



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

16731
February 6, 2003

RE: MV00001992
[REDACTED]s
M/V [REDACTED]
\$15,500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001992, which includes your appeal on behalf of [REDACTED]s, owner of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$15,500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 151.25	Failure to properly maintain Oil Record Book.	\$5,000.00
33 CFR 159.7	Vessel's installed Marine Sanitation Device not labeled (159.16) or certified (159.12 or 159.12a) or operable, or on board.	\$500.00
33 CFR 160.215	Failure to notify the nearest USCG MSO or Group office of a hazardous condition either aboard a vessel or caused by a vessel or its operation.	\$10,000.00

The violations were observed on June 9, 2000, when Coast Guard boarding officers boarded the M/V [REDACTED] while it was moored on the Miami River, near Miami, Florida, to conduct an annual freight vessel examination.

On appeal, you do not deny the violations. Instead, you contend that "the fines are not in accordance to the real reason for the violations" and request a "more favorable response" to your

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assertions on appeal. You contend that the evidence that you provided the Hearing Officer justifies a further reduction of the penalties assessed and add that the “amount [of the assessed penalties] will create a tremendous hardship” on the owners of the M/V [REDACTED] that will “most likely put them out of business—due to the current economic situation.” You conclude by asking that I “assist...[the owners of the vessel]...in reducing their fine so that they can continue to operate their business and cancel what they owe” the Coast Guard. Your appeal is denied for the reasons discussed below.

Before I begin, I believe a brief recitation of the facts and procedural background of the case is in order. Coast Guard boarding officers boarded the M/V [REDACTED] on June 9, 2000, to conduct the vessel’s annual freight vessel examination. As the boarding officers reviewed the vessel’s documentation, they learned that the vessel’s minimum safe manning compliment required two navigation officers, one master and one mate. Upon further investigation, the boarding officers learned that the mate’s license was expired. Furthermore, when the boarding officers inspected the M/V [REDACTED]’s Oil Record Book, they determined that the required entries were not correctly noted. Specifically, although oil/waste disposal receipts were found along with the record book, the discharges were not correctly logged in the Oil Record Book. Finally, the boarding officers flushed a dye tablet through the vessel’s marine sanitation device. When they did so, a discharge was observed coming from the vessel’s port side. Further inspection revealed that the holding tank discharge valve was locked in the open position. The instant civil penalty case is the result of the violations that were observed by the boarding officers during the examination on June 9, 2000.

Upon an initial review of the Coast Guard’s file of the incident, the Hearing Officer issued a Preliminary Letter of Assessment on October 4, 2000. That letter was addressed to [REDACTED]s ([REDACTED]), care of [REDACTED], the correspondence address of record with the Coast Guard. On December 20, 2000, the Hearing Officer issued his Final Letter of Assessment, to the same Santo Domingo address, indicating that because [REDACTED] had not responded to his preliminary notice, he found the violations proved and assessed the \$32,000.00 civil penalty suggested in his initial correspondence. At that time, the \$32,000.00 penalty assessed by the Hearing Officer represented final agency action, the case was closed and the file was forwarded to Maintenance and Logistics Command, Pacific, the office responsible for collecting monetary civil penalties.

Although final agency action had occurred, on March 23, 2001, Mr. [REDACTED], of [REDACTED], faxed a letter to Maintenance and Logistics Command, Pacific, indicating that [REDACTED] had not received either of the Hearing Officer’s letters. Therefore, Mr. [REDACTED] requested an additional opportunity, on [REDACTED]’s behalf, to respond to the Coast Guard’s allegations. Shortly thereafter, on May 7, 2001, Maintenance and Logistics Command, Pacific informed Mr. [REDACTED] that the civil penalty case had been completed and that interest had been accruing on the penalty, resulting in its increase to \$33,058.12.

The record is unclear as to exactly how, but at some point shortly thereafter, the Hearing Officer requested that the instant case be returned to him for further review. As a result, on June 27, 2001, Maintenance and Logistics Command, Pacific returned the file to the Hearing Officer, thereby suspending all actions to collect [REDACTED]’s debt. On May 8, 2001, counsel for

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[REDACTED], Mr. [REDACTED], of the Law Offices of [REDACTED], submitted what he termed a "Petition to Reopen" the case to the Hearing Officer. The Hearing Officer granted this request on September 14, 2001, when he afforded [REDACTED] an additional thirty days to submit evidence on the violations at issue. In that letter, however, the Hearing Officer noted that he had experienced great difficulty in reaching [REDACTED]'s attorney and that, as a consequence, he sent his letter to Mr. [REDACTED], whom he knew to be [REDACTED]'s agent.

At some point thereafter, Mr. [REDACTED], counsel for [REDACTED], contacted the Hearing Officer and was, subsequently, granted an extension of time within which to submit further evidence on the violations. On October 18, 2001, Mr. [REDACTED] submitted the affidavit of Mr. [REDACTED], Master of the M/V [REDACTED] at the time of the boarding, offering [REDACTED]'s view of the case. Thereafter, on January 8, 2002, the Hearing Officer issued a second Final Letter of Assessment, indicating that he had considered the additional evidence submitted after the case was re-opened and had mitigated the civil penalty assessed from \$32,000.00 to \$15,500.00. You have appealed the Hearing Officer's final assessment on [REDACTED]'s behalf.

I will begin by addressing [REDACTED]'s alleged violation of 33 CFR 151.25. In your letter dated February 3, 2002, you asserted that the Coast Guard's "allegations...[were]...correct except that the infraction was very minor in nature." You added that "[t]he chief engineer had all the records in order, but...that he did not record the receipts for the waste oil that were properly disposed off." Since you do not deny the violation, I consider it proved. Furthermore, I do not agree that this is a "minor" violation.

33 CFR 151.25(h) makes clear that discharges of certain oil/waste products "shall be fully recorded without delay in the Oil Record Book so that all the entries in the book appropriate to that operation are completed." It is simply not enough for the vessel to append its receipts to the Oil Record Book. Instead, the regulation requires that each discharge be specifically noted in the book, itself. In addition, the case file indicates that the Coast Guard has, on one other occasion, initiated a civil penalty case because of [REDACTED]'s previous violation of the same regulation. Given this violation history, I will not mitigate the penalty assessed by the Hearing Officer for this violation.

I will now address [REDACTED]'s alleged violation of 33 CFR 159.7. The record indicates that you do not specifically deny this violation. Instead, you contend that "the chief engineer had inadvertently locked the shut-off valve in an open position" and insist that "the vessel always used [a] shore side bathroom while in port." Furthermore, you note that, "[i]mmediately after notification by the U. S. Coast Guard, the Master promptly shut-off the valve and re-locked it and setup a double check by the Chief Mate and Chief Engineer, so [as to] ensure that this would not happen again." The fact that [REDACTED] took steps to both immediately correct the violation and to ensure that it would not happen again does not negate the fact that the violation occurred. Therefore, I find the violation proved. The record clearly indicates that the Hearing Officer considered the evidence that you submitted in mitigation when he reduced the assessed penalty from \$2,000.00 to \$500.00. Therefore, I will not mitigate the assessed penalty further.

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I will now address [REDACTED]'s alleged violation of 33 CFR 160.215. The record indicates that you do not deny this violation. The violation results from the fact that the vessel entered the waters of the United States without its required manning complement. The one mate onboard the vessel, required by its Safe Manning Certificate, did not have a valid mate's license because his had expired at some time prior to the voyage. 33 CFR 160.215 requires that hazardous conditions be immediately reported to the Coast Guard. In relevant part, 33 CFR 160.203 makes clear that the term "hazardous condition" may involve a "manning-shortage." Because the required licensed manning complement was not aboard the M/V [REDACTED] when it entered U.S. waters, a violation clearly occurred. Therefore, I find the violation proved and I will not mitigate the penalty assessed by the Hearing Officer.

Finally, I will discuss your contention that the "[o]wners are in extreme economic hardship to satisfy such a large penalty" and that the imposition of the penalty assessed by the Hearing Officer could "hamper the future business opportunit[ies]" of [REDACTED]. There is simply no evidence in the record to support your contention. Furthermore, it is clear that the Hearing Officer considered the evidence that you submitted in mitigation by reducing the amount of the assessed penalty from \$32,000.00 to \$15,500.00. Therefore, I will not mitigate the monetary civil penalty assessed any further.

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 \$15,500.00 penalty assessed, rather than the \$32,000.00 preliminarily assessed or \$57,200.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$15,500.00** 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 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.

Should [REDACTED]s still believe that it is financially unable to pay these penalties, it may request the establishment of a payment plan. Requests for relief should be directed to the Chief,

RE: CIVIL PENALTY MV00001992

16731

February 6, 2003

Claims Branch, Maintenance and Logistics Command Pacific, Coast Guard Island, Alameda, California 94501-5100.

Sincerely,

//S//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and [REDACTED] Law
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center