



16731

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

June 19, 2002

RE: MV00000700  
[REDACTED]  
M/V [REDACTED]  
\$2,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00000700, which includes your appeal on behalf of the owners of the Bahamian Flagged vessel M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 164.53	Failure to report required equipment that stops operating properly.	\$1,500.00
33 CFR 164.30	Failure to have the required marine charts, publications, and/or equipment on board as required by parts 164.33 through 164.41.	\$1,000.00

The violations were observed on January 18, 2000, when Coast Guard boarding officers boarded the M/V [REDACTED] for a Port State Control Examination while it was at anchor in Port Angeles, Washington.

On appeal, you deny the violations and "kindly request that both fines be vacated." With respect to the alleged violation of 33 CFR 164.53(b), you contend that the malfunction of the vessel's echo-sounding device "was not know until after the boarding officer's inspection which commenced. . .some 4 hours after the vessel anchored Port Angeles Anchorage." You further contend that "the M/V [REDACTED] has called in the United States countless times over the years and there have never been any prior or subsequent violations" and add that "[t]he vessel's clean history is a reflection of its integrity." With regard to the alleged violation of 33 CFR 164.33, you contend that "the vessel had the proper charts on board (NOAA 18465 & 18468)

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fully corrected.” You further assert that “Owners wish to emphasize that the boarding officer boarded the vessel. . .when the Master/officers/crew were focused in the carrying out of bunkering operations. . .which. . .is a delicate procedure requiring the officers and crews complete attention in order to eliminate any risk of spillage.” You mention that “NOAA chart 18468 was found in the presence of the boarding officer and duly presented” and add that “NOAA chart 18465 was also on board and both charts were fully updated.” Your appeal is granted, in part, and denied, in part, for the reasons described below.

I will begin by addressing your contentions regarding the operation of the echo depth sounding device. During their examination of the M/V [REDACTED] on January 18, 2000, Coast Guard boarding officers found that the vessel’s echo depth sounding device did not operate. The record indicates that, when asked how long the device had been inoperable, the vessel’s crewmembers offered various answers, many indicating that the device had not operated for as long as 5 months prior to the boarding. 33 CFR 164.53(b) makes clear that “[i]f the vessel’s. . .echo depth sounding device. . .stops operating properly, the vessel must report or cause to be reported that it is not operating properly to the nearest Captain of the Port, District Commander, or. . .to the Vessel Traffic Center, as soon as possible.” While you do not deny that the owners of the M/V [REDACTED] did not report the failure of the apparatus, you contend that the failure occurred sometime between the time the vessel arrived at 0755 hours on January 18, 2000 and 1215 hours when the device was turned on by the Coast Guard boarding officer. I find this highly unlikely, especially considering the various statements indicating that the device had not been operating for several months. While I commend the owners of the M/V [REDACTED] for quickly fixing the echo depth sounding device after the Coast Guard boarding, I am not persuaded that the device was operational during the vessel’s transit to Port Angeles. In support of your contentions, you have provided an invoice from [REDACTED], showing that the vessel’s echo depth sounding device was repaired on September 26-27, 1999. You contend that, because those repairs had occurred, the device could not have been inoperable during the period mentioned by the crew. You have, however, provided little evidence that the device was working during that time. Had the device been operating properly as indicated by the master, I question why he did not produce the readout from the recorder which is required by 33 CFR 164(i). Because this information was not provided and in light of the statements of the vessel’s crew, I am convinced that the device was broken before Coast Guard boarding officers boarded the vessel and that a violation of 33 CFR 164.53 occurred. Furthermore, it is clear that the Hearing Officer considered that [REDACTED] had no prior violations of this regulation when he reduced the penalty from \$5,500.00 to \$1,500.00. Therefore, I will not mitigate the penalty any further.

I will now address your contentions regarding the alleged violation of 33 CFR 164.30. While you contend that the proper charts were “on board and presented to the boarding officer,” you admit “there was some delay in presenting the charts to the boarding officer.” The Coast Guard Inspection Report, however, notes “the crew found one of the missing charts and the agent provided the vessel with the remainder of the missing charts and notice to mariners.” It is apparent that you and the Coast Guard have different views of the incident. It is the responsibility of the Hearing Officer to evaluate the weight of the evidence and to make a determination as to what happened during the incident in question. After a thorough review of the record, I do not find the Hearing Officer’s decision in this matter to be an abuse of discretion. There is sufficient evidence in the record to conclude that at least one of the required charts was

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not on board the vessel. However, in light of the company's prior record and because the charts were quickly replaced, I will mitigate the penalty to \$500.00.

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. I find a penalty of \$2,000.00 rather than the \$11,000.00 preliminarily assessed appropriate in light of the seriousness of the violations.

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:

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