U.S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard

4200 Wilson Blvd., Ste. 790
Arlington, VA 20598-7160
Staff Symbol: CG-094C
Phone: (202) 493-6978
Fax: (202) 493-1145

16200

[Redacted Company Name]
[Redacted Address]

November 16, 2011

RE: Case No. 2361711
[Redacted Company Name]
M/V {Redacted Vessel]
$250.00

Dear Ms. [Redacted Name]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 2361711, which includes your appeal on behalf of [Redacted Company Name] (hereinafter "[Redacted Name]"), as owner of the M/V [Redacted Vessel]. The appeal is from the action of the Hearing Officer in assessing a $350.00 penalty against [Redacted Name] for the following violations:

LAW/REGULATION	NATURE OF VIOLATION	ASSESSED PENALTY
33 CFR 153.305	Failure to follow prescribed methods and procedures for the removal of discharged oil.	$100.00
33 USC 1321(b)(3)	Discharge of oil or hazardous substance into the navigable waters of the United States, adjoining shoreline, or contiguous zone.	$250.00

The violations occurred on May 12, 2005, when diesel fuel was discharged from the M/V [Redacted Vessel] into the Chicago Ship Canal.

It is the mandate of Congress, as expressed in the Federal Water Pollution Control Act (hereinafter "FWPCA"), 33 U.S.C. 1321, that there shall be no discharges of oil or hazardous materials into or upon the navigable waters of the United States. The Act authorizes a civil penalty of not more than $11,000.00 to be assessed against the owner, operator, or person in charge of any vessel or facility from which oil is discharged in prohibited quantities. It is not necessary to find intent or negligence, as the law prohibits any discharge of oil in quantities that may be harmful. A discharge of oil that causes a film or sheen on or discoloration of the surface of the water, or a sludge or emulsion beneath the surface of the water, may be harmful.

On appeal, you state that the imposition of any fine for these alleged violations is unwarranted because the spill occurred inside a containment boom. You also assert that [Redacted Name] did

not use chemical dispersants to clean up the oil spill and contend that Tide was used only to clean affected areas on the salvage rig/vessel and any dispersants that entered the water were inadvertently washed off the vessel as [Redacted Name] employees took urgent actions to clean up the spill on the vessel.

The record shows that on May 12, 2005, the M/V [Redacted Vessel] was transferring fuel from one tank to another while the vessel was moored at a salvage job site, inside a containment boom. During the transfer, the number 4 tank "burped" and caused a discharge of diesel fuel from the deck hatch on the port side of the vessel. The fuel travelled aft on the deck and subsequently flowed onto the waters of the Chicago Ship Canal through a scupper. The discharge caused a sheen on the waters of the Chicago Ship Canal. Personnel on the scene reacted quickly and put sorbent pads between the [Redacted Vessel] and the EMC 423, the barge being salvaged.

The Coast Guard originally alleged that during the incident, an employee of [Redacted Name] was seen pouring dispersants (Tide detergent) into the water. [Redacted Name] denied this allegation and contended that [Redacted Name]'s employee only poured the Tide onto the vessel's deck as he attempted to clean the spill area so that it was safe for workers to use. The Hearing Officer apparently accepted [Redacted Name]'s version, finding that dispersant was subsequently washed into the water where the spill occurred, and concluded from this that [Redacted Name] had, in fact, used chemical agents to clean up the discharge. He also found that the company had done so without prior approval by the Federal On-Scene Coordinator. Whether dispersants were used or not, the Coast Guard agreed that the spill was promptly cleaned up and secured.

I first consider the alleged violation of 33 USC 1321(b)(3). Under 33 USC 1321(b)(6)(A), the Coast Guard may assess a class I civil penalty against any owner, operator, or person in charge of any vessel from which oil is discharged. The Hearing Officer found as follows with regard to the alleged violation:

> With regard to the charge of discharge of oil into the navigable waters of the United States, Mr. [Redacted Name] stated at the hearing that the spill did occur. He continued that the estimated amount spilled was "not more than a gallon." He stated that the spill occurred inside of a containment boom in place for the salvage of the barge EMC-423 and that the response from [Redacted Company Name] was rapid with two clean-up companies working to clean up the spill. The evidence in the case file corroborates these statements. However, it is not necessary to find intent or negligence, as the law prohibits any discharge of oil that maybe harmful. A discharge of any amount of oil that causes a film, sheen or discoloration upon the surface of the water may be harmful and is prohibited. Based on the evidence in the case file and statements made at the hearing, I find that the violation did occur. Taking into consideration the precautionary measures in place prior to the spill and the rapid response when the spill occurred, I am

reducing the imposed penalty to $250.00 which is my final determination in the charge.

As the Hearing Officer stated, evidence of a sheen on the water is sufficient, in and of itself, to justify the imposition of a civil penalty by the Coast Guard, because discharges of oil in quantities that may be harmful include discharges that cause a film or sheen on the surface of the water. 40 C.F.R. 110.3. This is consistent with the intent of the FWPCA to prevent *any* discharges of oil, whether or not they cause actual harm. *See Chevron, U.S.A., Inc. v. Yost*, 919 F. 2d 27 (5th Cir. 1990). Thus, your contention that the spill occurred inside a containment boom and was therefore not harmful does not convince me that the assessed penalty is inappropriate. There is substantial evidence in the record to support the Hearing Officer's conclusion that the violation occurred and that [Redacted Name] is the responsible party. I find that the Hearing Officer was not arbitrary or capricious in assessing a penalty of $250.00.

I turn to the alleged violation of 33 CFR 153.305. As the Hearing Officer noted, the regulation requires that removal of a discharge of oil in coastal waters shall use to the maximum extent possible mechanical methods and sorbents, and that chemical agents may only be used with the prior approval of the Federal On-Scene Coordinator. The Hearing Officer found that a chemical dispersant ("Tide" detergent) was used to clean up the affected area on the salvage rig and the vessel, and that dispersant was subsequently washed into the water where the spill occurred.

The Hearing Officer concluded that in using chemical agents to clean up spilled oil on its vessel, which chemical agents washed into the water, [Redacted Name] "used" chemical agents on the spilled oil in the water, in violation of the regulation. I disagree. There is insufficient evidence to hold [Redacted Name] liable for putting detergent in the water. If detergent flowed into the water without culpable negligence, the regulation was not violated. I refrain from deciding exactly what degree of negligence would render a party liable for violation of the regulation in circumstances like those in this case. The record is not sufficiently developed to find any degree of negligence here. The alleged violation has not been proved.

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

Payment of **$250.00** 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 531112
Atlanta, GA 30353-1112

Interest at the annual rate of 1% accrues from the date of this letter but will be waived if payment is received within 30 days. 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, in accordance with 33 USC 1321(b)(6)(H), 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,

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

Copy: Coast Guard Hearing Office
Coast Guard Finance Center
Coast Guard LSC-5, Claims and Collections Branch
Coast Guard MSU Chicago