U.S. Department of Homeland Security
United States Coast Guard

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United States Coast Guard

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16731
Nov 16, 2006

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

RE: Case No. [REDACTED]
[REDACTED]
[REDACTED]
$3,000.00

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 [REDACTED] (hereinafter "[REDACTED]"), owner/operator of two bulk oil plants in Sitka, Alaska. The appeal is from the action of the Hearing Officer in assessing a $3,000.00 penalty for the following violation:

LAW/REGULATION	NATURE OF VIOLATION	ASSESSED PENALTY
33 CFR 105.200	Failure of a facility owner or operator to ensure that the facility operates in compliance with applicable security requirements.	$3,000.00

The violation was first observed on August 19, 2004, when personnel from Coast Guard Marine Safety Office Juneau, Alaska, conducted an inspection of [REDACTED]'s North and South bulk oil facilities in Sitka, Alaska.

On appeal, you do not deny that the violation occurred. However, you seek mitigation of the penalty assessed by the Hearing Officer. To that end, you contend that the violation at issue in this case, failure to implement security measures for passenger and ferry facilities, resulted from a misunderstanding of the newly implemented Maritime Transportation Security Act (hereinafter "MTSA') security regulations that was immediately corrected after it was brought to [REDACTED]'s attention. You further note that although [REDACTED]'s facility was operating under a Coast Guard approved Facility Security Plan at the time of the violation, the operative plan was "focused on security for oil barge operations, not passenger vessel operations" and add that the omission of passenger vessel operations was "a technicality, not a security issue." In addition, you note that the Hearing Officer's decision "appears to hinge on a single vessel, [REDACTED]" whose use of [REDACTED]'s facility was not anticipated at the time that the operative Facility Security Plan was drafted. At the same time, however, you acknowledge that "it is clear this vessel required a modification to…[[REDACTED]'s]…existing plan at the time to more fully address passenger vessel operations to the satisfaction of the

Captain of the Port." Irrespective of that fact, you contend that "[a]djustments, interpretations and requirements of the MTSA and related…[security plans]…within the first year of implementation" have resulted in [REDACTED] spending "nearly $200,000 in attempting to comply with the MTSA and the results of USCG inspections" even though [REDACTED]'s facility has "a very low probability" of being the subject of terrorist activities. You conclude by stating that "[t]echnicalities and acts of omission while exercising a good faith effort to meet requirements" do not "deserve" the "strong…enforcement action" undertaken in this case. Your appeal is denied for the reasons discussed below.

The record shows that, in an attempt to comply with the MTSA, [REDACTED] implemented a security plan for its Sitka facility "for barge deliveries of refined, non crude fuel oil products approximately two times per month." The plan in place for the facility on August 19, 2004, did not contain any provisions for interfacing with passenger vessels or cruise ships. Nonetheless, the record shows numerous cruise ships called on the facility between May and September of 2004. Indeed, during the inspection that resulted in the instant violation, personnel from Coast Guard Marine Safety Office Juneau, Alaska, observed the [REDACTED], a passenger vessel, disembarking and embarking passengers at the facility. 33 CFR 105.200 makes clear that each facility owner or operator is required to ensure that the facility operates in compliance with, among other things, the approved facility security plan. Although [REDACTED]'s facility had a security plan in place, that plan did not contain the additional security requirements established at 33 CFR 105.285 for passenger and ferry facilities. As such, [REDACTED] failed to comply with its approved security plan by conducting activities not covered by that plan. Irrespective of whether the violation was intentional, the record clearly shows that it occurred. As a result, I do not find that the Hearing Officer erred in finding the violation proved. Having so determined, I must now consider whether the penalty assessed by the Hearing Officer was appropriate under the circumstances of the case.

As I noted above, you assert that the violation was not intentional and was the result of a misunderstanding of the applicable regulations. The record shows that, while the case was before the Hearing Officer, you explained that [REDACTED] mistakenly believed that the passenger vessels that used the facility were "outside the requirements of the MTSA" because they carried less than 150 passengers. You further explained that you now understand that all vessels that require SOLAS certificates, regardless of their size, are subject to MTSA regulation. In her final letter of decision, the Hearing Officer noted that your argument, in this regard, though understandable, failed to explain [REDACTED]'s failure to address port calls of the [REDACTED], a vessel certificated to carry 237 passengers. On appeal, you did not address this failure; instead, you simply stated that the [REDACTED]'s visits to [REDACTED]'s facility were "not anticipated." Irrespective of whether [REDACTED] anticipated the vessel's call, the company should have been aware not only of the vessel's capacity, but also that it was subject to the requirements of the MTSA. Other than this assertion, your appellate assertions in mitigation are virtually identical to those that you raised before the Hearing Officer.

The record shows that, in her Final Letter of Decision, the Hearing Officer addressed the penalty as follows:

> I do not doubt your intent to cooperate with the Coast Guard and implement required security measures, but I find the omission of passenger operations to be

> significant. However, I will reduce the penalty because of the enclosed email [outlining [REDACTED]'s compliance efforts] which I received from MSO Juneau…bringing to my attention additional mitigating factors. $3,000.00 is assessed.

Given the evidence contained in the record—including evidence showing that numerous violations occurred before penalty action was initiated—and the fact that you have not presented any significant additional evidence in mitigation on appeal, I do not find that the Hearing Officer was either arbitrary or capricious in assessing a $3,000.00 penalty for the violation.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the violation occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find the $3,000.00 penalty assessed by the Hearing Officer, rather than the $10,000.00 initially assessed or $25,000.00 maximum permitted by statute to be appropriate in light of the circumstances of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **$3,000.00** 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 4.00% 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