

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Phone: (202) 267-1527
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16730
July 3, 2001

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV99004736
[REDACTED]
M/V [REDACTED]
\$900.00

Dear [REDACTED]:

The Hearing Officer, Coast Guard Pacific Area, Alameda, CA, has forwarded the file in Civil Penalty Case MV99004736, which includes your appeal as the operator of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$1300.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR §67 (subpart U)	Failure to comply with prescribed special provisions required for a Certificate of Documentation.	\$400.00
46 CFR §15.610	Failure to have an uninspected towing vessel over 26 feet in length, under the control of a properly licensed individual.	\$400.00
46 CFR §25.30-20	Operation of an uninspected vessel without required number of approved fire extinguishers.	\$500.00

The violations are alleged to have been observed during a follow-up boarding of the M/V [REDACTED] on October 20, 1999. The vessel was first boarded on September 29, 1999 while

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it was moored on the Tennessee River at [REDACTED]. During the preliminary boarding, 16 discrepancies were noted, 3 of which resulted in the civil penalty action described above.

As a preliminary matter, it appears that the initial notice letter, dated December 7, 1999 incorrectly documented a pollution violation. While the case file is not clear, there may well have been an earlier pollution incident involving the M/V [REDACTED]. You responded to the incorrect classification in your request for appeal, dated August 14, 2000 when you generally discuss an alleged violation of the Federal Water Pollution Control Act. I notice, however, that the initial notice also contained a violation charge sheet that correctly informed you of the three violations noted above. That charge sheet provided an appropriate description of the charges and afforded you ample information to defend yourself against those charges. While I acknowledge that your request for appeal, dated August 14, 2000, mentioned the incorrectly documented pollution violation, I find that you also appropriately responded to the actual charges against you. Thus, as the correct nature of the violations was described throughout the civil penalty proceedings and because you responded to those violations, you have been adequately apprised of the issues and the error was harmless.

On appeal, you contend that “this vessel does not require a Certificate of Documentation because of its small size less than 15 tons.” You further maintain that, at the time of the alleged violation, the “vessel was in port and moored,” thus, eliminating the requirement that a licensed operator be on board. Finally, you assert that “[t]here was a properly inspected and fully charged fire extinguisher on board the vessel” that was “recovered after the boat was raised. Your appeal is granted, in part, and denied, in part, for the reasons discussed below.

I first note that you were incorrectly charged with a violation of 46 CFR §67.313. 46 CFR §67.313 states that “[t]he person in command of a documented vessel must have on board that vessel the original Certificate of Documentation currently in effect for that vessel.” However, the record clearly indicates that the vessel had never been documented. Since an element of proof for 46 CFR §67.313 requires that the vessel be **currently** documented, it was error to charge you with a violation of this provision. The record indicates that a violation of 46 CFR §67.7 would have been more appropriate under the instant circumstances. In relevant part, 46 CFR §67.7 makes clear that “[a]ny vessel of at least five net tons which engages in. . .coastwise trade. . .must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which [the vessel is] engaged.” 46 CFR §67.323 adds that “[n]o vessel which is required by §67.7 to be documented may engage in unlimited coastwise trade. . .without being documented in accordance with the requirements of this part.” The record is not clear as to the vessel’s tonnage. You contend that the vessel was “less than 15 tons” but provide no evidence that the vessel is less than 5 tons, as required by the regulation. The Coast Guard concludes that the vessel is at least 5 tons because it “exceeds 36 feet in length” but fails to provide any clear evidence of the vessel’s actual tonnage. In fact, the Coast Guard’s case description leaves the vessel’s tonnage blank, adding to the speculative nature of their conclusion that the vessel meets the registration requirements. Therefore, because you were incorrectly charged with a violation of 46 CFR §67.313 and because the record contains insufficient evidence of the vessel’s tonnage, I will dismiss this particular violation.

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You next contend that a violation of 46 CFR §15.610 did not occur because the “vessel was in port and moored at the time of the incident” and that, as a result, the vessel was not in operation and exempted from the application of the regulation. 46 CFR §610 states that “[e]very 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.” The record shows that you failed to operate the vessel with a licensed captain on board in violation of the regulation and that you had been informed that a licensed captain was required during operation. While the vessel was moored during the inspection, the gist of this violation is that prior to the sinking, the vessel had been operated by you, an unlicensed individual, on repeated occasions. I find sufficient evidence regarding this violation.

Finally, you contend that a violation of 46 CFR §25.30-20 did not occur because “there was a properly inspected and fully charged fire extinguisher on board the vessel that complies with 46 CFR 25.30-20” and that “[t]his fire extinguisher was recovered after the boat was raised.” You note that “it was not brought to the attention of the inspecting officers” and add that you can “provide documentation from. . .[your]. . .vendors of the last date of inspection for the fire extinguisher.” You conclude that “the 3 fire extinguishers noted by the inspecting officers were fully charged and operational regardless of inspection date.” While the record is not clear as to the exact length of the M/V [REDACTED], it is apparent that the vessel is more than 38 feet long. As a consequence, 46 CFR §25.30-20 requires that the vessel have at least two (three if the vessel is 40 feet or over) approved fire extinguishers on board. While I believe that there may have been one properly inspected and fully charged fire extinguisher on the M/V [REDACTED] at the relevant time, I, nonetheless, find that to be insufficient. 46 CFR §25-10(g)(1) makes clear that “[w]hen the date on the inspection record tag on the extinguishers shows that 6 months have elapsed since last weight check ashore, then such extinguisher is no longer accepted as meeting the required maintenance conditions.” Therefore, I find your argument regarding the three uninspected fire extinguishers to be without merit and find that because there was only one properly maintained fire extinguisher on board the M/V [REDACTED] at the relevant time, the violation is proved.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that 46 CFR §15.610 and 46 CFR §25.30-20 were violated and that you are the responsible party. I find a \$900.00 penalty appropriate for these two violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$900.00** 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

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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