

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of: CANUCK INDUSTRIES, INC.**

FAA Order No. 2002-17

Docket No. CP00SO0021  
DMS No. FAA-2000-7726<sup>1</sup>

Served: May 24, 2002

**ORDER GRANTING PETITION TO MODIFY FAA ORDER NO. 2002-14**<sup>2</sup>

FAA Order No. 2002-14, served on May 10, 2002, affirmed the ALJ's decision assessing a \$12,000 civil penalty against Canuck Industries for failing to train its employees under the hazardous materials regulations. Footnote 12, on page 12 of the decision, stated as follows:

Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).

Complainant has petitioned for modification of the decision, arguing that footnote 12 is incorrect because 49 U.S.C. § 46110, which provides for review by a United States Court of Appeals, does not apply to cases brought under the Federal hazardous materials transportation law (49 U.S.C. §§ 5101-5127).

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<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

<sup>2</sup> The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. In addition, there are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and WestLaw. For additional information, *see* the website.

Complainant's petition for modification is granted. According to 49 U.S.C. § 46301(g), "[a]n order of ... the Administrator imposing a civil penalty may be reviewed judicially only under 49 U.S.C. § 46110 . . . ." Section 46110 states that it applies only to orders issued "under this part" -- *i.e.*, 49 U.S.C. §§ 40101 – 46507. Because Complainant brought this action under 49 U.S.C. § 5123,<sup>3</sup> Section 46110 does not apply, and footnote 12's description of a right to appeal to a Federal court of appeals is incorrect.

Canuck may seek review of FAA Order No. 2002-14 by filing a petition for review in an appropriate Federal district court. As Complainant points out, the Federal hazardous materials transportation law does not contain any provision regarding judicial review. The Administrative Procedure Act, however, provides in 5 U.S.C. § 704 that "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review," and 28 U.S.C. § 1331 provides that the "district courts shall have original jurisdiction of all civil actions arising under the ... laws . . . of the United States."

For the reasons stated above, the following footnote is substituted for footnote 12:

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<sup>3</sup> 49 U.S.C. § 5123 provides, in part, that "[a] person that knowingly violates this chapter [entitled "Transportation of Hazardous Material"] or a regulation prescribed or order issued under this chapter is liable to the U.S. Government for a civil penalty . . . ."

Unless Respondent files a petition for review under 5 U.S.C. § 704 and 28 U.S.C. § 1331 with an appropriate District Court of the United States, this decision shall be considered an order assessing civil penalty.

JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration

VICKI S. LEEMON<sup>4</sup>  
Manager, Adjudication Branch

Issued this 24th day of May, 2002.

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<sup>4</sup> Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.