

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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16731  
October 22, 2001

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

RE: MV00002196  
[REDACTED]  
M/V [REDACTED]  
\$25,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00002196, which includes your appeal as owner of the F/V [REDACTED].

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 160.111	Failure to comply with an order to anchor or operate a vessel in the manner directed.	\$20,000.00
33 USC 1321(b)(3)	Discharge of oil or a hazardous substance into the navigable waters of the United States, adjoining shoreline, or contiguous zone.	\$5,000.00

The appeal is from the action of the Hearing Officer in assessing a \$25,000.00 penalty against you under the authority of both the Ports and Waterways Safety Act, 33 USC 1221 *et. seq.* and 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), diesel and waste oil, in a quantity that may be harmful was discharged from the F/V [REDACTED] into the Eckichy Channel of the Eastern shore, Virginia on May 4, 2000. The estimated 10 gallons of diesel and waste oil that discharged caused one or more of the

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conditions specified in 40 CFR 110.3. In order to prevent further contamination of the marine environment, the Captain of the Port of Hampton Roads issued several orders providing specific directions on what actions needed to be taken.

On appeal, while you do not deny that the violations occurred, you contend you “did not own that vessel” and that you “have no funds to pay such a big fine.” The record shows that, prior to this appeal, you made no attempts to contact the Coast Guard regarding the assessed penalty and, as you have noted, your time to file an appeal in this matter lapsed prior to your response. Because the Hearing Officer agreed to commence the appeal process, your appeal was forwarded to the Commandant for further process in accordance with the procedures outlined in 33 CFR 1.07. Although a timely appeal was not filed, I have, nonetheless, reviewed the file to independently determine if the Hearing Officer’s decisions are supported by substantial evidence. 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.

Before I begin, I believe a brief recitation of the facts is in order. On May 4, 2000, the F/V [REDACTED] grounded near Eckichy Channel, on the eastern shore of Virginia. On May 5, 2000, the Coast Guard issued Captain of the Port Order (hereinafter COTP) No. 00-034 requiring the removal of all fuel aboard the vessel prior to the commencement of salvage operations. On May 6, 2000, COTP revision 01 was issued, reasserting that the fuel be removed from the vessel. On May 12, 2000, COTP revision 02 was issued, requiring that the owner either move the vessel or remove all fuel from it prior to May 16, 2000. On May 24, 2000, MSO Hampton Roads issued a notice of federal assumption and began controlling the removal of the hazardous materials aboard the vessel. Clean up operations were completed on May 25, 2000 and the salvage of the vessel remained the responsibility of its owner. As of May 31, 2001, the vessel remained grounded in the original location of the incident.

The record indicates that you have not denied that either violation occurred. Therefore, I consider the violations proved. The only question remaining is whether you are the responsible party. Both 33 CFR 160.111 and 33 USC 1321(b)(3) may hold the owner of a vessel responsible for noncompliance. On appeal, you contend that you “did not own the vessel” at the time of the incident. I am not persuaded by your contention. There is ample evidence in the record to indicate that you are the owner of the F/V [REDACTED]. As was discussed above, COTP No. 00-034 and its two revisions were issued to you in May, 2000. During that time, there is no indication that you disputed ownership of the vessel. Furthermore, the [REDACTED] 2000 Annual Report, issued by the State of Virginia, indicates that [REDACTED] is a director of the corporation. The Certificate of Documentation for the F/V [REDACTED] denotes

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[REDACTED] as the owner of the vessel and the vessel's title abstract indicates that, as of March 17, 1997, [REDACTED] had granted a tenancy in common of the vessel between [REDACTED] and [REDACTED]. Upon a review of the record, the Hearing Officer concluded that [REDACTED] and [REDACTED] were one in the same. Because it is the responsibility of the Hearing Officer to determine the reliability and credibility of evidence and because you have not contested this notion, I am not persuaded otherwise. Furthermore, in a statement written on your behalf, your father [REDACTED] repeatedly acknowledged your ownership of the F/V [REDACTED]. Since you have provided no evidence to the contrary, I am not persuaded by your assertions.

To mitigate the severity of the assessed penalty, you contend that you "have no funds to pay such a big fine." Unfortunately, you have provided no evidence in support of this assertion. Instead, the record is replete with evidence indicating that a significant penalty is required under the facts of the instant case. The F/V [REDACTED] went aground on May 4, 2000. Although you were given nearly one month to successfully remove the fuel from the vessel and complete salvage operations, you continually refused to do so, thus threatening the environment. The Oil Spill or Hazardous Discharge Statement completed by Coast Guard Pollution Investigator [REDACTED] indicates that you were "uncooperative and abusive to MSO personnel in phone conversations" and that during that time, you "continued to go fishing on another vessel while ignoring calls from MSO personnel attempting to ascertain [your] intentions." On May 25, 2000, federal assumption proceedings began and MSO Hampton Roads assumed control of the situation. It was only after federal funds were provided that the oil was actually removed from the vessel and the situation made environmentally sound. As of May 31, 2001, the vessel remained grounded and, apparently, no steps had been taken to salvage her. Even in this appeal process, you have maintained a lackadaisical attitude. All initial correspondence from the Hearing Officer regarding the assessment of penalties and the appeal process were ignored. You only attempted to contact the Hearing Officer when you realized that you were liable for a rather extensive civil penalty. Your behavior evidences your lack of desire to comply with Coast Guard regulations and your mannerisms through this process show your contempt for Coast Guard involvement with the operation of the F/V [REDACTED]. Therefore, I see no reason to mitigate the penalty assessed by the Hearing Officer.

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 and the seriousness of the violations.

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

RE: CIVIL PENALTY

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USC §§ 1321 *et seq* and 2701 *et seq*. Payment of **\$25,000.00** 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 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.

Sincerely,

//S//

DAVID J. KANTOR  
Deputy Chief  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commander, U.S. Coast Guard Atlantic Area  
Commander, Finance Center