

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  
September 24, 2001

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

RE: MV00003950  
Subaru Legacy  
[REDACTED]  
\$1,100.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00003950 including your appeal as owner/operator of a Subaru Legacy with license number [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$1,100.00 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 was based on the finding that, in violation of 33 USC 1321(b)(3), lubricating oil, in a quantity that may be harmful was discharged from your Subaru Legacy into the Puget Sound, on September 27, 2000. The estimated 2 gallons of lube oil that discharged caused one or more of the conditions specified in 40 CFR 110.3.

On appeal, you do not deny the violations but contend that the assessed penalty "is not reasonable" because you did not "mean to break the law." To mitigate the penalty, you contend that this is your "first violation," that you offered an honest and prompt response to the charges against you and that you "will never do this again." Furthermore, you contend that you may be leaving the United States sometime in 2001 and therefore "can't set up a payment plan." You mention, however, that you "do not want to leave without closing this case." 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 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.

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On September 27, 2000, while changing the oil in your Subaru Legacy at Elliott Bay Park, an employee of Elliott Bay Marina witnessed you pour "oil out of a container into the city's street storm drainage," which was labeled to indicate that it drained directly into Puget Sound. This discharge "created a sheen on Elliott Bay at the outfall of the storm drain." Following the incident, a witness called the National Response Center and provided them with all relevant information, including your license number. You neither reported, nor attempted to report the spill to the authorities and departed the scene shortly after the incident. You have stated that, on the day of the events in issue, you had completed changing the oil in your car and found your oil filter on the side of the road, still filled with oil. You admit that you should have drained the oil from the filter into the container but, because you were in a "hurry," you opted to pour the oil down the drain. Since you do not deny the violations, I consider them proved.

I am not persuaded by your arguments in favor of mitigation of the assessed penalties. Your contention that you did not "mean to break the law" is most troubling to me. You have admitted that you drained the oil from your car into a container that you intended to properly dispose of and admit that you did not drain the oil from the filter into that container because you were in a "hurry." In light of these actions, I am convinced that you knew that it was inappropriate to empty the oil into the drain. While I appreciate that you have "promised. . .that [you] will never do this again," that promise does not eliminate the fact that you willfully discharged oil into the navigable waters of the United States. Furthermore, I am certain that the Hearing Officer considered your clean record and your "honest and prompt" responses to the charges against you when he lowered the assessed penalty from \$4,000.00 to \$1,100.00. While I understand that you may be leaving the United States and wish to resolve this matter prior to your departure, I see no reason why that fact would prevent you from establishing a payment plan with respect to this violation. Therefore, I will not mitigate the penalty any further.

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. His decision was neither arbitrary nor capricious and is hereby affirmed. Additionally, I find the penalty appropriate in light of the amount of oil that discharged

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 oil involved in this case. See generally, but not exclusively, 33 USC §§ 1321 *et seq* and 2701 *et seq*. Payment of **\$1,100.00** 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. 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

Subj.: MV00003950

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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. If you are financially unable to pay these penalties, you may request establishment of a payment plan. Requests for relief should be directed to the Chief, Claims Branch, Maintenance and Logistics Command Pacific, Coast Guard Island, Alameda, California 94501-5100.

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