

U.S. Department
of Transportation

**United States
Coast Guard**



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

16460
February 11, 2003

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

RE: MV00003968
M/V [REDACTED]
[REDACTED]
\$625.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00003968, 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 penalty of \$625.00 against [REDACTED] under the authority of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990, 33 USC 1321(b)(6)(A). The assessment was based on the finding that, in violation of 33 USC 1321(b)(3), vegetable oil, in a quantity that may be harmful, was discharged from the M/V [REDACTED] into Newark Bay on September 27, 2000. The estimated 26 gallons of vegetable oil that discharged caused one or more of the conditions specified in 40 CFR 110.3.

On appeal, you do not deny that the discharge in issue occurred but contend that the resultant spill was "contained." Therefore, you contend, "[n]o product actually entered the water." You further assert that the "Master of the [REDACTED] reported that there was no product in the water and this was confirmed by the Coast Guard Officer when he arrived." Your appeal is denied for the reasons described below.

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 material into or upon the waters of the United States. The Act provides that a Class I administrative penalty of not more than \$10,000.00 may be assessed against the owner, operator, or person in charge of any vessel or facility from which oil is discharged in prohibited quantities. The penalty was increased to \$11,000.00 by the Coast Guard's Civil Money Penalties Inflation Adjustments Final Rule effective May 7, 1997. It is not necessary to find intent or negligence, as the law prohibits any discharge of oil that may be harmful. A discharge of any amount of oil that causes a film, sheen, or discoloration upon the surface of the water may be harmful and is prohibited.

February 11, 2003

I believe a brief recitation of the facts is in order. On September 27, 2000, during discharge, the crew of the M/V [REDACTED] found that the vessel's cargo line cross over was "blocked by sumped cargo." To relieve the blockage, the crew disconnected the cargo line and began blowing steam into the manifold. When the sludge loosened, the backpressure in the hose forced the clog out of the manifold and, according to the vessel's Chief Officer, "sprayed down [the] manifold, shipside and jetty with...[about]...100 glns [gallons] of palm kernel oil."

Since you do not deny that the M/V [REDACTED] discharged vegetable oil on September 27, 2000, the only issue remaining on appeal is whether the discharge entered the navigable waters of the United States. Although you contend that no product entered the waters of Newark Bay, there is sufficient evidence in the record to allow me to conclude otherwise. The report of National Response Center (NRC) concerning the discharge in issue indicates that 20 gallons of vegetable oil were discharged into Newark Bay. Likewise, the Coast Guard's report of the incident, compiled by Coast Guard Pollution Investigator MK3 [REDACTED], indicates that the Coast Guard observed "vegetable oil sludge on the waters of Newark Bay." Indeed, under the circumstances of the incident, I believe, contrary to your assertions, that the discharge was not contained. It is highly improbable that the 100 gallons of vegetable oil that the crew of the M/V [REDACTED] claim discharged only landed on the vessel's port side and on the jetty. Given the information contained in the record, including the Coast Guard' report of the incident and the statements of the Chief Officer and the person in charge of the discharge, I conclude that the M/V [REDACTED] did, in fact, discharge vegetable oil into and upon the waters of Newark Bay. Since the Hearing Officer was aware of [REDACTED]'s recent clean-record with respect to pollution violations when he assessed the instant penalty and because you have submitted no evidence of mitigation, I will not mitigate the penalty assessed by the Hearing Officer.

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 decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. I find the penalty assessed by the Hearing Officer appropriate in light of the seriousness of the violation in issue.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. This decision does not address or decide any liability [REDACTED] may have for removal costs or damages, or any other costs arising from any discharge, or substantial threat of discharge, of oil involved in this case. See generally, but not exclusively, 33 USC §§ 1321 *et seq* and 2701 *et seq*. Payment of **\$675.00** 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 100160
Atlanta, GA 30384

Interest at the annual rate of 4.25% 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 in 30 days, in addition to the interest, an administrative charge of \$12.00 per month

Subj.: MV96002360

16460

February 11, 2003

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 [REDACTED] will be liable for all attorney's fees incurred and all other costs of collection.

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