

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16460
January 24, 2003

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00004211
MV00004439
F/V [REDACTED]
[REDACTED]
\$3,500.00
\$2,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the files in Civil Penalty Cases MV00004211 and MV00004439, which include your appeal as owner of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$3,500.00 in civil penalty case MV00004211 and a \$2,000.00 penalty in civil penalty case MV00004439. The penalties were assessed against [REDACTED] under the authority of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990, 33 USC 1321(b)(6)(A). The assessment was based on the finding that, in violation of 33 USC 1321(b)(3), oily bilge waste, in quantities that may be harmful, was discharged from the F/V [REDACTED] into Port Canaveral Harbor, Florida, on October 18, 2000 (MV00004439) and on October 29, 2000 (MV00004211). The waste oil that discharged on both occasions caused one or more of the conditions specified in 40 CFR 110.3.

As has been noted above, the violations are the result of two separate oil spills that occurred in Port Canaveral Harbor, Florida. The first spill occurred on October 18, 2000 and resulted in the discharge of approximately 175 gallons of diesel fuel and waste oil (MV00004439), while the second spill occurred on October 29, 2000 and resulted in the discharge of approximately 300 gallons of waste oil (MV00004211). Although the cases were handled separately by the Hearing Officer, due to their similarity and the fact that you raise virtually the same issues on appeal for both cases, I have consolidated the cases as noted above.

On appeal, you do not deny that the violations occurred but seek mitigation of the penalties assessed by the Hearing Officer. Although you do not specifically address the violation assessed for the spill that occurred on October 18, 2000, you stress the company's ailing financial position and the clean up costs of the spill that occurred on October 29, 2000, as reason to mitigate the penalties assessed by the Hearing Officer. With regard to the penalty assessed for the second spill, you contend that you did not deny responsibility for the spill, but rather that you were financially unable to pay for clean up. You further contend that your company has experienced

January 24, 2003

no financial gain by not properly disposing of the vessel's waste oil and cite the clean up costs as proof of that fact. You further assert that the oil spill was not intentional and imply that the penalty should be mitigated because of the minimal amount of oil that was discharged. You conclude that "to force a small business to pay a substantial penalty for a first time violation, seems excessive in light of the fact that...[the Coast Guard] realize[s] that...[the company has]...already been hit with an extremely large clean-up assessment, and that any assessed penalty...will only add to...[the company's] financial hardships and make it almost impossible to pay." Your appeals are denied for the reasons described below.

It is the mandate of Congress, as expressed through the Federal Water Pollution Control Act that there shall be no discharges of oil or hazardous material into or upon the waters of the United States. The Act provides that a Class I administrative penalty of not more than \$10,000.00 may be assessed against the owner, operator, or person in charge of any vessel or facility from which oil is discharged in prohibited quantities. The penalty was increased to \$11,000.00 by the Coast Guard's Civil Money Penalties Inflation Adjustments Final Rule effective May 7, 1997. It is not necessary to find intent or negligence, as the law prohibits any discharge of oil that may be harmful. A discharge of any amount of oil that causes a film, sheen, or discoloration upon the surface of the water may be harmful and is prohibited.

Before I begin, I believe a brief recitation of the facts is in order. The first spill occurred on October 18, 2000. At that time, the Coast Guard received reports of a diesel/waste oil spill in Port Canaveral Harbor, Florida. The Coast Guard observed a sheen measuring approximately 30 feet by 60 feet in the Cape Marina, as well as several other fuel slicks throughout the port. Because no responsible party was identified, the Coast Guard returned to the spill site on October 19, 2000, and took samples from many of the vessels in the area in an attempt to positively identify the source of the spill. When the Coast Guard's Marine Safety Laboratory conducted the tests, none of the samples taken from vessels on October 19, 2000, matched the spill source sample, however, the laboratory did conclusively match the spill with a sample taken from the F/V [REDACTED] on October 29, following the other spill in issue here.

The second spill occurred on October 29, 2000. At that time, the Coast Guard received several calls indicating that diesel/waste oil had been spilled near the Cape Marina and South fishing fleet in Port Canaveral. Upon further investigation, the Coast Guard observed an emulsion on the water's surface measuring approximately 150 feet by 60 feet. When Coast Guard pollution inspectors returned to the pollution site on October 30, 2000, a responsible party was not identified and oil samples were taken from the spill and several fishing vessels in the area, including the F/V [REDACTED]. At that time, federal funds were utilized to facilitate the clean up of the spill.

During the investigation of the second spill, pollution investigators discovered a leaking fuel tank on the F/V [REDACTED]. The vessel's bilges were found to contain excessive amounts of waste oil. On October 30, 2000, Mr. [REDACTED], a fisherman aboard the F/V [REDACTED] admitted to causing the spill. Mr. [REDACTED] indicated that, while attempting to repair a loose hose on the vessel's deck, he had severely injured his hand. He stated that when he did so, he ran into the cabin to obtain first aid supplies and accidentally turned the bilge pump on. Mr. [REDACTED] further indicated that he did not realize what he had done until a passerby told

January 24, 2003

him that oil was being discharged over the side of the vessel. Mr. [REDACTED] further indicated that he neither notified the Coast Guard of the spill nor facilitated clean up because he did not know what to do. When you were informed of the spill, you told the Coast Guard that you could not accept financial responsibility for clean up because you had neither the insurance nor the funds to do so.

Since you do not deny that the F/V [REDACTED] is responsible for the spills in issue, I consider the violations proved. The only consideration remaining is whether further mitigation of the penalties is required in light of the arguments that you have raised on appeal. As the Hearing Officer properly noted, 33 USC 1321(b)(8) provides that, when determining the amount of a civil penalty that results from a pollution incident, the Coast Guard must consider the following factors: "the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of the success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require." You seem to conclude that, because both spills were, in the words of the Hearing Officer, "on the low side of the seriousness continuum," the imposition of significant civil penalties is inappropriate. I do not agree.

In accordance with the dictates of 33 USC 1321(b)(8), the seriousness of the violation (or the amount of product spilled) is, indeed, one of the factors to be considered in the assessment of civil penalties. However, that factor, alone, is not decisive. All of the factors are weighed against each other, ensuring that the penalty assessed is an appropriate reflection of the totality of the circumstances surrounding the violation. In the instant case, I am certain that the Hearing Officer gave proper consideration to the criteria listed in 33 USC 1321(b)(8) prior to assessing the penalties against [REDACTED]. I have reviewed the records of both cases and have found no reason to mitigate the penalties any further. While the record does evidence that both discharges were relatively small, there is significant evidence to justify the penalties assessed by the Hearing Officer.

Your contentions concerning the Hearing Officer's characterization of your failure to accept financial responsibility for the oil spill that occurred on October 29, 2000, are wholly without merit. You contend that you *could not* accept financial responsibility for the spill because [REDACTED] did not have insurance or funds available to do so. With respect to Civil Penalty case MV00004211, the Hearing Officer stated that you "declined to accept financial responsibility for the clean up of the discharge." I do not see the Hearing Officer's characterization of your actions as inaccurate. The record clearly evidences that you did not accept financial responsibility for the spill that occurred on October 29, 2000. As I have previously stated, the law prohibits any discharge of oil into or upon the navigable waters of the United States, regardless of the degree of fault of the responsible party. As the owner of the F/V [REDACTED], you are therefore responsible for any discharges that result from that vessel. While the financial position of your company is, indeed, considered in the assessment of civil penalties, whether you can afford clean up costs, or not, you are responsible for them, as well as any civil penalties that result from the discharge.

January 24, 2003

Although you contend that [REDACTED] has not benefited by not disposing of the F/V [REDACTED]'s bilge water properly, I do not agree. The record indicates that the vessel's engine room bilge tanks contained excessive amounts of waste oil and diesel fuel. In addition to citing the leaking fuel tank as responsible for that waste oil and diesel fuel, the Captain of the F/V [REDACTED] stated that the bilge also contained discarded oil from the last main engine oil change. The record further indicates that the vessel's bilge was not correctly pumped out until the Coast Guard instructed [REDACTED] to do so following the second spill in issue.

You imply that, because you "have already been hit with an extremely large clean-up assessment," the payment of the civil penalties in issue would be unfair to your company. I do not agree. Although you are, indeed, now paying the National Pollution Funds center for their clean up costs resulting from the second spill, under the facts of these cases, I agree that the imposition of the civil penalties in issue is appropriate. Because the record evidences that the Hearing Officer considered [REDACTED] financial position, small business status and the clean up costs that the company owes to the United States when he mitigated the penalties in both cases, I will not mitigate them further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that [REDACTED] is the responsible party. The decisions of the Hearing Officer are neither arbitrary nor capricious and are hereby affirmed. Additionally, I find the penalties assessed appropriate in light of the circumstances of these cases.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. This decision does not address or decide any liability [REDACTED] Shrimping, Inc. may have for removal costs or damages, or any other costs arising from any discharge, or substantial threat of discharge, of oil involved in this case. See generally, but not exclusively, 33 USC §§ 1321 *et seq* and 2701 *et seq*. Payment of **\$5,500.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Payment should be directed to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Interest at the annual rate of 4.25% accrues from the date of this letter but will be waived if payment is received within 30 days. In accordance with 33 USC 1321(b)(6)(H), if payment is not received in 30 days, in addition to the interest, an administrative charge of \$12.00 per month for the cost of collecting the debt will be assessed. Furthermore, if the debt remains unpaid for over 3 months, and for every 3 months thereafter, an additional quarterly nonpayment penalty of 20% of the aggregate amount of the assessed penalty and all accrued quarterly nonpayment penalties will be added to the debt, and [REDACTED] will be liable for all attorney's fees incurred and all other costs of collection.

Sincerely,

Subj.: MV96002360

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January 24, 2003

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DAVID J. KANTOR
Deputy Chief
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center