



16731
October 25, 2001

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

RE: MV00001712
[REDACTED]
M/V [REDACTED]
\$4,100.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001712, which includes your appeal as shipper of three containers of hazardous materials aboard the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$4,100.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
49 CFR 172.202	Failure to properly describe hazardous materials in shipping papers.	\$1,000.00
49 CFR 172.504	Failure to comply with general placarding requirements.	\$1,000.00
49 CFR 172.400	Failure to comply with general labeling requirements.	\$2,100.00
49 CFR 176.172	Failure to comply with the requirements governing serviceability of freight containers/vehicles carrying explosives.	DISMISSED WITHOUT PREJUDICE

The violations were discovered on May 18, 2000, when Coast Guard container inspectors boarded the M/V [REDACTED] to inspect three freight containers that were on its deck while it was berthed at the North Carolina State Port in Wilmington, North Carolina.

On appeal, you deny responsibility for the violations and contend that "[REDACTED] was just an exporter-middleman whose responsibilities were to obtain the necessary export licenses."

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You further contend that “[a]ll activities regarding transportation, labeling, placarding, and preparation of shipping documents were undertaken by the shipping agents appointed by the U.S. company [REDACTED].” You contend that, although [REDACTED] is denoted as the “shipper” on the relevant shipping papers, “according to international commercial practice...the name of shipping agents...remain[s] hidden although all transportation issues have been settled by them.” You express concern that, if penalties are assessed against you, “the actual abusers...will continue to work in violation of existing rules and other companies like [REDACTED] [will] suffer the consequences.” You further argue that you “are not in a position to admit or accept any of the accusations because...[you]...are not in possession of any of the regulations” and add that “[n]o information concerning proper description of hazardous materials on shipping papers, general placarding requirements and general labeling requirements” has been received by you. You further contend that, because [REDACTED] is “a non-USA company,” it is prevented from “being enough familiar with U.S. legislation” and unable to “receive protection by a professional lawyer or attorney who is an expert in the respective legislative sphere.” Finally, you contend that [REDACTED] “certainly falls into the category of ‘small business’ as classified by the Small Business Regulatory Enforcement Fairness Act of 1996.” Your appeal is denied for the reasons described below.

I will begin by addressing your contention that [REDACTED] is not responsible for the shipment and packaging of the hazardous goods at issue in this case. As the Hearing Officer correctly noted, 49 CFR 171.2 makes clear that “[n]o person may offer or accept a hazardous material for transportation in commerce unless...the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment.” Furthermore, according to the statute authorizing the hazardous materials regulations, 49 USC 5103(b), the regulations apply to “a person-...(ii) causing hazardous material to be transported in commerce.” Therefore, according to both the regulations and their authorizing statute, [REDACTED] may be found liable for any violation that occurs. The IMO Dangerous Goods Declaration, signed by the [REDACTED], clearly identifies the shipper of the materials as [REDACTED]. By signing the Dangerous Goods Declaration, [REDACTED] declared *it was offering* the material for shipment and *certifying* that it was properly packaged, marked, labeled, and in proper condition for transport according to the applicable international and national government regulations. If [REDACTED] did not inspect the containers, or have a surveyor inspect them, or have any role in overseeing the packing of the containers, it should not have signed the Declaration. However, having signed the document, [REDACTED] is responsible for having performed physical acts regulated by the statute and cannot now evade responsibility for violations of Coast Guard regulations. Although [REDACTED] may not have physically prepared the containers for shipment, I believe it was, nevertheless, more than merely the “exporter-middleman whose responsibilities were to obtain the necessary export licenses.” Simply put, having offered the containers for shipment and certifying that the shipment complied with applicable regulations, [REDACTED] is the appropriate party responsible for the fact that the containers were not in the condition in which they were certified to be.

While [REDACTED] has neither denied nor admitted the violations, you comment that it cannot do so because it is not familiar with the appropriate regulations. I find this assertion unpersuasive. As has been discussed above, when [REDACTED] signed the IMO Dangerous Goods Declaration, it certified that the shipment was in accordance with appropriate national and

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international regulations. The company contends that it did not receive any information on the shipment of hazardous materials and contends that lack of such information precludes them from being found in violation of the regulations. This assertion is without merit. As the shipper of the relevant goods, it is [REDACTED]'s responsibility to ensure that the shipment is appropriately packaged and contained. While I understand that [REDACTED] is a foreign corporation, that fact does not excuse the violations. [REDACTED] was responsible for the hazardous materials that were shipped aboard the M/V [REDACTED]. The company was responsible for ensuring compliance with the regulations either itself or through its agents. In asserting that [REDACTED] did not receive the appropriate information on compliance with the regulations, you fail to acknowledge that it was [REDACTED]'s responsibility to ensure that compliance was effected. Furthermore, the regulations are published each year and are readily available to the public through a variety of sources, including the Internet and, as the Hearing Officer told you, the Government Printing Office. Therefore, there is no reason that [REDACTED] could not have ascertained the proper methods for shipping hazardous goods or taken appropriate steps to ensure that its agents correctly did so.

On appeal, you commented that, because [REDACTED] is a "non-USA" company, it has been disadvantaged during the civil penalty process because it cannot obtain advice from expert counsel. I am not persuaded by this assertion. The civil penalty process is designed to ensure that the parties involved are afforded maximum due process during informal adjudicative proceedings. By balancing procedural fairness and legislative intent, the civil penalty process plays an important and essential role in furthering national maritime safety and environmental goals. Because the process is informal in nature, expert attorneys are neither required nor needed to successfully refute Coast Guard allegations of violations. Furthermore, the Coast Guard makes no differentiation between foreign and US companies when enforcing its regulations. The regulations are applied to *any* vessel, owner, or operator responsible for the transiting of the navigable waters of the United States. Therefore, just as a citizen of the United States would be responsible for ensuring compliance with Coast Guard regulations, so too is [REDACTED].

Finally, I will address your contention that the penalty should be mitigated because [REDACTED] "certainly falls into the category of 'small business' as classified by the Small Business Regulatory Enforcement Fairness Act of 1996." Unfortunately, you have provided no evidence to support this assertion. According to 33 CFR 1.07-70(a), only issues that have been properly raised before the Hearing Officer and jurisdictional questions may be raised on appeal. Since you did not address the alleged "small business status" of [REDACTED] before the Hearing Officer prior to his final decision, your right to have it considered has been waived. I note, however, that even if I were able to find that [REDACTED] was a "small business" for the purposes of Coast Guard regulation, I would not mitigate the penalty assessed by the Hearing Officer. The hazardous materials regulations were promulgated to protect the life and property of individuals from the inherent dangers associated in their transportation. Violation of the regulations could have disastrous consequences and for that reason, compliance is essential. The maximum penalty for the violations in the instant case is \$137,500.00. I am, therefore, convinced that the Hearing Officer considered your arguments in mitigation when he reduced the penalty to \$4,100.00.

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 the penalty of \$4,100.00 rather than the \$26,300.00 preliminarily assessed appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$4,100.00** 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