

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

16455  
February 5, 2001

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

RE: MV00000431  
[REDACTED]  
[REDACTED]  
[REDACTED]  
\$2,000.00

Dear [REDACTED]:

The Hearing Officer, Coast Guard Pacific Area, Alameda, California, has forwarded the file in Civil Penalty Case MV0000431, which includes your appeal on behalf of [REDACTED], as the owner/operator of a mobile facility Truck No. [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$4,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 154 (SUBPART B)	Oil pollution prevention regulations for marine oil transfer facilities – Operations manual	\$1,000.00
33 CFR 154.700	No person may operate a facility unless the equipment, personnel, & operating procedures of that facility meet the required of this part	\$1,000.00
33 CFR 156 (SUBPART A)	Failure to comply with requirements for oil transfer	\$1,000.00
33 CFR 154 (SUBPART C)	Oil pollution prevention regulations for marine oil transfer facilities – Equipment requirements	\$ 500.00
33 CFR 154 (SUBPART D)	Oil pollution prevention regulations for marine oil transfer facilities – Facility operations	\$ 500.00

The violations were first noted on January 11, 2000, when a Coast Guard petty officer observed the transfer between your truck and the M/V [REDACTED] at Manchester Terminals, Houston, Texas.

On appeal, you contend in letters dated April 3, 2000, July 27, 2000, and August 28, 2000 that “the over the water transfer on January 11, 2000, occurred as the result of a conversation between a representative of [REDACTED] and BM2 [REDACTED], USCG.” You claimed that you were told “that an over the water transfer of less than 250 barrels would not fall under the requirements of 33 CFR 154 and 156.” However, you also agree that “the language of 33 CFR 154 and 156 is very clear as to application of this rule.” You also assert that “the Coast Guard advised us that we were in full compliance and it is our goal to maintain that level of compliance in the future.” You therefore request a reconsideration of the \$4,000.00 civil penalty to a lesser amount. Your appeal is granted in part and denied in part for the reasons described below.

You allege that this violation occurred due to BM2 [REDACTED] stating to an [REDACTED] representative that “an over the water transfer of less than 250 barrels would not fall under the requirements of 33 CFR 154 and 156.” Reviewing the case file, I am persuaded that it contains sufficient evidence to support your contention that there may have been some misunderstanding between you and the Coast Guard. In addition to your several letters of explanation, the Coast Guard’s Facility Inspection Report of February 4, 2000 signed by Petty Officer [REDACTED] instructs [REDACTED] to notify the Coast Guard “prior to next transfer of 250 bbls.” Even though this statement was made following the incident, it certainly is indicative of a possible miscommunication by the Coast Guard as to the exact requirements. In addition, when questioned on this point, Petty Officer [REDACTED] could neither confirm nor deny that he made a similar comment earlier to [REDACTED]. While this does not constitute a defense to the charges, it certainly is evidence to be considered in determining an appropriate civil penalty. I also note that the Hearing Officer indicated in his letter of August 4, 2000 that he considered your history of prior violations and your corrective action. He did not specifically state that he took into consideration the possibility that the Coast Guard may have intentionally misled [REDACTED] as to the transfer requirements. Therefore, I will reconsider the penalty amount. On reconsideration, I will further mitigate the penalty to \$2,000.00. I do so, however, with an advisory that [REDACTED] remains primarily responsible for understanding and complying with federal requirements.

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. The penalty of \$4,000.00 is mitigated to \$2,000.00 for the reasons provided above.

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:

RE: CIVIL PENALTY

16455  
February 5, 2001

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.

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