U.S. Department of Transportation
United States Coast Guard

COMMANDANT
U. S. Coast Guard

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Washington, DC 20593-0001
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Phone: (202) 267-1527
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16616

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

October 09, 2002

RE: MV00002050
[REDACTED]
[REDACTED]
$1,500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00002050, which includes your appeal as shipper of [REDACTED] and the fireworks contained therein. The appeal is from the action of the Hearing Officer in assessing a $1500.00 penalty for the following violations:

LAW/REGULATION	NATURE OF VIOLATION	ASSESSED PENALTY
49 CFR 172.201	Failure to properly provide required information for hazardous materials on shipping papers.	$250.00
49 CFR 171.12	Failure to inform shipper or freight forwarder of HAZMAT requirements for import/export shipments.	$250.00
49 CFR 172.320	Failure to comply with marking requirements for explosive hazardous materials.	$1000.00
49 CFR 172.602	Failure to comply with emergency response information requirements.	WARNING

The violations were observed on June 5, 2000, when a Coast Guard container inspection team conducted an inspection of [REDACTED] at the Port of Portland, Oregon.

On appeal, you deny the violations. You contend that [REDACTED] was neither the shipper of the fireworks nor the carrier. With regard to the alleged violation of 49 CFR 172.320, you contend that the Coast Guard did not "secure access to all sides of the packages" and conclude that "there is no evidence that the packages did not have EX numbers." You further contend that the regulations do not "specifically require[e] that [the] EX number must appear on the packages." Your appeal is denied for the reasons described below.

Preliminarily, I note that the case file documents a violation of 49 CFR 172.202(b) rather than 49 CFR 172.201. The case file indicates the gravamen of the offense was your failure to properly sequence the hazardous description on the shipping papers. I further find this error was inconsequential and did not deny you administrative due process since the case file clearly described the nature of the offense.

I will now address your contention that [REDACTED] is neither the shipper nor the carrier of the goods in issue. Pursuant to 49 U.S.C. 1804, the Secretary of Transportation has promulgated regulations in Title 49 Code of Federal Regulations to protect the life and property of individuals from the inherent dangers associated in the transportation of hazardous materials in commerce. These regulations apply "to any person who transports, or causes to be transported or shipped, a hazardous material." Further, pursuant to 49 C.F.R. 171.2, "[n]o person may offer or accept a hazardous material for transportation in commerce unless that material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized." There is substantial evidence in the record to indicate that [REDACTED] is responsible for shipping the fireworks at issue in the instant case. [REDACTED] is noted as the "shipper" of the goods on the IMO Dangerous Goods Declaration, which was signed by [REDACTED] using the Company's official stamp. Further, [REDACTED] is identified as the party to notify on the shipment's Bill of Lading and the "shipper" of the goods on Invoice No. [REDACTED], dated May 18, 2000. Thus, it is apparent that [REDACTED] "caused" the goods to be transported to the United States and is therefore subject to liability as their "shipper."

Next comes your alleged violation of 49 CFR 172.320. Contrary to your assertion, 49 CFR 172.320 clearly requires that "**each package** containing a Class 1 material must be marked with the EX-number for each substance, article or device contained therein." (Emphasis added). While you contend that the Coast Guard did not "secure access to all sides of the packages" and that there is not "evidence that the packages did not have EX numbers," you provide no evidence that the packages did, in fact, contain the required numbers. Photos taken on the day of the violation clearly show a designated area for the placement of the EX number. That designated area contains no such number. Because it is the responsibility of the Hearing Officer to decide the reliability and credibility of evidence, I will not disturb his findings absent clear evidence to the contrary. Therefore, I find the violation of 49 CFR 172.320 proved.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of $1,500.00 rather than the $7,600.00 preliminarily assessed or $137,500.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

RE: CIVIL PENALTY 16616
October 9, 2002

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **$1,500.00** 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. 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,

//S//

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