



DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY OF THE NAVY
(ENERGY, INSTALLATIONS AND ENVIRONMENT)
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WASHINGTON DC 20350-1000

MAY 14 2012

MEMORANDUM FOR CHIEF OF NAVAL OPERATIONS (N4)
COMMANDANT OF THE MARINE CORPS (I&L)

SUBJECT: Department of the Navy Process for Reviewing Potential Settlements of Penalties for Past Violations of the Clean Air Act (CAA)

In several cases before federal circuit courts of appeal, the United States has taken the position that federal agencies are not required to pay penalties imposed by state or local authorities for past violations of the CAA. The courts that have issued decisions on this question have reached different results. The Eleventh Circuit ruled that federal agencies are not required to pay; the Sixth Circuit ruled that they are required to pay; and the Ninth Circuit's ruling was not clear on this question. Until this question is definitively and uniformly resolved, the Department of Justice (DOJ) requires that any proposed settlements by federal agencies for past violations of the CAA be approved by DOJ. To facilitate approval by DOJ, a Department of the Navy (DON) process was developed to review settlement packages and coordinate them with DOJ. This memorandum formally establishes that process as a DON policy.

Any DON installation proposing settlement of a CAA penalty received from a state or local governmental agency shall draft a proposed letter responding to the regulator along with a supporting memorandum articulating why the command believes the penalty should be paid. (As federal agencies do not pay penalties for past violations of the CAA in states covered by the Eleventh Circuit, requests for settlement of such violations shall not be submitted regarding DON installations located in Florida, Alabama and Georgia.) The draft letter and supporting memorandum shall be forwarded through Headquarters Marine Corps (I&L) or Chief of Naval Operations (N45) (depending on the Service), to the Deputy Assistant Secretary of the Navy (Environment), who will render a final, Department decision on the proposed settlement. Proposals to settle shall be coordinated with DOJ in accordance with policies and procedures established by the General Counsel.

A handwritten signature in black ink, appearing to read "Jackalyn Pfannenstiel", is positioned above the printed name.

Jackalyn Pfannenstiel