

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commandant  
United States Coast Guard

2100 Second Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol: CG-0941  
Phone: (202) 372-3865

16731  
JUN 29 2007

Ambassador Services, Inc.  
Attn: Mr. Mark Gallagher  
P.O. Box 654  
Cape Canaveral, FL 32920

RE: Case No. 2207746  
Ambassador Services, Inc.  
SYS-100062196  
\$1,500.00

Dear Mr. Gallagher:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2207746 which includes your appeal on behalf of Ambassador Services, Inc. (hereinafter "Ambassador") as owner/operator of a waterfront facility in Port Canaveral, Florida. The appeal is from the action of the Hearing Officer in assessing both a \$1,500.00 penalty and a warning for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 C.F.R. 105.255(a)	Failure to implement facility security measures for access control.	\$1,500.00
33 C.F.R. 105.200	Failure of facility owner or operator to ensure facility operates in compliance with security requirements.	Warning

The violations were observed on September 21, 2004, when personnel from Coast Guard Marine Safety Detachment Port Canaveral, Florida, conducted an inspection of the Ambassador's lumber terminal facility at Port Canaveral, Florida.

On appeal, you deny the alleged violation of 33 CFR 105.255(a) and claim that the warehouse was manned by Ambassador personnel at the time of the infraction. In addition, you state that neither the Coast Guard inspectors, nor personnel from the Florida Department of Law Enforcement were "confronted due to the fact that it was so obvious as to who they were." For

the reasons set forth below, I find that there was substantial evidence in the record to support the Hearing Officer's decision and your appeal is denied.

I will begin by addressing the factual occurrences surrounding the violations. According to the record, Coast Guard inspectors, along with officers from the Florida Department of Law Enforcement, reported to Ambassador's on September 21, 2004, to investigate improper identification held by a foreign crewmember transiting the facility from an interfacing vessel. Concurrently with this investigation, the Coast Guard decided to conduct a random security inspection of the warehouse at the facility. During the inspection, approximately 75 motor vehicles were being offloaded from a vessel and stored in the warehouse. At the time of the transfer, the Facility Security Plan did not address the storage of vehicles in the warehouse. In addition, the Coast Guard inspectors claim that there were no security measures in place at the warehouse during the operations. The inspectors note that they were never asked to produce identification; moreover, several foreign crewmembers from nearby vessels were transiting the area and were, similarly, not asked for identification.

I will now address the violations, beginning with the alleged violation of 33 C.F.R. § 105.200. The record shows that, throughout the course of these proceedings, you denied the violation and asserted that you experienced complications coordinating the various aspects of creating a Facility Security Plan due to confusion over concurrent responsibility by other stevedore companies and the Canaveral Port Authority. The record further shows that, in response to the incident at issue in these proceedings, you expeditiously remedied your security plan to cover the offload of automobiles. Indeed, in her Final Letter of Decision, the Hearing Officer noted that she "considered your statement that there was some confusion regarding who was responsible for security of vehicles on the facility" and that "you quickly revised your security plan upon being ordered by the Coast Guard to do so and are now in compliance" when she mitigated the initially assessed penalty of \$3,000.00 to a warning. Given both the evidence contained in the record and the fact that you do not address the alleged violation of 33 CFR 105.200 on appeal, I find sufficient evidence in the record to support the Hearing Officer's determination that the violation occurred and I will not dismiss the warning assessed by the Hearing Officer for the violation.

I will now address the alleged violation of 33 CFR 105.255(a). The record shows that the violation is the result of the fact that a Coast Guard Inspector observed "inadequate access control" at the facility. 33 CFR 105.255(a) states, in relevant part, that "[t]he facility owner or operator must ensure the implementation of security measures to...[d]eter the unauthorized introduction of dangerous substances and devices...[s]ecure dangerous substances and devices that are authorized to be on the facility...and...[c]ontrol access to the facility." The Coast Guard Enforcement Summary for the incident shows that the inspector observed "[a]utos being stowed in...[the]...warehouse located next to North Cargo Pier 2 with inadequate access controls" and that "[u]nauthorized persons were transiting the facilities without being challenged or checked by facility personnel." While the case was before the Hearing Officer, you did not deny that the violation occurred, but instead, offered evidence in mitigation, specifically that the facility sustained damage during a hurricane and confusion as to the relevant security requirements. On

appeal, however, for the first time, you deny the violation and assert that, after some reflection, you now “feel...[that Ambassador was]...not in direct violation of facility security measures for access control due to the fact that the warehouse was manned by Ambassador personnel when said infraction occurred.” You further assert that official personnel (from MSD Port Canaveral and the Florida Department of Law Enforcement) were not confronted “due to the fact that it was so obvious who they were.” After a thorough review of the record, I do not find your assertions in this regard persuasive.

Pursuant 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 the issue you present on appeal was not previously submitted to the Hearing Officer prior to the issuance of her Final Letter of Decision, your right to have it considered has been waived. I note, however, that even if I considered the evidence that you submit on appeal—that Ambassador personnel were manning the warehouse—I would still find sufficient evidence in the record to support the Hearing Officer’s conclusion that the violation occurred. First, you do not deny that official personnel transited your facility without being questioned or confronted. One of the primary purposes of access controls is to verify the identity of personnel who are transiting a restricted area. It is entirely feasible that unauthorized persons who want to access restricted areas of a facility may attempt to mimic government officials in order to avoid detection. It is an unsafe practice to allow persons unqualified access to a facility simply because they “appear” to be government officials. In addition, you have not denied that foreign crewmembers from nearby vessels were also transiting the area and were not confronted. With this evidence in mind, I find the violation proved and I will not mitigate the penalty assessed by the Hearing Officer for the violation.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations occurred and that Ambassador is the responsible party. The decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. I find a total penalty of \$1,500.00 and a warning, instead of the maximum penalty of \$50,000.00, to be appropriate under the circumstances of the case.

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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 70945  
Charlotte, NC 28272

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% 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. In accordance with the regulations governing civil penalty proceedings, 33 C.F.R. § 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