

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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16460
Nov 17, 2006

[REDACTED]
c/o [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]

RE: Case No. [REDACTED]
[REDACTED]
[REDACTED]
\$8000.00

Dear [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. [REDACTED] which includes your appeal as alleged owner of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a penalty of \$8,000.00 against you under the authority of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990, 33 USC 1321(b)(6)(A). The assessment of the \$8,000.00 penalty was based on a finding that, in violation of 33 USC 1321(b)(3), oil, in a quantity that may be harmful, was discharged from the [REDACTED] on May 10, 2003, into the Gulf of Mexico. The 20 gallons of oil discharged caused a sheen that was 2 miles long and 0.5 miles wide, a condition specified in 40 CFR § 110.3.

It is the mandate of Congress, as expressed through the Federal Water Pollution Control Act, that there shall be no discharges of oil or hazardous materials into or upon the navigable waters of the United States. The Act provides that a Class I administrative penalty of not more than \$10,000.00 may be assessed against the owner, operator, or person in charge of any vessel or facility from which oil is discharged in prohibited quantities. The penalty was increased to \$11,000.00 by the Coast Guard's Civil Money Penalties Inflation Adjustments Final Rule effective May 7, 1997. It is not necessary to find intent or negligence, as the law prohibits any discharge of oil or hazardous material that may be harmful. Under the statute, the President has the authority to determine what amount of a particular released material is hazardous.

On appeal, you do not deny that oil was discharged from the [REDACTED] into the Gulf of Mexico. Rather, you assert that you were not the owner or the operator of the [REDACTED] at the time of the alleged violation. As a result, you contend that you should not be responsible for the penalty assessed by the Hearing Officer for the discharge. To the contrary, you state that Chase Marine, Inc., was the owner of the [REDACTED] at the time of the violation and insinuate that Chase Marine, Inc., should be responsible for any penalty assessed as a result of the discharge. In addition, you indicate that you have filed a civil suit against Gulf Island Fabrication, Inc., in order to verify who the responsible party is. Finally, you state that an insurance company "spent its own time and money to perform an investigation and clean-up of the site as well as limit any and all potential damage as a result of the sinking." Under 33 CFR 1.07-70(a), only issues that have been properly raised before the Hearing Officer and jurisdictional questions may be raised on appeal. Since the record shows that the issues you raise

on appeal were not submitted to the Hearing Officer prior to the issuance of her Final Letter of Decision, your right to have those issues considered has been waived. I note, however, that even if the issues were considered, the record shows that the violation occurred and, as will be discussed more thoroughly below, that you are an appropriate party to be charged with the violation. Accordingly, your appeal is denied for the reasons discussed below.

The record contains substantial evidence that indicates that on May 10, 2003, the [REDACTED] sank in Eugene Island block 243 of the Gulf of Mexico and discharged approximately 20 gallons of mixed oil (fuel oil, lube oil, and waste oil) in a quantity that is harmful and created a sheen of oil on the water's surface in violation of 33 U.S.C. § 1321(b). The record shows that you have never denied these facts.

Having determined that there is substantial evidence of a violation in the case file, I will now address your assertions that you are not the responsible party. After a review of the record, I find sufficient evidence to support the Hearing Officer's conclusion that you are an appropriate party to be charged with the violation. The record indicates the Hearing Officer notified Marine Safety Office (hereinafter "MSO") Morgan City, Louisiana, on February 7, 2005, of your appeal and requested Vessel Documentation to verify the ownership of the [REDACTED]. MSO Morgan City responded to the Hearing Officer on February 18, 2005, and provided a certified copy of the Certificate of Documentation for the [REDACTED] (official number 601447) from the National Vessel Documentation Center. The Certificate of Documentation listed you as both the owner and managing owner of the [REDACTED]. The record further shows that the Certificate of Documentation was valid from February 21st, 2003 until March 31st, 2004, which encompasses the date of the incident: May 10th, 2003. Furthermore, I note that there is no evidence in the record to suggest that anyone other than you is the owner of the [REDACTED]. Therefore, I do not find your claims regarding ownership of the [REDACTED] persuasive.

In addition I note that on appeal, you state that you have filed a civil suit against Gulf Island Fabrication, Inc., in order to verify who the responsible party is. The Coast Guard will not delay taking action on your appeal pending the outcome of your litigation. As I have already noted, there is substantial evidence in the record to support the Hearing Officer's finding that you were the owner of the [REDACTED] at the time of the discharge. Therefore, your assertions regarding the initiation of civil action are also not persuasive.

Finally, you note that an insurance company "spent its own time and money to perform an investigation and clean-up of the site as well as limit any and all potential damage as a result of the sinking." The fact that a spiller has conducted a removal operation is not a defense to a civil penalty assessment under 33 USC § 1321(b)(6), as it was the intent of Congress that discharges be prevented rather than merely mitigated. Nevertheless, the Coast Guard recognizes that removal operations by a spiller are among the factors bearing on the gravity of the violation.

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 decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. For

the reasons discussed above I find the \$8,000.00 penalty assessed by the Hearing Officer, rather than the \$11,000.00 maximum permitted by statute, 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. This decision does not address or decide any liability you may have for removal costs or damages, or any other costs arising from any discharge, or substantial threat of discharge, of the oil or hazardous chemical involved in this case. *See generally, but not exclusively, 33 USC §§ 1321 et seq. and 2701 et seq.*

Payment of **\$8,000.00** 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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties
P.O. Box 70945
Charlotte, NC 28272

Interest at the annual rate of 4% accrues from the date of this letter but will be waived if payment is received within 30 days. In accordance with 33 USC § 1321(b)(6)(H), if payment is not received in 30 days, in addition to the interest, an administrative charge of \$12.00 per month for the cost of collecting the debt will be assessed. Furthermore, if the debt remains unpaid for over 3 months, and for every 3 months thereafter, an additional quarterly nonpayment penalty of 20% of the aggregate amount of the assessed penalty and all accrued quarterly nonpayment penalties will be added to the debt, and you will be liable for all attorney's fees incurred and all other costs of collection.

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