

U.S. Department of  
Homeland Security

United States  
Coast Guard



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16460

[REDACTED]

[REDACTED]

[REDACTED]

April 27, 2006

RE: Case No. [REDACTED]  
[REDACTED]  
[REDACTED]  
Dismissed

Dear Mr. Hansen:

The Hearing 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 \$3,000.00 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 \$3,000.00 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 11, 2003, into Coos Bay, Oregon. The diesel fuel discharged caused one or more of the conditions 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, you do not deny that diesel fuel was discharged from the [REDACTED] into Coos Bay. Rather, you assert that you were not the owner or the operator of the [REDACTED] at the time of the alleged violation. As a result, you contend that you should not be responsible for the penalty assessed by the Hearing Officer for the discharge. To the contrary, you contend that [REDACTED], of Williams, California, who was the owner of the [REDACTED] at the time of the violation, should be responsible for any penalty assessed as a result of the discharge. You further stated that although you have contacted [REDACTED] regarding the alleged violation, he has refused to accept responsibility for the discharge. In addition, you explain that you did not respond to the Hearing Officer's letters in this case because "[REDACTED] said he would go to the USCG Station in Charleston, Oregon, and take care of the matter." You further explain that the only reason you became involved with the incident was because [REDACTED], the operator of the [REDACTED] at the time of the incident, called you after the vessel was towed into port following the discharge and sought your assistance in fixing the problems that led to the discharge. You assert that he did so because you were the previous operator of the vessel, until

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April, 2003. In addition, you note that [REDACTED] is “basically illiterate” and was “very upset” following the incident and needed your assistance to “fill out the paperwork” associated with the discharge. You conclude by stating that you made a “mistake” in filling out the paperwork associated with the discharge and add that you are now “totally disabled” and “cannot afford any financial liabilities” associated with this civil penalty case. Your appeal is granted for the reasons discussed below.

Pursuant to 33 USC 1321(b)(6), only the owner, operator or person in charge of a vessel is responsible for civil penalties associated with discharges of oil or hazardous substances into or upon the navigable waters of the United States. In this case, the record shows that you did not respond to either the Hearing Officer’s Preliminary Assessment Letter, dated April 21, 2004, or the Hearing Officer’s Final Letter of Assessment dated September 2, 2004. Thereafter, on October 22, 2004, you first responded to the Hearing Officer’s letters. In your letter of that date, characterizing the situation as a “misunderstanding,” you first asserted that you were neither the owner nor the operator of the [REDACTED] and, in so doing, you raised the same arguments that you now raise on appeal. Via a letter to you dated October 27, 2004, the Hearing Officer stated that he considered the matter “closed” due to the fact that you failed to take any prior action in the case and concluded that you could not “avoid liability at...[that]...date after ignoring all previous correspondence simply by claiming that you do not own the vessel.” While the Hearing Officer was not arbitrary or capricious in refusing to entertain your assertions after his Final Letter of Assessment was issued in the case, I believe that your assertions raise jurisdictional issues which must be properly considered on appeal.

After a review of the record in the case, I do not find sufficient evidence to support a conclusion that you were the owner or operator of the [REDACTED] at the time of the violation. First, the Captain of the Port Order issued following the discharge (which required that the vessel undergo repairs suitable to the Coast Guard prior to departing port) was addressed to [REDACTED] as Master of the [REDACTED]. In addition, a review of the statements of the Coast Guard personnel who investigated the incident shows that none of those statements identified you as either the owner or the operator of the [REDACTED]; instead, only the vessel, itself, was identified. Likewise, you are not identified as either the owner or the operator of the [REDACTED] on the Notice of Federal Interest that the Coast Guard completed for the incident. However, a review of that Notice shows that it was signed for and acknowledged by “[REDACTED],” the Master of the [REDACTED]. Indeed, other than the Hearing Officer’s letters, the only place where you are identified as the owner of the vessel is in the Coast Guard’s Enforcement Activity Summary; notably absent from that Summary is any indication of how you were identified as the owner of the vessel. It is possible that Coast Guard records identified you as the owner of the vessel simply because of your efforts to assist [REDACTED] with the completion of the attendant paperwork; however, again, the record contains no evidence to support such a conclusion. Under these circumstances, I do not find sufficient evidence in the record to support the Hearing Officer’s conclusion that you were the owner of the vessel at the time of the incident. As a result, I will dismiss the \$3,000.00 penalty assessed by the Hearing Officer for the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

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