

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

2100 Second Street, SW
Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone: (202) 267-1527
FAX: (202) 267-4496

16731
August 1, 2001

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00000564
[REDACTED]
[REDACTED]
\$5000.00

Dear [REDACTED]:

The Commanding Officer, U.S. Coast Guard Hearing Office, Arlington, VA has forwarded the file in Civil Penalty Case MV00000564, which includes your appeal as owner/operator of the 45 foot towing barge [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$5000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR § 15.610	Failure to have an uninspected towing vessel over 26 feet in length under the control of a properly licensed individual.	\$5000.00

The alleged violation was observed on December 10, 1999 as the [REDACTED] experienced heavy weather and mechanical difficulty in the area of the Chesapeake Bay Bridge. As a result, both the U.S. Coast Guard and the Maryland Department of Natural Resource Assets were called to assist. Subsequently, it was discovered that you did not have a USCG license.

On appeal, you seem to deny the violation and contend that the Coast Guard had previously dismissed their charges against you and that you were "assured that because of [your] quick and thorough response to the situation, there would be no fine." You further contend that you were unaware that 46 USC §§ 8904 and 8906 and 46 CFR § 15.610 require that "every uninspected towing vessel which is at least 26 feet in length. . . must be under the direction and control of an individual licensed by the Coast Guard." You assert that "[you] have never been issued a warning for pushing. . . barges without a captain's license" and that you were "under the impression that no license was needed to operate any vessel owned by you[rself], only commercial vessels belonging to others." Your appeal is denied for the reasons described below.

Your contention that the violation against you had previously been dropped is without merit. The Hearing Officer was correct to note that you were involved with two separate and distinct Coast Guard cases in December, 1999. The case that you have appealed, case number MV00000564, stems from the marine casualty described above. The dismissed case, on the other hand, involved your

August 1, 2001

compliance with a COTP Order issued after a Coast Guard boarding on 12 December, 1999. The dismissal of one case has absolutely no impact on the status of another pending case.

You next contend that you were unaware of the requirements of 46 CFR § 15.610. It is the responsibility of the owner and operator of a vessel to be aware of and to fully comply with all laws and regulations affecting his vessel prior to and during its operation. These laws have been promulgated not only to ensure the safety of the vessel and her crew, but also to protect the marine environment. Furthermore, it is a generally held legal principle that ignorance of the law is not a defense against its enforcement. See, e.g. Utermehle v. Norment, 197 U.S. 40, 49 L.Ed. 655, 25 S.Ct. 291 (1905). I find, therefore, that the Hearing Officer was correct to find that you violated 46 CFR § 15.610. At the time of the incident, you were operating a towing vessel greater than 26 feet in length without the appropriate Coast Guard license. In addition, it appears you have done so for many years.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$5000.00, rather than the \$25,000.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$5000.00** 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. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5% 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//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center