



16731

[REDACTED]  
[REDACTED]  
[REDACTED]

May 25, 2006

RE: [REDACTED]  
[REDACTED]  
[REDACTED]  
\$5,000.00

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 as owner of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$5,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 4.05-1 & 5	Failure to give proper notice as soon as possible of a marine casualty involving any of the occurrences listed in 46 C.F.R. 4.05-1(a)-(f).	\$2,500.00
46 C.F.R. 4.05-10(a)	Failure of a marine employer to report a marine casualty in writing to the OCMI, within 5 days.	\$2,500.00

The violations resulted from an alleged grounding of the [REDACTED] on August 6, 2002, while it was underway in the East Pass near Destin, Florida.

On appeal, you contend that the Coast Guard statements contained in the record contain errors and omissions that show that the Coast Guard personnel responsible for investigating the incident were seeking vengeance against you. In addition, although you do not deny that you failed to file a written Report of Marine Casualty with the Coast Guard within five days of the grounding, you contend that the vessel's Captain gave you information that indicated that the vessel may not have grounded, at all, during the incident. Furthermore, you contend that because you were "out of town" at the time of the incident, you are not responsible for initially failing to report the incident to the Coast Guard. Your appeal is denied for the reasons discussed below.

46 CFR 4.05-1(a) states that "immediately after the addressing of resultant safety concerns, the **owner**, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office

or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in...[a]n unintended grounding.” [Emphasis added] As I am sure you are well aware, in nautical parlance, the term “ground” means “to touch bottom.” The record, including the Coast Guard Form 2692 that you filed on August 19, 2002, shows that you acknowledge that the [REDACTED] “hit bottom” on August 6, 2002. Therefore, the record contains substantial evidence to show that the [REDACTED] experienced an “unintentional grounding” on August 6, 2002 and, pursuant to 46 CFR 4.05-1(a), as the owner of the vessel, you were required to report the incident to the Coast Guard immediately after addressing any resultant safety concerns. The record shows that the Coast Guard did not become aware of the incident until August 14, 2002, when it learned that the [REDACTED] was undergoing repairs at a local shipyard. The record further shows that you did not inform the Coast Guard of the incident until you were specifically asked about its occurrence. Accordingly, I find substantial evidence in the record to support the Hearing Officer’s conclusion that the violation occurred and that you, as the vessel’s owner, are an appropriate party to be charged with the violation.

I will now address the alleged violation of 46 CFR 4.05-10(a). The regulation states that “[t]he **owner**, agent, master, operator, or person in charge shall, within 5 days, file a written report of any marine casualty required to be reported under § 4.05-1.” [Emphasis added] As I stated above, the record contains substantial evidence to support the Hearing Officer’s conclusion that the [REDACTED] experienced a reportable marine casualty on August 6, 2002. In addition, the record shows that you are the owner of the [REDACTED] and that you did not file the required Coast Guard Form 2692 Report of Marine Casualty until August 19, 2002. Based on these facts, I find that the Hearing Officer was correct to find the alleged violation of 46 CFR 4.05-10 proved.

Having found substantial evidence in the record to support the Hearing Officer’s conclusion that the violations occurred, I will now review the record to determine whether the penalty assessed by the Hearing Officer for the violations is appropriate under the circumstances of the case. On appeal, you contend, as you did before the Hearing Officer, that a penalty should not be assessed against you for the failure to immediately report the grounding to the Coast Guard because you were “out of town at the time of the incident” and because “the Captain [of the [REDACTED]] was fully in charge and under contract labor” at the time of the incident. With respect to the amount of the assessed penalty, in her final letter of decision, the Hearing Officer stated as follows:

You assert that you did not deliberately disregard the requirement to report the incident, and that you thought the qualified, experienced captain had taken care of it. I accept this and agree that it is not unreasonable for you to delegate responsibilities. I also agree that if Captain [REDACTED] had made booth of the required reports, there would be no violation. However, if a person to whom you give responsibility makes an error, you remain liable for the consequences. This is true of liability in general, and it is true for legal requirements such as the regulations cited in this case. I am sure you know this. I will take your point into account in deciding the penalty amount.

I also note the memo you have issued to you captains concerning the requirements at issue in this case, in the interest of future compliance, as well as the expenses associated with the grounding.

Most of the other issues disputed between you and the Coast Guard reflected in this case do not affect the case. I accept your assertion of small business status, which is not inconsistent with your size relative to other local charter boat operators or the number of vessels you run, and is supported by your financial statements. The issue about whether the grounding “knocked the engine off line” does not affect the case, since the grounding itself made the incident a reportable marine casualty.

Considering all the circumstances, especially your corrected action, reduced penalties are assessed...The total is \$5000.

These comments show that the Hearing Officer fully considered all of the evidence that you presented when she reduced the penalty initially assessed for the violations from \$10,000.00 to \$5,000.00. Since you have not submitted any additional evidence in mitigation, I will not mitigate the penalty assessed by the Hearing Officer on appeal.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations occurred and that you are 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 \$5,000.00 penalty assessed by the Hearing Officer, rather than the \$10,000.00 initially assessed or the \$50,000.00 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 **\$5,000.00** 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 100160  
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% 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.

Should you still believe that you are financially unable to pay the penalty, you may request establishment of a payment plan. Requests for relief should be directed to the Chief, 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 International Law  
By direction of the Commandant

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