



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

16731
March 13, 2003

RE: MV01003087
M/V [REDACTED]
[REDACTED]
\$400.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV01003087, which includes your appeal as owner/operator of [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$400.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 4.05-1	Failure to give immediate notice of a marine casualty involving the occurrence listed in 46 CFR 4.05-1	\$250.00
46 CFR 4.05-10(a)	Failure of a marine employer to report a marine casualty in writing to the OCMI, within 5 days.	\$150.00

The violations were first observed after personnel at Coast Guard Marine Safety Detachment Kenai received two anonymous tips alleging that the M/V [REDACTED] had lost main propulsion during a voyage and was towed to its homeport in Homer, Alaska on August 2, 2002. A subsequent Coast Guard investigation revealed that the vessel had lost propulsion on that date with 12 passengers aboard. The incident was reported, via the filing of a Coast Guard Form 2692, on August 22, 2001.

On appeal, you deny the violations and contend, "a stern warning...would have been more appropriate." You note that you have a "clean record" and assert that the Coast Guard's investigative report "should be discarded because of his [the Coast Guard Inspecting Officer (IO)] use of the English language." You note that, in the report, the IO incorrectly spelled your name and incorrectly indicated that [REDACTED] operates "many" fishing vessels. To the contrary, you insist that [REDACTED] only operates two fishing vessels and is a "small charter

company.” You add that “[i]f a police man (sic) wrote a ticket like this it would be thrown (sic) out of court.” You further assert that the IO “should take a course in anger management an[d] English.” Your appeal is denied for the reasons described below.

In relevant part, 46 CFR 4.05-1 makes clear that “[i]mmediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty.” 46 CFR 4.05-1(a) makes further clear that the term “marine casualty” includes:

(3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel.

(4) An occurrence materially and adversely affecting the vessel’s seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, life-saving equipment, auxiliary power-generating equipment, or bilge-pumping systems.

The Coast Guard Form 2692 filed by the vessel’s operator, Captain [REDACTED] indicates that, during the incident, the “[m]ain engine was overheating...[and that the]...[e]ngine temp rose to excessive levels...[and]...could not be reduced by dropping the RPM.” In your letter to the Hearing Officer, dated October 10, 2002, you note that it was “determined that the failure was caused by an internal crack or defect in the port cylinder bank exhaust manifold on the vessel’s MAN V-8 main engine.” You further note that “[t]he leak in the manifold was allowing coolant into the exhaust valve area and subsequently into the cylinders and oil pan.” The record makes clear that, following the incident, the vessel was unable to operate under its own power and was subsequently towed by the M/V [REDACTED] from the fishing grounds to its homeport of Homer, Alaska.

Based upon the facts of this case, it is clear that a marine casualty occurred. When the vessel’s port cylinder bank exhaust manifold failed, rendering the vessel inoperable, the vessel lost maneuverability. This loss of maneuverability is undoubtedly contemplated by the definition of “marine casualty” contained in 46 CFR 4.05-1(a)(3). At the same time, the loss of the port cylinder bank exhaust manifold undoubtedly caused an “occurrence materially and adversely affecting the vessel’s seaworthiness or fitness for service or route” contemplated by 46 CFR 4.05-1(a)(4). Indeed, the fact that the vessel had to be towed to its homeport proves that its “fitness for service or route” was “materially and adversely affect[ed].” Therefore, contrary to your assertion, I find that loss of the M/V [REDACTED]’s exhaust manifold was a marine casualty. As such, pursuant to 46 CFR 4.05-1, the incident was required to be immediately reported to the Coast Guard. Since the incident was reported, via the filing of the Coast Guard Form 2692 on August 22, 2001, 20 days after the incident, it is clear that the required report was not made immediately. Therefore, I find the violation of 46 CFR 4.05-1 proved.

I will now address [REDACTED]’s alleged violation of 46 CFR 4.05-10(a). In relevant part, 46 CFR 4.05-10(a) makes clear that “[t]he owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine casualty required to be reported under §4.05-

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1...[and that]...[t]his written report...must be provided on Form CG-2692.” As I have already stated, it is clear from the facts of this case that the incident that occurred on August 2, 2001, was a marine casualty as defined by 46 CFR 4.05-1. Therefore, pursuant to 46 CFR 4.05-10(a), [REDACTED], the owner of the M/V [REDACTED], was required to file a CG Form 2692 within 5 days of the casualty, or by August 7, 2001. Since the Coast Guard Form 2692 was filed 20 days after the incident, it is clear that the 5-day time was not met. Therefore, I find the violation proved.

I will now address the remaining issues that you raise on appeal. While I acknowledge that the Coast Guard IO did, in fact, incorrectly spell your last name and indicate that [REDACTED] operated several vessels, I am not persuaded that these errors prejudiced your case in any way. As the Commander of the Seventeenth Coast Guard District noted in his rebuttal comments dated April 24, 2002, “[t]he clerical error of misspelling the charged party’s name does not negate the fact that the violation occurred, nor does it negate jurisdiction.” Furthermore, while you contend that the IO should be required to take “anger management” courses, presumably because of his conduct during the investigation, I am troubled by the comments contained in the record concerning your conduct during the course of the Coast Guard’s investigation of the incident. In the rebuttal comments noted above, the Commander of the Seventeenth Coast Guard District indicated that you were “not issued a warning because...[you]...were uncooperative.” Regardless of the conduct of the IO, your reluctance to assist the Coast Guard with its investigation shows a lack of respect and courtesy that undoubtedly complicated an already difficult Coast Guard investigation. Therefore, 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 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 the \$400.00 penalty assessed by the Hearing Officer, rather than the \$2,000.00 initially assessed or \$52,500.00 maximum permitted by statute to be appropriate in light of the circumstances of the case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$400.00** 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 4.25% 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

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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,

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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