



16731

[REDACTED]  
[REDACTED]  
[REDACTED]

August 22, 2000

RE: MV00000730  
[REDACTED]  
[REDACTED]  
Dismissed

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00000730, which includes your appeal as the responsible party in the subject case. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
49 CFR 176.76	Failure to comply with regulations governing shipment of Hazmat in transport vehicles, freight containers, or portable tanks.	\$250.00
49 CFR 171.2	Failure to comply with the general requirements for HAZMAT shipments.	\$250.00

The violations were observed on February 19, 2000 when Marine Safety Office Portland, Oregon, inspected [REDACTED] at the Portland, Oregon terminal at the request of U.S. Customs officers.

On appeal, while you do not deny that the violations occurred, you deny that you are the responsible party and contend that you were not "responsible for loading the vehicle in the container." You contend that you shipped your "car from Riyadh, Saudi Arabia to Portland through [REDACTED] in Riyadh" and contend that you "are not familiar with the requirements for shipping a vehicle which is the reason. . .[you] obtained a cargo service". You further assert that you are "being treated unfairly by the Marine Safety Office or the Custom Officials in Portland because of . . .[your]. . .nationality." Your appeal is granted for the reasons described below.

The record indicates that on February 19, 2000, U.S. Customs officials alerted Coast Guard Marine Safety Office, Portland, Oregon, that they had found evidence of violations during their

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inspection of [REDACTED]. The Coast Guard boarding report indicates that “the vehicle was not properly secured to prevent movement in all directions in violation of 176.76(a)(2),” that the vehicle “did not have any straps or metal bands attached to keep it from moving,” that the “1 level of 2x4 used to block the wheels” was “inadequate,” and that the container was “not marked with the required warning sign. The Bill of Lading for the shipment indicates that you were the consignee of the shipment, which contained “1 Mazarte (sic) car.” At your request, the vehicle was shipped from Dammam, Saudia Arabia to Portland, Oregon. The relevant issue in this case is whether you are the party responsible for the violations.

You contend that you hired [REDACTED]s to act as the shipper of the car because you are “not familiar with the requirements of shipping a vehicle.” You have provided a receipt from [REDACTED], indicating that you paid for the shipment on December 21, 1999. You assert that [REDACTED] is the party responsible for the violations assessed in this matter. I agree. There is conflicting evidence in the record as to who was responsible for packaging the container in issue. The record indicates that MSO Portland contacted [REDACTED], who informed them that they did not prepare the vehicle for shipment because the company was “dissatisfied” with the way you had treated them. However, it is unclear whether [REDACTED] has been erased from the portion of the bill of lading denoting the “shipper” of the container or whether the “erasure” is simply the result of poor copying or faxing. Furthermore, I find it highly unlikely that an individual would, on his own, obtain and load a container. The fact that you have a receipt from [REDACTED] is also strong evidence that it was the shipper. Based on the foregoing, I do not find that the violation has been proven by substantial evidence and I will dismiss the violation assessed by the Hearing Officer. Therefore, in accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Although I have dismissed the violation assessed by the Hearing Officer, I will address your contention that the Marine Safety Office treated you unfairly because of your nationality. The United States Coast Guard is responsible for the enforcement of all laws relating to the use and enjoyment of the navigable waters of the United States. In particular, the Coast Guard’s civil penalty program is a critical element in the enforcement of numerous marine safety and environmental laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. Coast Guard Hearing Officers are obligated to be mindful of national goals underlying the Congressional intent of the statutes and regulations that they enforce. Furthermore, the procedural rules guiding the civil penalty process, at 33 CFR 1.07, are designed to ensure that the parties involved are afforded maximum due process during informal adjudicative proceedings. By balancing procedural fairness and legislative intent, the civil penalty process plays an important and essential role in furthering national maritime safety and environmental goals.

The record indicates, and you have not disputed, that the container entered the waters of the United States in a dangerous condition. The vehicle was not properly secured, the container was not properly marked and the vehicle contained a dangerous amount of fuel in its tanks. Pictures taken of the container indicate that the vehicle moved during transit, breaking the 2x4 pieces of wood that secured it. I have no doubt that U.S. Customs officials called the Coast Guard to

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investigate the container because of the great danger that shipment of a vehicle in this manner undoubtedly could have caused and I assure you that agency action in this matter is simply the result of the violation that occurred. Furthermore, the Coast Guard even-handedly enforces its laws and race, creed and national origin do not play any role in the Coast Guard's decision to assess civil penalties.

Sincerely,

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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