

20 September 1996

MEMORANDUM FOR SEE DISTRIBUTION

FROM: SAF/MIQ

SUBJECT: Air Force Policy on the Payment of Fines and Penalties for Violations of Clean Air Act

References: (a) 42 U.S.C.A. §§7401-7671q

(b) *United States v. Georgia Department of Natural Resources*, 897 F. Supp. 1464 (N.D. Ga., 1995)

(c) *United States Department of Energy (DOE) v. Ohio*, 503 U.S. 607, 112 S.Ct. 1627, 118 L.Ed.2d 255 (1992)

(d) AFI 51-301

The purpose of this memorandum is to provide guidance to all Air Force commands on the payment of civil fines and penalties to state and local air pollution control authorities for violations of air pollution control laws and regulations.

Section 118(a), 42 U.S.C.A. §7418(a) of the Clean Air Act (Reference (a)) waives the sovereign immunity of the Federal Government regarding federal, state, local and interstate air pollution control laws and regulations which implement the Clean Air Act. This waiver generally requires the payment of nondiscriminatory, administrative fees imposed by state and local authorities to support the expense of administering an applicable air pollution program. The federal court, *United States v. Georgia Department of Natural Resources* (Reference (b)) has determined that fines and penalties for violations of the Clean Air Act are not included within this waiver of sovereign immunity. This court relied on the Supreme Court's decision in *DOE v Ohio* (Reference (c)) in reaching the conclusion that Congress has not waived sovereign immunity for payment of fines and penalties under the Clean Air Act.

Air Force activities which are assessed civil fines or penalties by state or local authorities shall assert sovereign immunity, and, consistent with existing Air Force Instructions (Reference (d)) attempt to negotiate a satisfactory compliance agreement or consent order that excludes the payment of fines and penalties. Air Force activities may render payment for properly documented administrative and investigative costs related to the enforcement action.

THOMAS W.L. MCCALL, JR.

Deputy Assistant Secretary of the Air Force
(Environment, Safety and Occupational Health)

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