



16480
March 11, 2003

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

RE: MV01001344
[REDACTED]
Container [REDACTED]
\$1,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01001344, which includes your appeal on behalf of [REDACTED] ([REDACTED]), shippers of Container No. [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
49 CFR 172.504	Failure to comply with general placarding requirements.	\$500.00
49 CFR 172.301	Failure to comply with general marking requirements for hazardous materials—non-bulk packages.	\$500.00

The violations were first observed on April 2, 2001, when inspectors from Coast Guard Activities New York inspected Container No. [REDACTED] at the Global Terminal in Bayonne, New Jersey.

On appeal, you contend that [REDACTED] is “not responsible” for the violations. First, you assert that the violations in issue are “American administrative law/regulations...[and]...[a]s a [REDACTED] company, [you] don’t think the Code of Federal Regulations can be applied [to [REDACTED]].” Furthermore, you assert that, as Shipper of the goods in issue, [REDACTED] complied with the International Maritime Dangerous Goods Code and, as a consequence, “the IMDG not the C.F.R. can be applied in this case.” Finally, you contend that once “container [REDACTED] reached [the] American coast...the buyer has taken delivery of the cargo...[and]...the seller should not be cited as the responsible party.” Your appeal is denied for the reasons described below.

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I will begin by addressing your contention that the Coast Guard's hazardous materials regulations do not apply to [REDACTED] because it is a foreign corporation. This assertion is without merit. The Coast Guard's hazardous materials regulations, set forth at 49 CFR Subchapter C, apply to any shipment of hazardous materials entering or exiting the United States. Indeed, the regulations, themselves, make no distinction between U.S. and foreign shippers. 49 CFR 172.3 clearly indicates that the hazardous materials regulations in issue apply to "[e]ach person who offers a hazardous material for transportation." Therefore, per Coast Guard regulation, [REDACTED] was required to ensure that all applicable U.S. federal regulations were complied with, regardless of its nationality.

I will now address your contention that because [REDACTED] complied with the IMDG Code, no violations of the Code of Federal Regulation should be found. Contrary to your assertion, I do not believe that compliance with the IMDG Code relieves [REDACTED]'s responsibility for complying with the regulations set forth in the Code of Federal Regulations. The regulations set forth in the IMDG Code are not exclusive; they must be read in conjunction with the Code of Federal Regulations. Indeed, 49 CFR 171.12(b) makes clear that compliance with the IMDG Code is "**notwithstanding**" compliance with the regulations set forth in 49 CFR Subchapter C. Therefore, while I commend [REDACTED] for its efforts in complying with the IMDG Code, I do not find that that compliance obviates its duty to comply with the regulations of 49 CFR Subchapter C.

Finally, I will address your contention that [REDACTED] should not be held responsible for the violations associated with Container No. [REDACTED] following the container's acceptance by the buyer. This assertion is without merit. As shipper of the goods in issue, [REDACTED] is an appropriate party to be charged with the violations in issue. I note, however, that there is some confusion in the record as to [REDACTED]'s role in this case. Both the Bill of Lading and the Dangerous Goods Declaration indicate that [REDACTED] is the shipper of the container in issue. However, [REDACTED] admits that it offered the goods for transportation. Since 49 CFR 172.3(a)(1) makes clear that the regulations apply to "[e]ach person who offers a hazardous material for transportation," I find that [REDACTED] is an appropriate party to be charged with the instant violations, regardless of the buyer's acceptance.

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 \$1,000.00 penalty assessed by the Hearing Officer, rather than the \$1,800.00 initially assessed or \$55,000.00 maximum permitted by statute to be appropriate under the circumstances of this case.

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

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Payments received within 30 days will not accrue interest. However, interest at the annual rate of 4.25% 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.

Sincerely,

//S//

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

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center