



16731

November 14, 2002

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

RE: MV01000943
[REDACTED]
M/V [REDACTED]
\$1,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01000943, which includes your appeal on behalf of the owners of the M/V [REDACTED]. 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 USC 2716(a)	Failure to establish evidence of financial responsibility.	\$1,000.00

The violation was observed on March 16, 2001, when the M/V [REDACTED] entered U.S. waters (the Port Everglades anchorage) without a valid Certificate of Financial Responsibility (COFR).

On appeal, you do not deny the violation but request that the Coast Guard "waive the fine in this case." To that end, you assert that [REDACTED] has "changed their standard operating procedures so that a valid COFR confirmation is part of the required checklist routine prior to each vessel arriving in US waters." In addition, you provided a copy of the endorsement indicating that the M/V [REDACTED] was added to [REDACTED]'s insurance policy on February 26, 2001, in an attempt to reaffirm your assertion (first raised in your letter to the Hearing Officer dated December 13, 2001) that although a COFR was not in effect for the vessel, it was sufficiently insured when it entered U.S. waters. Finally, you contend that "[REDACTED] shipping and the officers and crew of the '[REDACTED]' are proud of their clean record and they very much wish to keep it that way." Your appeal is denied for the following reasons.

Before I begin, I believe a brief recitation of the facts is in order. On March 16, 2001, the M/V [REDACTED] arrived at the Port Everglades anchorage without a valid COFR. Captain of the

Port Order (COTP) Number 01-172 was issued at Marine Safety Office (MSO) Miami, preventing the vessel from entering the port until a valid COFR was issued. Approximately 2 hours later, the National Pollution Funds Center, (NPFC), informed MSO Miami that the vessel had achieved "substantial compliance" with the Coast Guard's regulations and that a COFR certificate had been issued. Shortly thereafter, the COTP Order was lifted and the vessel was allowed to enter Port Everglades.

Your letter dated December 13, 2001, added further clarity to the situation. Therein, you explained that the M/V [REDACTED] had lost its COFR due to an administrative error that occurred at the time that [REDACTED] gained operational control of the vessel. Apparently, [REDACTED] assumed that its insurer, [REDACTED], would apply for the vessel's COFR once it was added to its already existing insurance policy. However, [REDACTED] required specific instruction before taking such action. Therefore, although [REDACTED] had obtained the necessary insurance for the vessel, it did not have a valid COFR, a violation of Coast Guard regulation.

Since you do not deny the violation, I consider it proved. The only issue remaining is whether further mitigation of the penalty is in order. I do not believe that it is. On appeal, you have not raised any new issues and seem only to seek to clarify your initial assertions. To that end, the Hearing Officer's Final Letter of Decision, dated January 31, 2002, makes clear that he considered all of your assertions in mitigation when he lowered the monetary civil penalty assessed from \$10,000.00 to \$1,000.00. Because it is the responsibility of the Hearing Officer to assess the reliability and credibility of evidence and because you have not provided any additional evidence in mitigation, I will not mitigate the penalty further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation 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 \$1,000.00 rather than the \$10,000.00 initially assessed by the Hearing Officer or \$27,500.00 maximum permitted by statute appropriate in light of the seriousness of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$1,000.00** 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: CIVIL PENALTY MV01000943
November 14, 2002

16731

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