

Draft April 18, 2011
Major General Carl B. Jensen
Commanding General
Marine Corps Installations East
PSC Box 200005
Camp Lejeune, NC 28542-0005

Re: Beaufort County Stormwater Fees reference MC 01 Feb 08 letter
Our File No.: 3236 RWA

Dear Major General Jensen:

We appreciate the Marine Corps Installations East's position as outlined in Major General Robert C. Dickerson's February 1, 2008 letter to Mr. Bellamy in relation to our request for payment of Stormwater Fees. We did not, however, agree with Major General Dickerson's position or conclusions. We also were not in a position to carry this issue forward when there was some uncertainty, nationally about the requirement of federal facility's to pay stormwater fees. These national issues have been clarified in a recent amendments (Public Law 111-378, 124 Stat.4128) to Section 313 of the Federal Water Pollution Control Act and further clarified in DOJ opinion dated February 25, 2011.

The conclusion that the requested fee is a tax is incorrect. Beaufort County's Stormwater Utility was set up on an independent basis wholly supported by a fee system. Accordingly, all land parcels in Beaufort County pay a fee based on a fair approximation of the proportional contribution of the property's impact of the runoff into Beaufort County's receiving waters. This includes land owned by all eleemosynary entities within Beaufort County. Churches, schools, utilities, local, state and federal government land parcels all pay fees based on their impacts from runoff. All of these entities are tax exempt, but are not exempt from the stormwater fee which is a fee and not a tax, as defined by case law.

Beaufort County does not agree with the position that the military installations do not benefit from Beaufort County's stormwater system. You are correct that the Military Installations handle much of its own on-site stormwater, however, the installation properties and those who work and live on their Installations' properties benefit as a result of the Beaufort County's stormwater system. The Beaufort County Stormwater Management System helps ensure that roads are prepared for evacuations in the case of an emergency. This includes not only military personnel who live and work on the base, but also civilians who also work on the base. The Stormwater fees support many efforts to protect and restore the County's waters benefiting all residents of Beaufort County. They support quality water controls for existing development to restore currently impaired waters. It does not seem reasonable that Military installations would be the only facilities in the County not willing to contribute to protecting the waters of the County.

Stormwater experienced by the Military Installations is not completely contained within the installation. Installation stormwater does reach the water surrounding the bases and impacts the overall water quality and requires monitoring. There are presently restrictions to water uses in waters adjacent to Military Installations in our County.

The attached chart illustrates the total fees owed for the Beaufort County Military Installations including the Marine Corp Air Station, Laurel Bay and Parris Island. The total fees owed as of January 15, 2011 are \$2,219,363.13. The break down of the monies owed is provided on the chart, attached herewith and made a part hereof as Exhibit A. As of June 15, 2011, the 2010 stormwater fees will be due.

On behalf of Beaufort County, I respectfully request that the fees be paid in full on or before July 1, 2011. Because some of the stormwater within the Military Installations is handled within the Installations, the Installations may qualify for a credit of up to 50%. In order to qualify for the credit, all criteria must be met. If you wish to seek a potential credit, it is imperative that you advise us of your desire to apply for a credit prior to July 1, 2011. If we do not receive payment in full or payment of half of the amount due in conjunction with an application for a credit on or before July 1, 2011, we will have no alternative but to seek all remedies available, both legal and equitable, to collect the stormwater fees due.

While we must formally object to your current position, we do want to keep communication lines open. If you have any questions or would like to discuss this in more detail, I will make myself available at your convenience. Beaufort County has some of the most protective requirements established to protect our waters from the impacts of stormwater runoff and we do want to work with you in protecting our waters. It is my understanding that Federal Facilities have been charged with managing stormwater "to the maximum extent technically feasible" and this is the standard that Beaufort County adopted in our recent controls of stormwater runoff. We feel that cooperatively working stormwater issues can lead to protection of our nation's waters that we all enjoy.

Sincerely,

Gary Kubic