



16731
31 MAR 2008

REDACTED
c/o REDACTED
REDACTED
Lafayette, LA 70505

RE: Case No. 2367008
REDACTED
REDACTED
\$1,000.00

Dear REDACTED:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2367008, which includes your appeal as owner of the REDACTED. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 31.01-1	Operation of a tank vessel without ensuring that a COI inspection was conducted (<1600 GT).	\$1,000.00

The violation was first observed on May 24, 2005, when Coast Guard personnel received a call from you attempting to schedule a Certificate of Inspection (COI) inspection of the REDACTED. The vessel's COI expired on April 7, 2005.

On appeal, you do not deny that the violation occurred; instead, you seek mitigation of the penalty assessed by the Hearing Officer because you "strongly disagree with the fine and...[the Hearing Officer's]...assessment of...[your]...work environment." In that regard, you assert that "having to deal with all the different inspectors...[and]...their different opinions about rules and all the different dates...keeps...[you]...stressed and frustrated on a continual basis." At the same time, you imply that Coast Guard personnel responsible for conducting relevant vessel inspections are, themselves, confused not only as to the meaning and intent of the relevant inspection regulations, but also as to when vessel certificates expire. You assert that this confusion is only exacerbated by the fact that vessel certificates often note numerous expiration dates for different types of inspections on their faces. At the same time, you note that you are aware of a similar violation case in which a vessel operator was fined \$750.00 when "he loaded, transported, and pumped product, for 6 months with an expired certificate" and assert that there is "no comparison" to your case because your barge was "never loaded and sat empty as a safety

precaution only.” In this regard, you add that the only conceivable reason that the penalty at issue in that case may have been so low is because that “person did not understand the dates and all and was very confused.” With regard to the violation, itself, you assert that “[o]nce...[you]...discovered the violation...[you]...did all...[you]...could do to get the barge back in...[your]...possession and have it inspected.” In that regard, you note that during the time the barge was in violation, it was not loading product, but rather, was serving in a safety capacity to ensure that help was available in the event that a dangerous situation involving a well being drilled occurred. In that regard, you note that “[t]he rules that govern these vessels are established to protect the environment” and insist that “[h]aving it [the barge] available regardless of some deadline date is far more important to safety” and add that “[j]ust because a date expired does not mean the barge is no longer fit for duty.” In that vein, you further assert that “[t]he Coast Guard needs to understand that rules have to be broken sometimes” and conclude, with regard to the instant case, that I should “look at the positive side of this and try and focus on the problems with pollution that could have happened had...[your]...barge not been available.” You insist that that is “really what this is all about.” Although you conclude by stating that you are “sorry...[you]...got the dates confused,” you add that you “cannot promise...that it will not happen again” and add that “[u]ntil something simple is created to keep track of the dates...[you]...are certain...[you]...will continue to receive violations for the same simple reason.” On this basis, you conclude that the fine is “excessive” and “offer \$500 as a compromise.” Your appeal is denied for the reasons discussed below.

First, I note that the record contains substantial evidence to support a conclusion that the violation occurred. The record contains a copy of the REDACTED COI. A careful review of that COI shows that its expiration date is clearly identified—on the certificate’s front page in the top right corner—as 07APR05. A review of the COI further shows that the certificate was issued on April 7, 2000, and was valid for 5 years. While hull examination dates are discussed on page 2 of the COI, the expiration date is clearly identified in a separate and distinct location on page 1 of the COI. The Enforcement Summary Report contained in the record further shows that a COI inspection was completed for the vessel on May 27, 2005, 51 days after the relevant COI expired. Given this evidence, I do not find that the Hearing Officer erred in finding the violation proved. As such, the remainder of this decision will focus on whether mitigation of the penalty assessed by the Hearing Officer is appropriate under the circumstances of this case.

The record shows that, in her final letter of decision, the Hearing Officer addressed the violation as follows:

You explain and show by photos that the vessel is a shale barge, with open tanks above the deck, which did not have any product in it during the period when the COI was expired. This made me take a closer look at the COI, where I noticed that it is permitted to carry no higher than grade E cargo, flashpoint greater than 300 degrees F. You complain that keeping track of required inspection dates is confusing and also mention that you had family health issues and other concerns that made it easy to overlook the required inspection. You add that you are at the mercy of the customer which can make it difficult to meet vessel inspection

requirements. You also discuss the prior offense included in the case file. Finally, you call attention to post-Katrina and Rita hardships.

The multitude of inspection types and their deadlines may be confusing, but this case is about the expiration of the COI, which is very simple and straightforward as the expiration date appears in the top right corner of the COI. This is the one that's easy to get right, and you must get it right. Whatever the confusion factor, that and customer issues are part of your business that you must have a way to deal with. As for the prior offense of 2002, yes, it appears they "let it go as an oversight" as you say, but they did not forget it. I take it to indicate that the current violation was not a unique incident, and there may be reason to assess a penalty that will give you an incentive to develop a better system to ensure you do not miss inspections. I am not insensitive to family health issues, but perhaps you need a better system that would be less affected by those exceptional matters as well as by the normal exigencies.

The barge-specific points are strongly mitigating, as is the hurricane factor. Considering everything \$1,000 is assessed.

On appeal, you assert many of the arguments that you raised before the Hearing Officer, including your assertion that the REDACTED was chartered to another company at the time the certificate expired and was, therefore, difficult to reacquire for inspection. I do not find this argument persuasive. First, the operative Coast Guard regulation clearly states that "[e]very tank vessel subject to the regulations...shall be inspected every 5 years." *See* 46 CFR 31.01-1. Moreover, the vessel's COI clearly indicated that the certificate would expire on 7 April 2005. Irrespective of that fact, however, the record shows that you rented the vessel to Broussard Brothers, Inc., from April 21, 2005 to May 26, 2005. As a vessel owner, it is the responsibility of REDACTED, to ensure that its vessels are in compliance with all applicable regulations. As the owner/operator of the MOP 19, Marine Operators should have been aware that the vessel's COI was scheduled to expire on April 7, 2005, and should have ensured that it was not operated—or put in a position to operate—under an expired COI. Accordingly, I am not persuaded by your assertions regarding your alleged inability to have the REDACTED inspected.

In addition, you argue that you are aware of a similar company who was assessed a penalty of \$750.00 in a similar case and in so stating, imply that the penalty at issue here should be mitigated. I am unaware of the facts at issue in that "other" case and, even, whether the violation charged is the same as in this case. The record shows that the Hearing Officer considered the evidence that you submitted in mitigation when she substantially reduced the initially assessed penalty from \$32,500 to \$1,000. Given the evidence contained in the record and your assertion that you "cannot promise" that a similar violation will not occur in the future, I find the penalty assessed by the Hearing Officer to be appropriate under the circumstances of this case.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that REDACTED, is the responsible party. The decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. I find the \$1,000.00 penalty assessed by the Hearing Officer, rather than the

\$32,500.00 maximum penalty permitted by statute to be appropriate under the circumstances of the case.

Payment of **\$1,000.00** 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 70945
Charlotte, NC 28272

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Should you still believe that you are financially unable to pay these penalties, you may request establishment of a payment plan. Requests for relief should be directed to the Chief, Claims Branch, Maintenance and Logistics Command Pacific, Coast Guard Island, Alameda, California 94501-5100.

In accordance with the regulations governing civil penalty proceedings, 33 C.F.R. § 1.07, this decision constitutes final agency action.

Sincerely,

//s//

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