efficiency. It is evident from this event that in order to prevent such lawsuits in the future, the Marine Corps will need to adequately plan and budget for the compliance, management, and funding requirements that have resulted from the CWA regulations. Your recommendation for an increased awareness amongst installation commanders of the threat of citizen suits, is valid. A letter has been distributed to inform them of such a threat.

2. This Headquarters is currently supporting efforts to assist installations in planning for the increasing demands of the CWA requirements and reduce the threat of the subject lawsuits. As described in reference (c), an evaluation of Marine Corps-owned wastewater treatment systems is being performed to assist installations in addressing their short and long-term compliance and funding requirements. This contracted effort includes site visits to identify compliance requirements and recommend priorities for them, as well as to provide an outbrief of the findings to each Command. With this information, installations will be better able to develop their own strategy for CWA compliance. These evaluations are currently taking place at West Coast installations. East Coast installations will be evaluated in July.

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3. The vast majority of environmental compliance requirements, including studies to recommend/justify military construction projects under the CWA, must be supported by installation operating funds. Limited Headquarters managed funds exist for environmental studies, investigations, and construction and repair projects. Such funds include the following:

a. Headquarters Environmental Studies and Investigations (P): Funds are eligible for investigations to determine the methods to comply or come into compliance with CWA requirements. These funds are requested under the installation's Annual Operations Plan (AOP) and are intended to provide a means to take initial compliance related actions in response to regulations and circumstances that were unanticipated during the installation's budget formulation process.

b. Headquarters O&MMC Major Repair (M2): Headquarters authority funding for repair projects is allocated to support the entire spectrum of project types including environmentally related requirements. Such funds can be used to repair wastewater treatment systems. M2 validation is based on an established set of criteria which allows for a uniform rating of all projects Marine Corps wide. Validation criteria were updated in FY91 to place an increased emphasis on projects driven by environmental compliance requirements. Only projects validated and approved for design can be considered for execution. It must be emphasized that the installation's own priority will weigh heavily in determining which of its approved projects are selected for funding.

c. Headquarters O&MMC Minor Construction (R2): A portion of O&MMC minor construction funds have been set aside to support environmental compliance requirements. These funds can be used for wastewater treatment system construction or upgrade under \$200,000. Environmental R2 projects are approved on the basis of their ability to satisfy specific compliance demands. Low priority environmental R2 projects which are unable to be supported under this limited program may still compete for general minor construction funding. However, given the real limitation on total available minor construction funds, the installation's priority will be significant in determining which minor construction projects are selected for funding.

Notwithstanding the mechanisms described above for allocation of centrally managed funds, a concept that provides for the Regional Review Board to recommend priorities for funding installation environmental projects may be useful, as long as local commanders concur with the regional priorities submitted to this Headquarters.

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4. Permit modifications or judicial orders in lieu of state administrative orders relaxing permit requirements are two interim options available to commanders faced with potential enforcement actions. The better course for plants operating under state administrative consent orders is to find out why a plant exceeds its effluent limits and to take steps to correct the problem.

5. Congress, in the CWA, specifically provided for citizen suits against any person, including any U.S. government instrumentality or agency, who is in violation of the CWA. Congressional action to rescind or mitigate the effects of this provision, given the current Congressional mood toward federal facility compliance, is extremely unlikely. However, as in all issues affecting the Corps, we will maintain a dialogue with the other services, the Secretariat, and the Department of Defense, in order to take better advantage of our position and Congressional direction.

6. The point of contact for this Headquarters (LFL), is Mr. Robert Warren at DSN 226-0865 or (703) 696-0865.



J.C. ARICK
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By direction of
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