

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16460
November 26, 2001

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

RE: MV00002417
M/V [REDACTED]
[REDACTED]
\$1,800.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00002417, including your appeal on behalf of the owners of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$1,800.00 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), oil, in a quantity that may be harmful, was discharged from the M/V [REDACTED] into Puget Sound on May 5, 2000. The estimated one-gallon of diesel 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 penalty assessed by the Hearing Officer. You disagree with the Coast Guard's "interpretation of the criteria in 33 USC 1321(b)(8)" and contend that the penalty should be lowered due to the "extraordinarily small" amount of oil spilled. Arguing further mitigation of the penalty, you contend that "[REDACTED]'s former subsidiary [REDACTED] moved approximately one billion gallons of fuel oil. . .without incident" and further contend that "[REDACTED] is committed to safe spill free operations of vessels." You contend that "[t]he Coast Guard's revised assessment, while appreciated, is simply extraordinarily expensive in light of. . .[REDACTED]'s...financial constraints." Your appeal is 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

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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.

Since you do not deny that the M/V [REDACTED] spilled diesel or that [REDACTED] is the responsible party, I consider the violation proved. The only consideration remaining is whether further mitigation of the penalty is required in light of the arguments that you have raised on appeal. Your main assertion is that the Hearing Officer did not properly consider the criteria set forth in 33 USC 1321(b)(8) when he found a \$1,800.00 penalty appropriate. 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." You seem to conclude that the "extraordinarily small" amount of diesel released renders the imposition of a significant civil penalty in this matter 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 penalty against [REDACTED]. I have reviewed the entire record and have found no reason to mitigate the penalty any further. While the record does evidence that a relatively small amount of fuel oil was released into the Puget Sound, there is significant evidence justifying the assessed penalty. The record indicates that the discharge on May 5, 2000 was the M/V [REDACTED]'s third discharge of oil that occurred between March 1999 and May 2000. All three discharges resulted from similar situations when the fuel tank was overfilled during an internal transfer operation and diesel overflowed from a vent into the navigable waters of the United States. It is also apparent that the Hearing Officer considered [REDACTED]'s small business status when he reduced the original penalty assessed from \$3,000.00 to \$1,800. I further note that [REDACTED] had an opportunity to settle this matter for \$500.00 when the Coast Guard issued a Notice of Violation. However, it did not take advantage of this opportunity.

The remaining evidence presented on appeal is also unpersuasive. The fact that the company sold business entities to "alleviate its debt burden" has little bearing on the party's culpability or attempts to achieve compliance. Additionally, your parenthetical assertion regarding an allision between the Coast Guard cutter [REDACTED] and [REDACTED]'s fuel dock has no factual bearing to the matter at hand and is irrelevant. You have presented no evidence to persuade me that further mitigation is appropriate. Furthermore, in light of the record of the M/V [REDACTED], it is apparent that more than a nominal penalty is necessary to achieve full compliance with Coast Guard regulations, since previous penalties have apparently had little or no effect on the vessel's operating practices.

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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 Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed.

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] 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 **\$1800.00** 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 [REDACTED] will be liable for all attorney's fees incurred and all other costs of collection.

Sincerely,

//S//

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

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