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**TESTIMONY OF
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OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

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Mr. Chairman and Members of the Subcommittee, my name is Peter J. Murtha. I am the Director of the Office of Criminal Enforcement, Forensics and Training (OCEFT) in the Office of Enforcement and Compliance Assurance at the Environmental Protection Agency (EPA). Prior to re-joining the Agency in January 2002, I spent over 16 years as a federal prosecutor. Since November of 2003, in my capacity as the Director of OCEFT, I have directed EPA's investigation of environmental crimes. Thank you for inviting me to appear today to discuss the Agency's criminal investigation relating to contaminated drinking water at Camp Lejeune and the decision not to proceed with federal criminal charges.

This was a complex investigation, requiring a review and assessment of activities and actions that, in some cases, occurred decades ago. We were acutely aware of the anguish and deeply held feelings of the former military and civilian residents of Camp Lejeune who brought the allegations to the attention of EPA and the department of Justice. While EPA's criminal enforcement program always strives to conduct its investigations with great thoroughness and professionalism, I can say that given the seriousness of the allegations and the underlying environmental and human health harm, we were especially careful to conduct this investigation as comprehensively as possible. The issue for the criminal enforcement program was not whether pollution and exposure to contaminated drinking water occurred – this is

incontrovertible – but whether there was sufficient evidence to indicate that prosecutable organizations or individuals criminally violated the law.

My testimony today will describe in general how EPA's criminal enforcement program conducts a criminal investigation and what we did in the Camp Lejeune drinking water investigation.

EPA's Criminal Enforcement Program

EPA's criminal enforcement program investigates violations of environmental laws that both pose a significant threat to human health and the environment, and manifest the required criminal intent. In addition to the federal environmental statutes, the program also enforces U.S. Criminal Code (Title 18) violations often associated with environmental crimes, such as conspiracy, false statements, interfering with a federal investigation, and so forth. OCEFT administers this program through its Criminal Investigation Division (CID).

Our CID offices are located in 10 Area Offices and 36 Resident Offices throughout the country. The program and offices are centrally managed out of Headquarters. Our special agents are fully authorized law enforcement officers.

EPA participates nationwide in dozens of environmental crime task forces. Our partners in these task forces consist of other federal law enforcement agencies, Offices of the U.S. Attorney, as well as state and local law enforcement and regulatory agencies. During the Camp Lejeune drinking water investigation, EPA's criminal enforcement program worked closely with prosecutors from the Environmental Crimes Section (ECS) of the Department of Justice (DOJ) in Washington and the Office of the US Attorney, Eastern District of North Carolina, which is the federal judicial district within which Camp Lejeune.

Opening a Criminal Investigation

The decision to commence a criminal investigation is not undertaken lightly. The Criminal Investigation Division uses case selection criteria to determine whether a lead (information suggesting criminal activity) should become a formal criminal investigation. The two major criteria are *significant environmental harm* and *culpable conduct*.

Significant harm is measured by the presence of actual harm or the threat of significant harm to human health or the environment. Culpability is measured by the existence of deliberate conduct, repeated violations, concealment, tampering, or operations entirely outside EPA's regulatory system.

One of the most-commonly asked questions regarding EPA's criminal enforcement program is: What makes an environmental violation criminal? As a legal matter, environmental criminal liability is triggered only through the existence of some level of intent, or "*mens rea*." For example, if "lying, cheating, or stealing" is involved, the violations are likely criminal.

To evaluate the extent of criminal conduct, EPA considers factors in the criminal case selection process such as: a history of repeated violations; a wilful disregard for the law (that is, a "specific intent" to violate the law that goes beyond the "general intent" that the government must prove to obtain a felony conviction under most environmental statutes); concealment or falsification of information, or tampering with monitoring equipment; and attempts to "fly under the radar" of the regulatory system altogether. The presence of one or more of these factors make a criminal investigation more likely.

The Camp Lejeune Criminal Investigation

In the 1980s, the drinking water for Camp Lejeune was drawn from groundwater wells that fed eight treatment plants which supplied finished drinking water for the base. From an unknown start date, but likely approximately 1957 through 1985, numerous wells servicing two of the treatment plants were contaminated with trichloroethylene (TCE) and tetrachloroethylene (PCE). The contaminated wells were shut down between December 1984 and February 1985.

In 1989, Camp Lejeune was placed on the National Priorities List (NPL) for clean-up under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In the early 1990s, the Agency for Toxic Substances and Disease Registry (ATSDR) began assessing the human health effects of exposure to contaminants on Camp Lejeune.

In August of 2003, retired Marines and former residents of Camp Lejeune contacted the Environmental Crimes Section of the Department of Justice, and later the U.S. Attorney's Office for the Eastern District of North Carolina, about the water contamination issues at the camp. Many of these Marines believed their family members had died or suffered other serious health effects as a result of exposure to contaminated drinking water.

These individuals alleged that military and civilian employees of the USMC and Navy conspired to violate the Safe Drinking Water Act (SDWA), and had conspired to conceal records and provide false statements to officials of the Agency for Toxic Substances and Disease Registry, who were conducting a congressionally mandated public health study. An additional series of allegations pertained to how ATSDR officials maintained health study records and interacted with the military.

The allegations clearly met the EPA case selection criteria. The threat of significant harm stemmed from the drinking water contamination and the need to effectively respond to the resulting public health issues at Camp Lejeune. The illegal conduct alleged by the private citizens concerned the concealment of records connected with the contaminated drinking water on the base by the USMC from the public and the ATSDR via its requests for data. The case also initially carried allegations of government or government contractor misconduct. Consequently, the criminal investigation was opened in October 2003.

The investigation was conducted by CID's Charlotte, NC Resident Office and managed by the Region 4 Area Office in Atlanta, GA. The investigation was also closely monitored by CID headquarters in Washington, D.C. As previously stated, close and ongoing communications and consultation was maintained with both ECS and the U.S. Attorney's Office (USAO) in Raleigh.

An initial period of investigation and review was required to sort through the numerous allegations involving drinking water contamination and conduct that had occurred two decades earlier. Investigators examined events surrounding the generation of 1980-82 water sampling results provided by the U.S. Army Environmental Hygiene Agency (the summary reports that the Subcommittee may have seen refer to these results as the "TTHM Surveillance Report Forms"), and by the Grainger Laboratory. The latter report definitively identified the presence of trichloroethylene (TCE) and tetrachloroethylene (PCE) in Camp Lejeune's drinking water. The initial reaction to, and decisions made by, the military after having received these two sets of data, was important background information for this investigation. Investigators interviewed personnel from Camp Lejeune, and the Naval Facilities Engineering Command Atlantic Division (LANTDIV), which had oversight responsibility for environmental conditions at the base during this period.

The investigation also looked into allegations that the ATSDR destroyed relevant records and conspired to improperly administer a congressionally mandated health study.

Results of the Criminal Investigation

After about 18 months of investigation and a thorough review of all the pertinent evidence, the Department of Justice (i.e., both ECS and the USAO) declined to seek criminal prosecution in the Camp Lejeune water contamination investigation. This decision was agreed to by both DOJ and EPA. That decision was primarily based on the following findings:

- First, the Safe Drinking Water Act provided no enforceable limits on TCE and PCE at the time that military officials became aware of the presence of these chemicals in the water supply at the base. EPA did not pass enforceable regulations related to TCE and PCE until 1987 and 1991, respectively.
- Second, the statute of limitations for all substantive federal crimes is five years. Thus, even had there been criminal conduct committed in the early 1980s, it would not have been prosecutable in 2005 – unless it formed part of a criminal conspiracy that continued to a point within the limitations period. The investigation found no such ongoing conspiracy by any persons (military or civilian) with a role in providing drinking water at Camp Lejeune.
- The investigation concluded that there was no conspiracy to conceal records and prevent persons from talking with ATSDR regarding the congressional mandated health study or to conceal FOIA records from the public.
- The investigation further determined that the Marine Corps did not make material false statements to federal investigators, and that there no basis on which to prosecute LANTDIV personnel for false statements or obstruction.
- With regard to the allegations concerning the ATSDR, the investigation did not substantiate a conspiracy to improperly administer its health study or destroy ATSDR records.

In summary, DOJ and EPA concluded that when the available evidence was viewed under the laws applicable at the time of the relevant activities in this case, and viewed in the context of 1980s environmental practices and the evidence pertaining to the Camp Lejeune

employees that addressed the issue, the evidence did not support the bringing of federal criminal charges.

It is clear that harm occurred at Camp Lejeune and individuals suffered. However, after a thorough investigation, it was determined that the criminal enforcement process was not the appropriate avenue to address these wrongs.

I would be glad to answer any questions from the Subcommittee.

