



16200

January 18, 2013

[REDACTED COMPANY NAME]

Attn: Mr. [REDACTED NAME]

[REDACTED ADDRESS]

[REDACTED CITY, STATE, AND ZIP]

RE: Case No. 3630946
[REDACTED COMPANY
NAME]
Dismissed

Dear Mr. [REDACTED NAME]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 3630946, which includes your appeal on behalf of [REDACTED COMPANY NAME], a Department of Transportation drug testing collection site. The appeal is from the action of the Hearing Officer in assessing a \$300.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 16.113	Failure to conduct chemical drug testing in accordance with 49 CFR Part 40 requirements.	\$300.00

The alleged violation came to the Coast Guard's attention during a Coast Guard audit of [REDACTED COMPANY NAME]'s drug testing collection process at Ft. Lauderdale, FL, on October 15, 2009.

On appeal, you contend that the alleged violation could not have occurred because no drug test collection was conducted during the audit. Your appeal is granted for the reasons discussed below.

First, I am compelled to comment on your contention that in the absence of a drug test collection on the date of the audit, no violation occurred. This contention is flawed. According to the record, the sole collector at the facility stated "that she has worked at this facility doing DOT drug testing collections for 5 years and had never received any training at any point in time." Clearly she had conducted drug test collections on earlier dates. Since she had not been trained, those collections violated 49 Part 40 requirements.

However, there is no evidence that any of those drug test collections involved a mariner. Such evidence is essential to a finding of violation of 46 CFR 16.113, as that Coast Guard-issued

regulation only applies where the Coast Guard has jurisdiction, that is, to drug test collections involving mariners. Accordingly, the alleged violation is not proved. The charge is dismissed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR subpart 1.07, this decision constitutes final agency action.

Sincerely,

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard Finance Center
Coast Guard Sector Miami, Investigations Division