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LETTER REPLY TO LETTER DATED 15 NOVEMBER 1989 REGARDING NEWSPAPER
ARTICLE ENTITLED "DER CONSIDERS SUIT AGAINST MAYPORT BASE" NS MAYPORT FL
11/24/1989
NAVAL STATION MAYPORT



DEPARTMENT OF THE NAVY

NAVAL STATION
MAYPORT, FLORIDA 32228-5000

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The Honorable Charles E. Bennett
House of Representatives
Washington, DC 20515

Dear Mr. Bennett:

This letter is in response to your correspondence of November 15, 1989 concerning a November 11, 1989 newspaper article on the relationship between the Florida Department of Environmental Regulation (FDER) and this command. By way of background, the November 11th article was published as a follow-up to articles published in the Tampa and Orlando areas criticizing FDER for "backing down" on an issue of imposing civil penalties against the Air Force for alleged violations of the Resource Conservation and Recovery Act (RCRA) at McDill, Air Force Base.

As you know, on February 21, 1989, FDER and the U.S. Environmental Protection Agency conducted a compliance inspection of the Mayport Naval complex. Violations were noted by FDER and promptly corrected by this command. FDER indicated, nonetheless, that they wanted to pursue civil "in-kind" penalties against the Navy as a result of the violations noted.

It is the position of the Department of Justice (DOJ), Department of Defense (DOD), and Department of the Navy (DON) that Congress has not waived sovereign immunity for the payment of civil penalties by Federal agencies to States under RCRA. To date, the most important Federal court decision on the subject (rendered by the 9th Circuit Court of Appeals) has affirmed that interpretation. This command is constrained, therefore, as a matter of official policy, from submitting to civil penalties under RCRA.

On August 31, 1989, this command submitted a draft compliance agreement to FDER that did not provide for civil penalties. That agreement was substantively identical to a draft consent order submitted by the Air Force in the McDill case.

In response, FDER proposes to meet with senior Navy and Air Force officials to discuss the civil penalties issue. FDER has also indicated that its Secretary, Mr. Dale Twachtman, will soon be issuing correspondence to Florida Congressmen on the matter of Federal agency compliance under RCRA. FDER plans to hold in abeyance any legal actions for civil penalties against individual Federal facilities pending the results of the meeting with Air Force and Navy officials. At the installation level, therefore, the Mayport Naval complex is in a "wait and see" posture pending possible resolution of the larger policy issues by senior FDER and DON officials.

In closing, let me emphasize that this command continues to place a high priority on committing additional resources to environmental compliance. For example, we are aggressively recruiting for an additional environmental engineer and a physical science technician and hope to have these additions to our environmental staff on board in the immediate future. It is becoming increasingly difficult, however, to obtain the resources we need in the face of severe budget constraints. We are therefore actively pursuing creative alternatives to augment our "in-house" resources. We are committed to doing our utmost to protect the environment and comply with all State and local regulations on environmental matters.

Sincerely,

PETER A. C. LONG
Captain, United States Navy
Commanding Officer