

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commandant  
United States Coast Guard

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[REDACTED]  
[REDACTED]  
[REDACTED]

16460  
28 JUN 2007

RE: Case No. [REDACTED]  
[REDACTED]  
[REDACTED]  
\$2,500.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. [REDACTED] which includes your appeal as alleged owner of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$2,500.00 against you 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 of the \$2,500.00 penalty was based on a finding that, in violation of 33 USC 1321(b)(3), oil, in a quantity that may be harmful, was discharged from the [REDACTED] on June 25, 2004, into Bodega Bay, California. The oil discharged caused a rainbow sheen on the waters of Bodega Bay, a condition specified in 40 CFR 110.3.

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 materials into or upon the navigable 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 or hazardous material that may be harmful. Under the statute, the President has the authority to determine what amount of a particular released material is hazardous.

On appeal, although you do not deny that oil was discharged from the [REDACTED] into Bodega Bay, you assert that you were not present at the time of the incident and claim that the vessel was under the control of another individual. As a result, you contend that you should not be responsible for the penalty assessed by the Hearing Officer for the discharge. Your appeal is denied for the reasons discussed below.

The record shows that at approximately 0500 on June 25, 2004, the harbor master received a report of a discharge causing a rainbow sheen covering approximately 700 square feet between docks A and B in Spud Point Marina. After deploying approximately 35 absorbent pads to help clean up the spill, the harbor master notified the National Response Center of the spill. As a result of the notification, the Coast Guard responded to the incident and, in the process, took samples from both your vessel and the spill to determine whether they were derived from a common source. The record shows that Gas Chromatography and Gas Chromatography Mass-Spectrometry tests revealed that the fuel samples taken from your vessel's discharge pipe and the

sheen were found to be derived from a common source. Given this evidence, I find substantial evidence in the record to support the Hearing Officer's conclusion that on June 25, 2004, oil was discharged from the [REDACTED] into the Spud Point Marina in Bodega Bay.

Having determined that there is substantial evidence to support the Hearing Officer's conclusion that the violation occurred, I will now address your assertions that you are not the party responsible for the violation. The record shows that you do not deny owning the [REDACTED] and, indeed, the record contains a certified copy of the vessel's Certificate of Documentation that clearly indicates that you are the vessel's owner. Irrespective of that fact, however, on appeal, you contend that because you were neither aboard the vessel nor in control of it at the time of the spill, you should not be charged with the violation. Your assertion, in this regard, is wholly without legal merit. 33 USC 1321(b)(6)(A) makes clear, in relevant part that "[a]ny owner, operator, or person in charge of any vessel...from which oil or a hazardous substance is discharged...may be assessed a...civil penalty." Therefore, as the owner of a vessel from which oil was discharged, you are an appropriate party to be charged with the alleged violation and the alleged culpability of others cannot be used as a defense to avoid your own overall statutory and regulatory responsibility.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find the \$2,500.00 penalty assessed by the Hearing Officer, rather than the \$11,000.00 maximum permitted by statute, appropriate in light of the circumstances of the violation.

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 you may have for removal costs or damages, or any other costs arising from any discharge, or substantial threat of discharge, of the oil involved in this case. *See generally*, but not exclusively, 33 USC §§ 1321 *et seq.* and 2701 *et seq.*

Payment of **\$2,500.00** 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

Interest at the annual rate of 1% 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 you 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: Commanding Officer, Coast Guard Hearing Office  
Commanding Officer, Coast Guard Finance Center