

U.S. Department  
of Transportation

**United States  
Coast Guard**



COMMANDANT  
U. S. Coast Guard

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16460

[REDACTED]  
[REDACTED]  
[REDACTED]

May 22, 2001

RE: MV99005635  
F/V [REDACTED]  
[REDACTED]  
\$250.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV99005635, which includes your appeal as owner of the fishing vessel, [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$500.00 against you 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), oily bilge waste, in a quantity that may be harmful, was discharged from the F/V [REDACTED] into Southport Marina on November 16, 1999. The estimated two gallons of bilge waste that discharged caused one or more of the conditions specified in 40 CFR 110.3.

On appeal, you contend that you were “wrongfully charged and should have due process.” You assert that you spent a lot of money to correct mechanical problems with your boat. You also contend that you “asked for evidence that this second leak came from” your boat as there are other boats that dock in the same area. You further contend that you paid a penalty and the check was cashed, either by the Coast Guard or the Department of Marine Fisheries. Although not clear, you appear to imply that as they are both the government, payment to one agency should be considered payment enough. Your appeal is denied, in part, and granted, in part 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.

The record shows that on November 16, 1999, at approximately 8:30 am, Coast Guard Marine Safety Office Wilmington, North Carolina pollution investigators were on a routine harbor patrol when they noticed the F/V [REDACTED] discharging bilge slops at Southport Marina. The bilge waste created a sheen on the surface of the Atlantic Intracoastal Waterway. The record further indicates that the incident was “unintended” and that once notified of the discharge, you took appropriate corrective action by securing the bilge pump until the bilge could be cleaned properly. The Coast Guard originally gave you a Notice of Violation (NOV) or “ticket” in the amount of \$250.00 for this incident. However, you declined the NOV. Thus, in accordance with the Coast Guard’s regulations contained in 33 CFR 1.07-11(d), the case file was forwarded to the Hearing Officer for processing pursuant to the civil penalty procedures contained in 33 CFR 1.07.

On March 1, 2000, after the Hearing Officer received the file and determined that there was a prima facie case, he mailed you a letter advising you that the matter had been referred to him for civil penalty action. Along with his March 1<sup>st</sup> preliminary letter, he also forwarded you a copy of the entire case record and a copy of “Alternatives in Coast Guard Civil Penalty Actions.” The “Alternatives” clearly explained that you could pay the penalty proposed, request a hearing, or submit any written evidence and arguments in lieu of a hearing. Thus, while properly advised of the commencement of the civil penalty procedures and your right to respond, the record shows that you did not respond in any manner until after the Hearing Officer issued his May 2, 2000, final decision. Because you failed to respond to the Hearing Officer before he issued his final decision, under 33 CFR 1.07-70(b), you are considered to have waived your right to raise any issues on appeal, except for jurisdictional issues.

Finally, as the Hearing Officer explained in his June 14, 2000, letter to you, the \$250.00 check you forwarded made payable to and endorsed by the “Department of Commerce/NOAA” cannot be considered evidence of payment made for the instant Coast Guard civil penalty case. Furthermore, it references “case No. SC990266,” which does not correspond to either this case or the NOV initially issued to you by the Coast Guard for the incident.

Accordingly, as the record is undisputed that the F/V [REDACTED] was the source of oil that discharged on November 16, 1999, thereby creating a sheen on the Atlantic Intracoastal Waterway, I find the violation of 33 USC 1321(b)(3) proved. I also find that there is substantial evidence in the record to support the Hearing Officer’s determination that you are the responsible party. However, I will consider the fact that you paid \$250.00 to the Department of Commerce as a mitigating factor. Thus, while I find that the Hearing Officer was neither arbitrary nor capricious when he assessed a \$500.00 civil penalty, I will mitigate the penalty to \$250.00.

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 you 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 **\$250.00** 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 5 % 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 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 you 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, U.S. Coast Guard Hearing Office  
Commander, Finance Center  
Commanding Officer, Coast Guard District 5  
Commanding Officer, Marine Safety Office, Wilmington, North Carolina