



16460
April 26, 2006

[Redacted]
dba [Redacted]

RE: Case No. [Redacted]
[Redacted]
[Redacted]
\$25,000.00

Dear Mr. [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]") as shipper of three containers ([REDACTED], [REDACTED] and [REDACTED]) that were found to have been shipped in violation of the Department of Transportation's hazardous materials regulations. The appeal is from the action of the Hearing Officer in assessing a \$25,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
1. 49 CFR 172.200(a)	Failure to prepare shipping papers for shipment of hazardous materials.	\$10,000.00 For Container: [REDACTED]
2. 49 CFR 172.400	Failure to comply with general labeling requirements.	\$5,000.00 For Container: [REDACTED]
3. 49 CFR 172.504	Failure to comply with general placarding requirements.	\$5,000.00 For Container: [REDACTED]
4. 49 CFR 176.30(a)	Failure to prepare Dangerous Cargo Manifest.	\$5,000.00 For Container: [REDACTED]
5. 49 CFR 172.200(a)	Failure to prepare shipping papers for shipment of hazardous materials.	Warning For Container: [REDACTED]

6. 49 CFR 172.400	Failure to comply with general labeling requirements	Warning For Container: [REDACTED]
7. 49 CFR 172.504	Failure to comply with general placarding requirements.	Warning For Container: [REDACTED]
8. 49 CFR 176.30(a)	Failure to prepare Dangerous Cargo Manifest.	Warning For Container: [REDACTED]
9. 49 CFR 172.200(a)	Failure to prepare shipping papers for shipment of hazardous materials.	Warning For Container: [REDACTED]
10. 49 CFR 172.400	Failure to comply with general labeling requirements.	Warning For Container: [REDACTED]
11. 49 CFR 172.504	Failure to comply with general placarding requirements.	Warning For Container: [REDACTED]
12. 49 CFR 176.30(a)	Failure to prepare Dangerous Cargo Manifest.	Warning For Container: [REDACTED]

The violations were brought to the attention of the Coast Guard on June 10, 2003, during a Multi Agency Strike Force Operation conducted by the Coast Guard and the United States Customs Service in the Port of San Juan. During the operation, a random inspection of container [REDACTED] revealed not only that product was leaking from barrels within the container but also that the container's contents were not properly marked or identified as hazardous materials. As a result of the apparent violations, four other containers identified on the relevant Bill of Lading were subsequently inspected. Similar violations were found with two of those containers, container [REDACTED] and [REDACTED].

On appeal, you do not deny that the violations occurred; rather, you seek mitigation of the penalty assessed by the Hearing Officer because the violations were “the result of administrative flaws, which...resulted in no harm to the environment, wildlife, human beings, waters or vessels.” In addition, you further contend that [Redacted] “has always operated in strict compliance with the U.S. State and Federal Regulations and has never before been held responsible for violating any U.S. Regulation whatsoever.” You further assert that “there was never any intentional wrongdoing from...[[Redacted]]” and insist that, in this case, [Redacted] did not ignore the regulations “but, unfortunately, failed to en[Redacted]e...[their]...adequate implementation.” Finally, you assert that the violations are “excessively high...for a [c]ompany like Pinturas [Redacted], which is a small business operation with limited financial resources” and add that “several other companies in Puerto Rico, which have committed similar violations...have received a minor penalty than the one imposed” in this case. Your appeal is denied for the reasons discussed below.

Because you do not contest the violations, I consider them proved. Accordingly, the sole issue remaining for consideration is whether the penalty assessed by the Hearing Officer was appropriate under the circumstances of the case. The record shows that in his final letter of decision, the Hearing Officer addressed the amount of the assessed penalty as follows:

I am concerned that the financial impact of significant penalties might cause the company to close its doors but I am equally aware of the potential harm that could occur when shipping requirements for hazard[ous] material are either ignored or not known by those who should know.

I will not dismiss any of the violations but I will impose a monetary penalty on four violations and issue warnings on the remaining eight. This will assess a monetary penalty for each regulation that was in fact violated but it will not involve a monetary penalty for multiple violations of the same regulation. I will not reduce the preliminary penalties assessed for violations one through four but I will issue warnings in lieu of monetary penalties for violations five through twelve. The action that I have taken reduces the penalty from \$75,000.00 to \$25,000.00.

After a thorough review of the record, I find that these comments show that the Hearing Officer carefully considered [Redacted]’s financial assertions when he mitigated the initially assessed penalty by \$50,000.00 from \$75,000.00 to \$25,000.00. Indeed, a review of the Hearing Officer’s decision shows that although violations were present in three of [Redacted]’s containers, the Hearing Officer chose only to assess monetary penalties for violations observed in one of those containers. Irrespective of the cause of the violations, [Redacted], as the shipper of the containers was required to en[Redacted]e that no regulatory violations occurred during the shipment of the containers. In this case, [Redacted] clearly did not do so and, as a result of its regulatory transgressions, created a potentially dangerous situation for all parties involved with the shipment of the containers. Under such circumstances, I find the penalty assessed by the Hearing Officer to be appropriate in this case.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's conclusion 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. For the reasons discussed above, I find the \$25,000.00 penalty assessed by the Hearing Officer, rather than the \$75,000.00 initially assessed or \$333,000.00 maximum permitted by statute to be appropriate in light of 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 **\$25,000.00** 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 these penalties, 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,

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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