

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
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16731
February 5, 2001

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00001259
[REDACTED]
[REDACTED]
\$500.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001259, which includes your appeal as owner/operator of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$750.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 25.25-13(b)	A personal flotation device light was not provided for each exposure suit, life preserver, marine buoyant device, and buoyant vest.	\$200.00
46 CFR 67.121	Failure to comply with the marking requirements for the official number of the documented vessel.	\$100.00
46 CFR 28.165	Failure to post required injury placard	\$ 50.00
46 CFR 28.160	Failure to provide the proper type and amount of required fire extinguishers	\$100.00
46 CFR 28.230	Failure to have an operable magnetic compass with deviation table at the operating station	\$100.00

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46 CFR 28.225	Failure to equip vessel with the required navigational charts and publications	\$100.00
33 USC 2033 (b) (Rule 33)	Failure to have some means of making an efficient sound signal for vessel less than 12 meters in length	\$100.00

The violations were observed on October 12, 1999, when Coast Guard boarding officers boarded the [REDACTED] in Long Bay, near Shallotte, North Carolina.

On appeal, I note that you do not dispute that the violations occurred. Instead, you base your appeal on the fact that following receipt of the Letter of Inquiry from Chief Warrant Officer [REDACTED], you purchased and installed the devices and equipment required by Federal regulations. You further claim that you then contacted Coast Guard Marine Safety Office Wilmington to schedule a courtesy dockside examination. You indicate that you were assured that someone from the Coast Guard would contact you to schedule the examination. Unfortunately, no one ever called back and the next contact you had with the Coast Guard was the assessment letter dated August 29, 2000. You also contend that the penalty would be a financial hardship and you are requesting an exam so that your compliance can be verified. Your appeal is denied in part and granted in part for the reasons described below.

Initially, under the Coast Guard's civil penalty procedures, only issues that have been properly raised before the Hearing Officer and jurisdictional questions may be raised on appeal. As the issue you present on appeal was not previously submitted to the Hearing Officer prior to the final decision, your right to have it considered may have been waived. However, I will accept your contention that you did not receive the Hearing Officer's initial letter of June 27, 2000 and I will consider your appeal and review the entire case file.

Since you do not dispute that the violations occurred and, in fact, acknowledge receipt of the report, I find the violations proven. The only issue is the appropriateness of the penalty based upon your allegation of having made the necessary corrections to your vessel and contacting the Coast Guard for a courtesy examination. I applaud your actions of purchasing and installing the safety equipment identified as being deficient or missing by the Coast Guard during the boarding of the F/V [REDACTED]. While I have no reason to doubt that you did, in fact, obtain the necessary equipment, I note that you did not provide the Coast Guard with copies of receipts that would verify the purchase of the correct equipment. Similarly, I have no reason to doubt you when you say you contacted Marine Safety Office Wilmington for the courtesy examination. However, when you did not hear back from the Coast Guard, you should have contacted that office once again, especially since Chief Warrant Officer [REDACTED]'s letter indicated the courtesy exam had to be completed within 30 days. The Coast Guard is very concerned about fishing vessel safety. Primary responsibility rests with the owners and operators to ensure that

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their vessels are equipped with the required items. Fishing vessel safety is not achieved if owners and operators wait until the Coast Guard identifies deficiencies. Finally, I believe it would have been more prudent for the Hearing Officer to have considered the comments in your appeal letter based upon your contention that you never received his first letter. As a result, I will reconsider the penalty assessment. Based upon the information contained within the case file, I believe a \$500.00 civil penalty is appropriate.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. However, I further mitigate the penalty to \$500.00.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$500.00** 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