



16731

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

17 Nov 2006

RE: Case No. [REDACTED]
[REDACTED]
[REDACTED]
([REDACTED])
\$10,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. [REDACTED], which includes your appeal on behalf of the [REDACTED] (hereinafter "[REDACTED]") as operator of a marine terminal that receives cargo shipments. The appeal is from the action of the Hearing Officer in assessing a \$10,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 160.105	Failure to comply with an order pertaining to the control of vessel or facility operations.	\$10,000.00

The violation resulted from a container inspection at [REDACTED]'s facility on August 12, 2004. During the inspection, personnel from Coast Guard Sector Miami observed two shipping containers ([REDACTED]) with improperly completed shipping papers and improper hazard class labeling. Following observation of the discrepancies, Coast Guard personnel placed the respective shipments on hold, and issued orders requiring that the containers be detained until their shipping papers were corrected and until the containers, themselves, were properly labeled. Although the Coast Guard detention orders stated that the containers could not be shipped until a re-inspection was conducted, a follow-up inspection on August 25, 2004, revealed that the containers were shipped prior to the re-inspection.

On appeal, you do not deny that the violation occurred. Instead, you offer evidence in mitigation. To that end, you contend that although [REDACTED] took every effort to inform the "individual carriers" that the containers were on "hold," the company shipping the containers, Chilean Lines, "blatant[ly] disregarded" the Coast Guard's hold of the containers and shipped them anyway. In addition, you add that [REDACTED]'s failure to respond to the Hearing Officer's letters was not intentional but, rather, was the result of a management change at the company that unfortunately allowed the violation case to be forgotten until after the Hearing Officer issued his Final Letter of Decision. You conclude by noting that [REDACTED]

has recently hired an experienced individual to serve as the company's Compliance Officer and imply that, as a result, [REDACTED] will never again fail to respond to a Coast Guard civil penalty case in a timely manner. Your appeal is denied for the reasons discussed below.

First, I note that the record shows that [REDACTED] did not respond to the Hearing Officer's Preliminary Assessment Letter within the time period allowed by the applicable regulations and that, as a result, the Hearing Officer found the violation proved. Since the issues that [REDACTED] now presents on appeal were not submitted to the Hearing Officer in response to his notification letter, the company's right to have those issues considered now has been waived. *See* 33 C.F.R. 1.07-70(a). Irrespective of that fact, I note that even if I were to consider the evidence that [REDACTED] has presented on appeal, it would not affect the penalty assessment in this case.

The record shows that [REDACTED] was issued two orders, one detaining Container No. [REDACTED], and the other detaining Container No. [REDACTED]. The record further shows that the detention orders for the containers clearly stated that the papers were to be detained until a follow-up inspection, verifying that the violations had been corrected, was conducted by NCB. Irrespective of these orders, the record shows that when NCB attempted to conduct the re-inspection of the containers on August 25, 2004, it could not do so because the containers had—in violation of the order—already been shipped (Container No. [REDACTED] was shipped on August 12, 2004, while Container No. [REDACTED] was shipped on August 24, 2004). Pursuant to 33 CFR 160.105, “[e]ach person who has notice of the terms of an order...must comply with that order.” The record shows that [REDACTED] was aware of the orders at issue in this case. Because the record shows that the [REDACTED] were shipped prior to re-inspection, [REDACTED] clearly failed to comply with the orders. As a result, the Hearing Officer was correct to find the violation proved.

Having determined that the record contains sufficient evidence to support the Hearing Officer's conclusion that the violation occurred, I will now determine whether the penalty assessed by the Hearing Officer was appropriate under the circumstances of the case. As I mentioned above, [REDACTED] asserts that it took reasonable efforts, namely putting “holds” on the containers in its computer system and notifying the respective shipping companies of those holds, to prevent the containers from being shipped. [REDACTED] contends that the containers' shipping company blatantly disregarded those holds and shipped the containers anyway. While [REDACTED] has submitted evidence to show that it informed the shipping companies of the holds on the containers, as the party to whom the detention orders were issued, [REDACTED] was responsible for ensuring that the containers were not shipped prior to re-inspection. Its efforts to that end were ineffective. In addition, I note that the record shows that two orders were issued to [REDACTED] (one per container) and that [REDACTED] failed to comply with either of those orders. As such, [REDACTED] could have been liable for a maximum penalty of \$32,500.00, per day, for violation of each of the orders. Under these circumstances the penalty assessed by the Hearing Officer was appropriate in light of the circumstances surrounding the violation.

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 party. The Hearing Officer's decision that the violation occurred was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find the \$10,000.00 penalty assessed by the Hearing Officer, rather than the \$32,500.00 maximum permitted by statute to be appropriate under 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 **\$10,000.00** 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 70945
Charlotte, NC 28272

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 4.0% 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, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center