

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16460
October 22, 2001

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

RE: MV00002244
M/V [REDACTED]
[REDACTED]
\$1,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00002244, including your appeal on behalf of the owners of the passenger ferry [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$1,000.00 against the [REDACTED] ([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), oil, in a quantity that may be harmful was discharged from the M/V [REDACTED] into Bahia De San Juan on June 29, 2000. The oil that discharged caused one or more of the conditions specified in 40 CFR 110.3.

On appeal, you do not deny the violation but seek mitigation of the assessed penalty. You contend that the calculated quantity of oil discharged is "not correct" and assert that "discharge of all the oil of this engine would produce the excessive overheating of the engine and its melting." You further contend that, while the Coast Guard calculated the discharge at "approximately twenty (20) gallons of oil," you contend that "[REDACTED], the mechanical engineer of the [REDACTED], estimated the discharge of oil...[to be]...approximately one (1) gallon." Your appeal is granted, in part, and denied, in part, 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 record indicates that on June 29, 2000, while Coast Guard boarding inspectors were conducting a deficiency follow-up inspection aboard the M/V [REDACTED], the vessel experienced a problem with its turbocharger and discharged blue smoke mixed with particulate. The particulates covered the roof of the M/V [REDACTED] and entered the San Juan Bay from the vessel's port side. A follow up investigation

revealed a large amount of oil on the roof of the vessel and a visible path toward the water. In addition, Coast Guard inspectors found approximately 3 tablespoons of oil underneath one of the vessel's exhaust mufflers.

Since you do not deny that the M/V [REDACTED] discharged oil into the San Juan Bay or that the [REDACTED] is the responsible party, I consider the violation proved. The only consideration remaining is whether further mitigation of the penalty is required. Your main contention on appeal is that the Coast Guard has incorrectly estimated the amount of oil discharged by the M/V [REDACTED]. You assert that the vessel's port side engine has a capacity of only "twelve (12) gallons" and contend that the vessel's mechanical engineer has estimated the discharge to be "approximately one (1) gallon."

There is considerable confusion in the record as to the actual amount of oil discharged by the M/V [REDACTED]. The statement of Chief Warrant Officer [REDACTED], present during the discharge, indicates that "approximately a ½ gallon of engine oil discharged through the port side exhaust and settled on the water." The Coast Guard's report of the incident contains different estimates of the amount of oil discharged. The section of the report denoted "Details of the Violation" indicates that "approximately 20 gallons of oil...[discharged]...into Bahia De San Juan," while the section of the report for "Additional Information" indicates that "approximately 5 gallons of oil" discharged. Furthermore, the Coast Guard's "Marine Violation Charge Sheet Enclosure," undoubtedly utilized by the Hearing Officer in assessing the penalty, indicates that "20 gallons of oil" were discharged. In light of these discrepancies, I cannot agree with the Coast Guard's conclusion that the M/V [REDACTED] discharged 20 gallons of fuel oil. Given the great range in amounts posited by the Coast Guard, I will accept [REDACTED]'s conclusion that "approximately one (1) gallon" of fuel was discharged by the M/V [REDACTED].

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. 33 USC 1321(b)(8) provides that the following factors must be considered in determining the amount of a civil penalty assessed as the result of a pollution incident: "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." 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 penalty against [REDACTED]. I have reviewed the entire record and have found no reason to mitigate the penalty any further. While I have concluded that a relatively small amount of fuel was released into the San Juan Bay, there is significant evidence necessitating a more excessive penalty. The record indicates that the [REDACTED] has an extensive history of violating Coast Guard regulations and that many of the 91 cases assessed against the [REDACTED] involved violations of 33 USC 1321(b)(3). Furthermore, the Coast Guard's report of the incident indicates that the [REDACTED] repeatedly denied responsibility for the incident. Although the [REDACTED] properly reported the spill to the National Response Center, they initially reported that the spill had come from an "unknown" source, even though Coast Guard boarding inspectors were present during the incident. Indeed, it was not until much later that the [REDACTED] actually admitted responsibility for the incident. In view of the [REDACTED]'s

extensive history of violations, and their failure to admit responsibility for this incident, I will not mitigate the penalty assessed by the Hearing Officer.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that the [REDACTED] is the responsible party. His decision was neither arbitrary nor capricious and is hereby affirmed. Additionally, I find the penalty appropriate in light of the amount of oil that was discharged.

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 that the [REDACTED] 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 **\$1000.00** 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 5 % 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 the [REDACTED] will be liable for all attorney's fees incurred and all other costs of collection.

Sincerely,

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

Copy: Commander, U.S. Coast Guard Atlantic Area
Commander, Finance Center