

COMMANDANT  
U. S. Coast Guard

2100 Second Street, SW  
Washington, DC 20593-0001  
Staff Symbol: G-LMI  
Phone: (202) 267-1527  
FAX: (202) 267-4496

16455  
November 27, 2001

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

RE: MV00000375  
[REDACTED]  
\$2,000.00

Dear Mr. [REDACTED]:

The Hearing Officer, Coast Guard Pacific Area, Alameda, California, has forwarded the file in Civil Penalty Case MV00000375, which includes your appeal on behalf of [REDACTED], as owner of [REDACTED]'s mobile facility located at Barber's Point, Oahu. The appeal is from the action of the Hearing Officer in assessing a \$2,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 154.310	Oil pollution manual incomplete	\$250.000
33 CFR 156.170	Oil transfer equipment not tested and inspected as required	\$500.00
33 CFR 154.710	Person in charge of transfer operation not designated	\$250.00
33 CFR 154.1055	Failure to provide an exercise program containing announced/unannounced exercises as per exercise requirements for facilities	\$250.00
33 CFR 154.1035	Failure to include specific information in response plan for facilities that could be expected to cause significant harm to the environment	\$250.00

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33 CFR 154.1057	Failure to comply with requirements for maintenance, inspection, and documentation of response resources	\$500.00
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The violations were initially observed on November 23, 1999, when Coast Guard inspectors met with you to conduct a scheduled annual mobile facility inspection at the [REDACTED] facility in Barbers Point, Oahu.

On appeal, you do not deny the violations but assert that the “fines are a bit extreme for someone that has taken every step to correct its discrepancies for which there were no prior violations.” You further assert that you “were, for all intents and purposes, in the process of trying to be in compliance...and to avoid further violations.” You conclude by asking for “leniency” from the Coast Guard with respect to the penalties assessed. Your appeal is denied for the reasons described below.

First, I believe some clarification regarding the Hearing Officer’s Assessment Letter is warranted. 33 CFR 1.07-15(b) provides that the Hearing Officer decides each case on the basis of the evidence before him. Section 1.07-65(a) further provides that the decision to assess a civil penalty should be based upon substantial evidence in the record. Commandant Instruction M16200.5A contains additional civil penalty Hearing Officer procedures. These instructions provide that the Hearing Officer’s decision letter must clearly state the decision and findings. While the evidence will sometimes be so obvious that the basis for the decision is quite clear, when a penalty is assessed, the letter should explain what evidence was considered, what violations were found to have occurred, and the basis for the penalties. The Hearing Officer should not casually dismiss an issue or argument out-of-hand but rather, he must address the relevant arguments offered by the party. Unfortunately, in the instant case, the Hearing Officer’s January 5, 2001 decision fails to articulate the basis for his findings and fails to properly consider some of the pertinent facts. While it may not always be necessary for Hearing Officers to list the reasons underlying a decision in all cases, it would certainly have been helpful in this case. Therefore, I have carefully reviewed the entire record. My decision on appeal will address each issue you raise and fully articulate the basis for my findings.

I will begin by addressing your desire to explain your “side of this to someone in person.” The regulations governing civil penalty proceedings neither provide for nor authorize personal hearings or testimony before the Commandant on appeal. *See*, 33 CFR 1.07-70; 1.07-75. Consequently, the Commandant’s action on appeals is based solely upon those materials contained in the case file. In this case, the record contains all material considered by the Hearing Officer as well as the additional material submitted by you for consideration on appeal. This information provides an adequate basis for a determination of any issues on appeal. Furthermore, these appellate procedures have been both sanctioned by Congress and upheld in Federal courts. *See*, H. Rep. No. 95-1384, 95th Cong., 2d Sess. 27 (1978); S. Rep. No. 96-979,

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96th Cong., 2d Sess. 25 (1980); H. Rep. No. 98-338, 98th Cong., 1st Sess. 133 (1983); *United States v. Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D.N.Y. 1979).

I will now address your concerns regarding the penalties assessed for violations of 33 CFR 154 and 33 CFR 156. Because you do not deny the violations, I find them proved. In mitigation, however, you have stated that, during the initial inspection, “[REDACTED]. was in the process of reviewing, inspecting and testing...[its]...equipment and operating procedures.” You also note that, at the same time, “[REDACTED]. was under going major personnel changes and many areas pertaining to...[its]...facility were inadvertently overlooked.” The record indicates that all discrepancies were corrected by January 28, 2000, nearly one month after the December 23, 2000 compliance date originally required by the Coast Guard. In addressing the lapse of time, you note that [REDACTED]’s “Mobile Facility and Response plans were submitted to the Coast Guard Marine Safety office in Honolulu on December 23, 1999” and that at that time “all changes and information that were lacking w[ere] thought to be included and any discrepancies corrected.” The record indicates that the Coast Guard examined your response plan on January 4, 2000, and that the same was, at that time, deemed valid through January 4, 2005. However, the Coast Guard maintains that during the follow-up inspection, “only one of eight discrepancies had been corrected.” Therefore, I cannot conclude that the discrepancies were corrected during the requisite 30-day period. Because you do not deny the violations and because the record contains sufficient evidence that the discrepancies were not corrected during the allotted time, I will not dismiss the penalty. Furthermore, because the maximum penalty allowed in the instant case is \$77,000.00 and because the Hearing Officer assessed a nominal penalty of \$2,000.00, I will not mitigate the penalty any further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations occurred and that [REDACTED] is the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$2,000.00 rather than the \$6,500.00 preliminarily assessed or \$77,000.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$2,000.00** 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. 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 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.

RE: MV00000375

16455

November 27, 2001

Sincerely,

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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