



16471

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

January 22, 2003

RE: MV00001615
[REDACTED]
\$500.00

Dear Ms. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001615, which includes your appeal on behalf of [REDACTED], owner of a mobile facility located in Bayonne, New Jersey. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violation:

| <u>LAW/REGULATION</u> | <u>NATURE OF VIOLATION</u> | <u>ASSESSED PENALTY</u> |
|-----------------------|--|-------------------------|
| 33 CFR 154.1055(d) | Failure to comply with the regulations for facilities transferring oil or hazardous material in bulk contained in this part. | \$500.00 |

The violation was observed on October 14, 1999, when Coast Guard facility inspectors conducted an annual facility inspection at [REDACTED], in Bayonne New Jersey.

On appeal, you do not specifically address the violation of 33 CFR 154; however, you specifically address the violation for "not having documentation on the hoses." With respect to that violation, you assert that the information in issue was "revised the same day." You conclude, "a \$500.00 penalty is too severe for an error in paperwork." Because you have not specifically addressed the violation in issue, I have reviewed the entire record for substantial evidence to support the Hearing Officer's conclusions. Your appeal is denied for the reasons described below.

First, I believe a brief recitation of the circumstances surrounding the violation is in order. On October 14, 1999, Coast Guard facilities inspectors conducted an annual facility inspection at [REDACTED]. During the inspection, the Coast Guard observed two violations of 33 CFR 154. The first violation concerned [REDACTED]'s failure to comply with the QI notification exercises required at 33 CFR 154.1055(d), while the second violation dealt with the facility's failure to comply with the hose testing documentation requirements set forth at 33 CFR 154.740.

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The violations were initially submitted to the Hearing Officer as civil penalty case MV99005031. At that time, the Hearing Officer dismissed the violations, without prejudice to the Coast Guard, based upon the written response submitted by [REDACTED]. The initiating unit, Coast Guard Activities New York, resubmitted the violations in the case in issue, pursuant to 33 CFR 1.07-65. After [REDACTED] failed to respond to the Hearing Officer's preliminary letter of assessment, he issued his Final Letter of Notice, the subject of your appeal. Therein, the Hearing Officer determined that there was insufficient evidence to support the alleged violation of 33 CFR 154.740 and dismissed the violation. The Hearing Officer did find, however, that there was substantial evidence to support the alleged violation of 33 CFR 154.1055(d) and assessed a \$500.00 civil penalty for that violation. A review of the record indicates that your appeal focuses on the violation that was dismissed. Given the fact that the Hearing Officer chose to dismiss the violation, and because it is the Hearing Officer's responsibility to determine the reliability and credibility of the evidence in issue, I will not address that violation further. Instead, I will focus on the violation that remains against [REDACTED].

In your letter dated January 14, 2000 (initially written to address civil penalty case MV99005031), you note that [REDACTED] facility was first inspected on July 24, 1998 and that, during that inspection, the Coast Guard noticed that the Quarterly Notification Drills "were not written up to specs." You assert that you corrected the discrepancy, faxed the corrected document to the Coast Guard, and did not hear anything further about it. You further note that the Coast Guard inspected the facility on October 19, 1999 and initially found no discrepancies but faxed over an amended discrepancies list on October 14, 1999. You note that, on November 2, 1999, you were informed that the last column of your document concerning Quarterly Notification Drills did not contain a location for the method of QI notification to be documented (e.g. by beeper or cell phone). You contend that "[a]ll corrections were made in accordance with Coast Guard requests and time schedules" and imply that this situation could have been avoided if the Coast Guard had informed you of the incorrect documentation when you faxed them the forms in July of 1998.

33 CFR 154.1055(a)(1) makes clear that a facility is required to have four "Qualified individual notification exercises." To support your assertion that you did, indeed, notify the QI, you submitted a document entitled "1999 Drills." As the Coast Guard noted in the "comments" section of the Marine Violation Case file, "[t]he drill information submitted by [REDACTED]...in their rebuttal was a list of jobs conducted while acting as a spill response contractor, not as a mobile facility testing their FRP communications." I further note that although it is evident that [REDACTED] has conducted several exercises requiring the notification of its QI, the list of drills does not include the four QI notification drills required by 33 CFR 154.1055(a)(1). Although you seem to contend that the Coast Guard could have informed you of the violation in 1998, thereby allowing you to avoid subsequent violations in 1999, I am not persuaded by your assertion. Compliance with the Coast Guard's regulations is solely the responsibility of [REDACTED]. Since you have provided no information in mitigation of the penalty assessed and because you do not deny that the violation occurred, I consider the violation proved and 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

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party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$500.00 rather than the \$22,000.00 maximum permitted by statute appropriate in light of the seriousness of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

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