



16200
February 23, 2012

[PARTY]
Attn: [REPRESENTATIVE]
[ADDRESS]

RE: Case No. 3168417
[PARTY]
[PARTY] Facility
\$5,000.00

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 3168417, which includes your appeal as [PARTY] as operator of a marine facility in Port Canaveral, Florida. The appeal is from the action of the Hearing Officer in assessing a \$5,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 105.260(d)	Failure of facility owner or operator to be in compliance with security requirements for restricted areas for MARSEC Level 1.	\$5,000.00

The violation occurred on March 20, 2008, when Coast Guard facility inspectors were able to access [PARTY]'s facility in Port Canaveral, Florida, without being questioned or asked for identification.

On appeal, you ask that the penalty assessed by the Hearing Officer be reduced or waived. Although you do not deny that the violation occurred, you contend that [PARTY] diligently strives to maintain and improve its port and vessel operating procedures, and that [PARTY] has hired a nationally recognized security firm to handle security at its facilities. You assert that a \$5000.00 penalty would cause hardship to [PARTY]'s business, which has suffered in trying economic times to the point that this operation has been shut down. Your appeal is denied for the reasons discussed below.

On March 20, 2008, Coast Guard Port State Control examiners went to [PARTY]'s facility to conduct a Port State Control examination of the M/V [VESSEL], which was moored at the facility. When the Coast Guard examiners arrived at the facility, which is a restricted area in its entirety, they found the access gate open and the facility's security guard facing away from the entrance. The Coast Guard examiners drove onto the facility and the guard did not notice them or ask for identification. The Facility Security Plan requires that during MARSEC Level I,

which is the lowest level of security per 33 CFR 101.200(b), access will be controlled and the gate guard will check the identity of any person seeking to enter.

I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred. The Hearing Officer considered the points you have raised on appeal. The penalty is within the amount authorized. The decision of the Hearing Officer was neither arbitrary nor capricious and is affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR subpart 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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties
P.O. Box 531112
Atlanta, GA 30353-1112

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.0% 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.

Sincerely,

//S//

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

Copy: Coast Guard Hearing Office
Coast Guard Finance Center