

U.S. Department
of Transportation

**United States
Coast Guard**



COMMANDANT
U. S. Coast Guard

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Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone: (202) 267-1527
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16460
December 30, 2002

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

RE: MV01000874
[REDACTED]
[REDACTED]
\$110.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV01000874, which includes your appeal on behalf of the owners of [REDACTED]'s facility at [REDACTED], Alaska. The appeal is from the action of the Hearing Officer in assessing a \$110.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 154.300	Operating manual not readily available to person in charge.	\$110.00

The violation was observed on May 31, 2000, during a Coast Guard inspection of [REDACTED]'s facility at [REDACTED], Alaska.

On appeal, you do not deny that the operations manual was not available at the facility during the inspection. However, you contend that the facility is "...in the process of finding out what is available for [the] oil spill response manual." You further contend that "US Fish and Wildlife...shut down commercial fishing...hence nobody was in the village to neither receive nor process" the Coast Guard's notifications. In mitigation of the assessed penalty, you assert that "[e]xcept for the spill response manual...[[REDACTED] is]...in compliance with the necessary impermeable lined and beamed tank storage area." You further note that the company has "acquired all the spill response equipment in storage." Your appeal is denied for the reasons described below.

Since you do not deny that [REDACTED]'s facility did not have the operations manual required by 33 CFR 154.300 readily available during the facility's inspection on May 31, 2000, I consider

December 30, 2002

the violation proved. The only issue remaining is whether mitigation of the penalty assessed by the Hearing Officer is appropriate. I do not believe that it is. While I commend [REDACTED] for being in compliance with the Coast Guard's requirements with respect to tank storage and on-site spill response equipment, such compliance does not obviate the company's duty to comply with the Coast Guard's operations manual requirements. The oil spill response manual is a key factor in addressing any spill that occurs at a facility. Careful compliance with that manual is a necessary element in mitigating the harmful environmental and economic impact of an oil spill. Therefore, the presence and ready accessibility of a facility's oil spill response manual is strictly necessary for the safe operation of that facility.

To mitigate the penalty assessed by the Hearing Officer, you contend that you were not properly notified of the civil penalty because no one was at the village plant to receive and respond to the Coast Guard correspondence. I note your appeal letter continues to list the [REDACTED] plant address as an appropriate address. At the very least, you should have made arrangements to have the mail forwarded to the Seattle address. Also, as the Commander of the 17th Coast Guard district properly noted in his rebuttal comments dated November 19, 2001, it is the responsibility of the charged party to inform the Coast Guard of any changes in their mailing address. Therefore, since the Coast Guard's notice was sent to the address of record, I am confident that [REDACTED]'s rights, with respect to notice, have not been violated.

The maximum penalty that may be assessed for a violation of 33 CFR 154.300 is \$11,000.00. Thus, the maximum penalty that could have been assessed against [REDACTED] for the violation in issue is \$11,000.00. Given the seriousness of the violation and in light of the nominal penalty assessed, I will neither mitigate nor dismiss the penalty.

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. I find the penalty of \$110.00 rather than the \$11,000.00 maximum permitted by statute appropriate in light of the seriousness of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$110.00** 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 3% 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.

RE: CIVIL PENALTY

16460
December 30, 2002

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