



16731

August 8, 2001

[REDACTED]

[REDACTED]

[REDACTED]

RE: MV99005652

[REDACTED]

F/V [REDACTED]

\$200.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV99005652, which includes your appeal on behalf of [REDACTED] as owner of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$600.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 28.160	Failure to provide the proper type and amount of required fire extinguishers	\$100.00
46 CFR 28.140	Failure to maintain, inspect or have lifesaving equipment readily accessible and ready for immediate use	Warning
46 CFR 28.150	Failure to have the required EPIRB on board	Warning
46 CFR 28.110 (25.25-13)	Failure to meet the requirements for life preservers or other personal flotation devices	\$100.00
46 CFR 25.26-50(b)	Failure to test EPIRB immediately after installation and once each month.	\$200.00
46 CFR 28.210	Failure to have the required first aid equipment and/or required number of trained	\$200.00

August 8, 2001

	persons onboard	
46 CFR 28.270	Failure to comply with the requirements for instruction, drills, and safety orientations	Warning
46 CFR 28.265	Failure to comply with the requirements for providing emergency instructions for crew members	Warning

The violations were observed on August 10, 1999, when Coast Guard boarding officers boarded the F/V [REDACTED], while it was fishing in the Atlantic Ocean, 57 nautical miles off Cape May, New Jersey.

As a preliminary matter, I note the Hearing Officer incorrectly cited 46 CFR 28.110 rather than 46 CFR 25.25-13(b) for the violation described as failure to have a personal flotation device light for each personal life preserver on board. However, as the correct nature of the violation was described throughout the case record, I find the error harmless.

On appeal, you acknowledge the violation for failure to comply with 46 CFR 28.110. However, you dispute the violations for failure to comply with sections 46 CFR 28.160, 25.26-50(b), and 28.210. Your appeal is denied, in part, and granted, in part, for the reasons described below.

As you acknowledge the violation for failure to comply with 46 CFR 28.110, and as the Boarding Report shows that four lights were out, I find this violation proved. With regard to the violation for failure to comply with 46 CFR 28.160, you contend that “[a]ccording to the captain and crew, one inspection tag was missing as the inspection was being conducted.” However, it was found behind the extinguisher before the Coast Guard left the boat, but the “inspector did not erase the violation.” Therefore, you contend the boat was properly equipped with all types of extinguishers and inspections. I find the handwritten notations on the Boarding Report to be inconclusive. The note simply reads “missing 1 A11” and then follows up with an illegible comment about a tag. To satisfy its burden of proving a case with substantial evidence, the Coast Guard is obligated to document its case file with factual detail sufficient to satisfy this standard. Here, other than repeating several times that the vessel was missing one A-11 fire extinguisher, there is little else in the way of evidence. A-11 extinguishers are normally required to be at a particular location, such as the main corridor. The case file does not contain any narrative which further explains this violation. As a consequence, I cannot find the violation proved and will dismiss the penalty.

With regard to the violation for failure to comply with 46 CFR 25.26-50(b), you contend that the EPIRB was inspected before the crew went out and that “[t]here was a question about the age of the EPIRB, but when it passed the test, we felt that replacing it when he came back would be sufficient.” The record shows that you forwarded the Hearing Officer documentation showing

August 8, 2001

that you replaced the EPIRB on September 7, 1999, when the vessel arrived back in port. According to the notation on the Boarding Report, the EPIRB failed the self-test. In light of this, the EPIRB was not tested and serviced as required by 46 CFR 25.26-50(a). Therefore, I find the violation proved. Additionally, because the EPIRB failed the self-test, the [REDACTED] was essentially being operated without an EPIRB, a violation of 46 CFR 28.150. The fact that you purchased a new EPIRB when the vessel returned to port does not negate the fact that you had a non-working EPIRB on board the F/V [REDACTED] at the time of the boarding and continued to operate the vessel in that condition for approximately one month.

With regard to the violation for failure to comply with 46 CFR 28.210, you contend that the vessel's captain, "[REDACTED], did not have in his possession his first aid card, but as you can see from the photocopy of his card, he has certification to conduct drills and has conducted drills prior to each trip." In light of the documentation you provided, I am persuaded that Mr. [REDACTED] is trained and qualified to conduct personal survival and emergency drills required under 46 CFR 28.270. The card that you provided does not show that Mr. [REDACTED] has the first aid and CPR training required under 46 CFR 28.210.

Finally, while you do not dispute the violation for failure to comply with 46 CFR 28.270, as noted above, Mr. [REDACTED]'s card does show he is qualified to conduct the drills required under this section. However, the Safety Orientation Log and the Monthly Drills Log do not show that a safety orientation briefing was conducted for the August 10, 1999, voyage. The earliest notation on the log is for September 10, 1999. Furthermore, the documentation does not persuade me that all personnel on board the F/V [REDACTED] received a safety orientation that included all the items listed on the log or the vessel's emergency instruction manual. Even if I was to accept that the log was from the vessel, which is not evident from the log itself, the notations appear to indicate that not all the drills were performed as they should have been and the dates of the drills that were conducted do not correspond directly to the August 11, 1999, voyage. Therefore, I find the violation proved.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that the [REDACTED], as owner of the F/V [REDACTED], is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. However, based upon comments provided by Commander Fifth Coast Guard District recommending significant reduction of the civil penalty, I will further reduce the penalty to \$200.00.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$200.00** 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

RE: MV99005652

16731

August 8, 2001

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
Commanding Officer, Coast Guard 4100 Processing Center