

U.S. Department  
of Transportation

United States  
Coast Guard



COMMANDANT  
U. S. Coast Guard

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16455  
February 26, 2001

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: MV99005644  
[REDACTED]  
[REDACTED]  
\$250.00

Dear [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV99005644, which includes your appeal as owner of the mobile facility that made a transfer of #2 fuel oil to Norfolk Dredge P.G.F.B. #4 on December 9, 1999. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 C.F.R. 156.150 (SUBPART A)	Declaration of inspection not properly completed	\$1,000.00

The violation was observed on December 9, 2000 when three Coast Guard personnel monitored the oil transfer between your tank truck and the barge P.G.F.B. #4 while it was in Figure Eight Island Canal, near Wilmington, North Carolina.

On appeal, you request that consideration be given for your success in transferring over 142,000 gallons of fuel without any spills compared to the error of utilizing check marks versus initials on the Declaration of Inspection form. You hoped that the inspection and resulting pollution prevention compliance report would be regarded as valued on-site training. You also contend that the penalty would pose a financial hardship on your company. Your appeal is granted in part and denied in part for the reasons described below.

Initially, I find that the case file contains sufficient evidence of a violation of 33 C.F.R. 156.150, a provision which requires that the person in charge of an oil transfer indicate by initialing on the Declaration of Inspection (DOI) that the requirements for the transfer have been met. The DOI dated December 9, 1999 provided by you shows both check marks as well as the initials of [REDACTED]. This is consistent with the Coast Guard's account that [REDACTED] had initially placed a check mark by each requirement and only initialed the DOI after this

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discrepancy was pointed out by the on-scene Coast Guard personnel. In addition, the copies of previous DOI's provided by you also show a consistent practice by [REDACTED] of placing only a check mark by each requirement rather than his initials. Thus, I find the Coast Guard's allegation has been proven by substantial evidence.

Although not specifically mentioned in your appeal letter, previous correspondence from you questioned the appropriateness of the penalty amount. In referring the case to the Hearing Officer, Marine Safety Office Wilmington recommended that a \$2,000.00 civil penalty be assessed. In his preliminary assessment letter of March 1, 2000, the Hearing Officer proposed a \$1,000.00 civil penalty. In his letter of September 12, 2000, the Hearing Officer elected to retain the \$1,000.00 civil penalty in spite of your explanatory letter of March 17, 2000. Considering the nature of this violation and all the facts contained within the case file, I believe a further reduction of the penalty is warranted. As you point out, the Coast Guard conducted a previous oil cargo transfer monitor on March 30, 1999. While you were issued a Letter of Warning for several deficiencies, you were not specifically cited for using check marks as opposed to initials on the DOI. However, a copy of the DOI clearly shows the use of check marks. While the May 30, 2000 letter from Marine Safety Office Wilmington simply claims you were cited for improperly filling out the DOI, the actual Letter of Warning clearly shows that the discrepancy was for not having the person in charge sign the DOI. Furthermore, I will take into consideration the fact that you had conducted numerous transfers without a spill and that your person in charge actually reviewed each requirement before the oil transfer was initialed. Finally, I regard this violation as simply a minor administrative infraction that merits further reduction. Had it not been for your previous violation, a Letter of Warning would have been an appropriate penalty in this case. However, considering your prior history, I believe a civil penalty of \$250.00 is appropriate.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$250.00** 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

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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