

N00213.AR.001440
NAS KEY WEST
5090.3a

LETTER SUBMITTING PETITION REQUESTING A FORMAL HEARING NAS KEY WEST
5/20/1988
U S NAVY

5801/Code 09CB
20 May 1988

Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Re: Department of Environmental Regulations v. U.S.

Dear Sir:

Enclosed please find the Petition for the above referenced case.

Sincerely,

PM
PETER M. KUSHNER
Government Trial Attorney

Encl (as stated)

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.	
1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery.	
3. Article Addressed to: Department of Environmental Regulations 2600 Blair Stone Road Tallahassee, FL 32399-2400	4. Article Number P685540434 Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature - Addressee X	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X <i>D. Aman</i>	
7. Date of Delivery MAY 23 1988	

09CBx
skw 5/20/88
Z-Petition

BEFORE THE ADMINISTRATION COMMISSION,
DEPARTMENT OF ENVIRONMENTAL REGULATION,
STATE OF FLORIDA

DEPARTMENT of ENVIRONMENTAL)
REGULATION (DER))

v.)

UNITED STATES OF AMERICA,)
Department of the Navy,)
Naval Air Station)
Key West, Florida)

No. _____

PETITION

PETITIONER, the United States of America, Department of the Navy, Naval Air Station, Key West, Florida, hereby requests a formal hearing and, pursuant to FAC Rule 28-5.201 and Chapter 22I-6, states as follows:

1. Name and address of each agency affected:

Department of Environmental Regulation
State of Florida
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

2. Name and address of Petitioner and explanation of how Petitioner's substantial interest will be affected:

a) Commanding Officer
Naval Air Station
Key West, Florida 33040-500

b) Petitioner's substantial interest is affected as a result of being the object of DER's order to clean up the fuel spill by virtue of being the property owner. The cost of Petitioner, an agency of the Department of Defense, to clean up the fuel spill is significant.

3. Statement of when and how Petitioner received notice of the agency decision or intent to render a decision:

- a) Petitioner received notice by letter dated 2 February 1988 from DER and sent certified mail. Enclosure 1.
- b) DER granted Petitioner a sixty (60) day extension to file a petition by letter dated 23 March 1988. Enclosure 2.

4. Statement of all disputed issues of material fact:

- a) The fuel spill resulted from fuel lines owned, operated, and maintained by Key West Pipeline Company, 4211 Southwest Freeway, Post Office Box 56727, Houston, Texas 77256.
- b) As a result of the fuel spill from property owned, operated, and maintained by Key West Pipeline Company, such fuel transited Petitioner's property thereby contaminating.
- c) The owner of the fuel is the Defense Fuel Supply Center, Cameron Station, Alexandria, Virginia 22314, an agency of the Department of Defense.
- d) The fuel lines owned, operated, and maintained by Key West Pipeline Company are located in Petitioner's property pursuant to a license agreement between Key West Pipeline Company and Petitioner. Enclosure 3.
- e) Key West Pipeline Company transports fuel owned by the Defense Fuel Supply Center in the fuel lines owned, operated, and maintained by Key West Pipeline Company pursuant to an operating agreement between the Defense Fuel Supply Center and Key West Pipeline Company. Enclosure 4.
- f) Petitioner has taken action to contain and remove the fuel discharge, but cannot abate the discharge where it results from property owned by the third parties.

5. Concise statement of ultimate facts alleged and rules and statutes which entitle Petitioner to relief:

- a) Pursuant to Florida Statutes 376.301 (5), (6) and 376.305(1), Key West Pipeline Company is the owner/operator of the facility who discharged the pollutant.
- b) The discharged pollutant located on Petitioner's land constitutes a trespass in that it is present without Petitioner's consent and in violation of the license agreement.

- c) Florida Statute 376.305(1) and Florida Administrative Code, Section 17-70.004 places responsibility upon Key West Pipeline Company to contain, remove, and abate the discharge.
- d) Petitioner's actions to date to contain and remove the discharge do not constitute an admission of liability pursuant to Florida Statute 376.305(3).
- e) Petitioner is entitled to be compensated for its efforts to contain and remove the discharge from Key West Pipeline Company pursuant to Florida Statute 376.305(5).
- f) Petitioner is entitled to be compensated for its efforts to remove and contain the discharge from DER pursuant to Florida Statute 376.305(6).

6. Demand for relief:

- a) That DER's letter/order to Petitioner dated 2 February 1988 be withdrawn.
- b) That Petitioner be found entitled to its costs to contain and remove the discharge from Key West Pipeline Company. Alternatively, that Petitioner be entitled to reimbursement of its costs to contain and remove the discharge from DER.

Respectfully submitted,

151
PETER M. KUSHNER
Government Trial Attorney

Date: 20 May 1988

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petition has been mailed 'first class' this 20th day of May 1988 to the Department of Environmental Regulation, State of Florida, Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

151
PETER M. KUSHNER
Government Trial Attorney