



16460
July 1, 2011

[Redacted]
[Redacted]
[Redacted]

RE: Case No. 3050968
[Redacted]
[REDACTED]
\$600.00

Dear Mr. [Redacted]:

The Hearing Office has forwarded the file in Civil Penalty Case No. 3050968, which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$600.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 USC 1321(b)(3)	Discharge of oil or hazardous substance into the navigable waters of the United States, adjoining shoreline, or contiguous zone.	\$100.00
33 USC 1602 (Rule 5)	Failure to maintain proper look-out by sight/hearing as well as by all available means appropriate in the prevailing circumstances and conditions.	\$500.00

The violations occurred on August 13, 2007, when diesel fuel was discharged from the [REDACTED] onto the waters of the Stikine Strait after the vessel ran aground on Etolin Island.

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 substances into or upon the navigable waters of the United States. The Act authorizes a civil penalty of not more than \$11,000.00 to be assessed against the owner, operator, or person in charge of any vessel or facility from which oil is discharged in prohibited quantities. It is not necessary to find intent or negligence, as the law prohibits any discharge of oil in quantities that may be harmful. A discharge of oil that causes a film or sheen on or discoloration of the surface of the water, or a sludge or emulsion beneath the surface of the water, is considered harmful.

On appeal, you do not deny that the violations occurred. With respect to the alleged discharge of oil, you argue that given the minimal amount of fuel discharged, the fact that you reported the discharge to the Coast Guard, and the efforts that you took in mitigation, the penalty for the discharge should be waived. You similarly argue that the penalty assessed for the violation of Rule 5 should be waived given that everyone involved took it seriously and that you have taken steps to prevent this situation from recurring. Your appeal is denied for the reasons discussed below.

The record shows that on August 12, 2007, a crewman on the [REDACTED], who was assigned to the wheel watch, fell asleep. As a result, the vessel maintained a course that brought it aground on Etolin Island. When the vessel ran aground, it began taking on water. In the course of the incident, fuel vents became submerged, allowing fuel to escape, or oily water that collected in the engine room was pumped out. The oil discharged created a sheen approximately 100 yards long by 52 yards wide.

The record shows, and you do not deny, that the [REDACTED] discharged oil into the Stikine Strait. The sole issue with regard to that violation is whether the \$100.00 penalty assessed by the Hearing Officer is appropriate. The record indicates that the discharge was minimal. The record also shows that you properly reported the discharge to the Coast Guard and that you took steps to mitigate. It is clear that the Hearing Officer considered your arguments in assessing the \$100.00 penalty at issue in this case. The penalty assessed by the Hearing Officer for the violation is appropriate under the circumstances of the case.

As to Rule 5, the record shows, and you do not deny, that the violation of Rule 5 occurred. The sole issue is whether the \$500.00 penalty assessed by the Hearing Officer is appropriate. The record shows that the Hearing Officer considered your arguments in mitigation when he reduced the penalty from the preliminary \$1,000.00 to \$500.00 in his Final Letter of Assessment. The penalty assessed by the Hearing Officer for the violation is appropriate under the circumstances of the case.

I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred. The penalties are within the amounts authorized. The decision of the Hearing Officer was neither arbitrary nor capricious and is affirmed.

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

Payment of **\$600.00** 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 531112
Atlanta, GA 30353-1112

Interest at the annual rate of 1% 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 within 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//

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard Finance Center