U.S. Department of Transportation
United States Coast Guard

COMMANDANT
U. S. Coast Guard

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Phone: (202) 267-1527
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16731
October 29, 2001

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

RE: MV00003593
MV00004614
[REDACTED]
M/V [REDACTED]
M/V [REDACTED]
$2,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Cases MV00003593 and MV00004614, including your appeal on behalf of the owners of the M/V [REDACTED] and M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing two $1,000.00 penalties for the following violation:

LAW/REGULATION	NATURE OF VIOLATION	ASSESSED PENALTY
33 CFR 159.7	Vessel's installed Marine Sanitation Device not labeled (159.16) or certified (159.12 or 159.12a) or operable, or on board.	$2,000.00

The violations result from incidents that occurred on September 6, 2000, when Coast Guard boarding officers boarded the M/V [REDACTED] and M/V [REDACTED] while the vessels were moored in Juneau, Alaska for an expanded examination of the vessel's Marine Sanitation Devices.

On appeal, you deny the violation and contend "every mechanical problem does not render a marine sanitation device (MSD) 'inoperable' under 33 CFR 159.7." You assert "there must be a proven causal link between the mechanical problem and the inability of the MSD to treat sewage to the required effluent standards before it can be concluded that the system was inoperable." You further contend that the sewage that was discharged on September 6, 2000 "did not go overboard" and assert that "[t]he sewage that did go through the MSD and then overboard on September 6, 2000, was never tested by the Coast Guard." You conclude that you "cannot

understand how the Coast Guard can summarily conclude that the upset conditions it witnessed on September 6, 2000 rendered the MSD's inoperable" and assert that "[p]olitical hysteria…can never be allowed to impact the sound application of the law." To mitigate the assessed penalties, you assert that [REDACTED] has spent "about $3,000,000 per ship" to "install advanced treatment systems" on all of their vessels that enter Alaskan waters. Because the cases contain similar facts and issues of law and because you have chosen to offer a collective letter of appeal, I have consolidated the cases and deny your appeal for the reasons described below.

33 CFR 159.7 makes clear that "[n]o person may operate any vessel equipped with installed toilet facilities unless it is equipped with: (1)[a]n operable Type II or III device that…is certified under §159.12 or 159.12(a)." To be certified, 33 CFR 159.53 requires that Type II MSD's "[u]nder…test conditions described in §§159.126 and 159.126a, produce an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter…" The record indicates that testing of discharges from the M/V [REDACTED] and the M/V [REDACTED], in August of 2000, indicated that both vessels contained fecal colliform bacteria counts above the limits prescribed by Coast Guard and EPA regulations. Discharge tested from the M/V [REDACTED] contained a fecal coliform content of approximately 9,000,000 bacteria per 100 milliliters of sewage and discharge from the M/V RYMDAM contained a fecal coliform content of approximately 500,000 bacteria per 100 milliliters of sewage. While these two incidents did not result in charges being brought against [REDACTED], it did lead to further investigation of the vessels on September 6, 2000 by the U.S. Coast Guard.

The Coast Guard Marine Violation Charge Sheets indicate that both vessels were found to have "mechanical discrepancies" that rendered the MSD systems "inoperable and not in compliance with applicable regulation standards. You contend that "the upset conditions witnessed on September 6, 2000 did not equate with the MSDs being unfit" and conclude that "there is no evidence that the high fecal coliform counts found prior to September 6th were caused by the same problems observed on September 6th. You further assert that you were "advised that the sewage in question was cleaned up by the crew using absorbent material and was not discharged overboard through the bilge water system" and add, "the sewage that overflowed…was a system upset which periodically happens on every ship that uses a MSD." You conclude that "[o]ther than the high fecal coliform counts, there is no evidence that…would permit the Coast Guard to conclude that the sewage which did not overflow was being improperly treated" and contend that "[a]s to that sewage, the system may have been fully operable." Despite your contentions, I believe there is sufficient evidence within the case file substantiating each violation.

In the case of the M/V [REDACTED], the actual discrepancies were, unfortunately, not clearly set forth by the Coast Guard investigators. However, the investigators did note that the MSD system was discharging effluent from the overflow vent, a condition which only occurs when the system is inoperable. In addition, the certificate prepared by Lloyd's Registry indicates that the MSD and collection tank pump control level switches were overhauled and tested. It is uncontested that both treated and untreated sewage was being discharged into the bilge, creating a health concern aboard the vessel. A properly operating MSD system simply would not pump untreated sewage into the bilge that requires clean up by absorbent material. Finally, the evidence of the August discharge is relevant to rebut you contention that the M/V [REDACTED]

was simply experiencing a "periodic" mechanical problem. Rather, it appears that the vessel had a longstanding problem with its MSD system which was allowed to continue until a Captain of the Port Order was issued ordering immediate corrective action.

As to the M/V [REDACTED], the Coast Guard inspectors found that treatment tank #2 had overflowed. Subsequent inspection revealed that both the pump start and the high-level float switches were stuck. The fact that both float switches failed at the same time suggests poor maintenance. Also, collection tank #4 had leaking automatic discharge valves which were replaced. Once again, it simply is not normal for a properly operating MSD system to be pumping or leaking sewage into the bilge.

You contend that "political hysteria" in Alaska last summer lead to the issuance of violations where they were inappropriate. This assertion is without merit. The Coast Guard's civil penalty program is a critical element in the enforcement of numerous maritime safety and environmental laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. While Coast Guard Hearing Officers are obligated to be mindful of the national goals underlying the Congressional intent of regulations, their primary interest is to ensure that violations of the regulations do not go unnoticed. Furthermore, procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded maximum due process during informal adjudicative proceedings. By balancing procedural fairness and legislative intent, the Coast Guard civil penalty process plays an important and essential role in furthering national maritime safety and environmental goals. While I acknowledge that those goals may change with the times, Coast Guard enforcement, however, is always based upon legally enacted regulations. The record indicates, however, that the [REDACTED] installed state of the art MSDs to ensure that their vessels do not participate in further violations of the regulation. In light of this fact, I will mitigate the assessed penalty to $1,000.00

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 Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find a $1,000.00, rather than the $2,000.00 penalty preliminarily assessed by the Hearing Officer to be appropriate in light of the circumstances of the case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. 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. Send your payment to:

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

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % 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.

Sincerely,

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

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center