



16731

[REDACTED]
[REDACTED]
[REDACTED]
Attn: [REDACTED]

November 20, 2002

RE: MV01002481
F/V [REDACTED]
[REDACTED]
\$250.00

Dear Ms [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01002481, which includes your appeal on behalf of the owners of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$250.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 28.150	Failure to have the required EPIRB on board.	\$250.00

The violation was observed on June 25, 2001, when Coast Guard boarding officers boarded the F/V [REDACTED] in the Straits of Florida for a routine safety inspection.

On appeal, although you do not deny that the EPIRB on board the F/V [REDACTED] was expired, you contend that you "have done nothing wrong, either legally or morally." You assert that "it is not...[your]...fault that it [the EPIRB] was only good for a few weeks or months...[because you]...expected it to be good for a year like the last one." You further contend that the Hearing Officer is "taking this hard line because of the marijuana that was found aboard the ship." In that regard, you contend that you were "appalled" and assert that you have never "done any illegal drugs in...[your]...life." Your appeal is denied for the reasons described below.

Before I begin, I believe a brief recitation of the facts is in order. On June 25, 2001, Coast Guard boarding officers boarded the F/V [REDACTED] in the Straits of Florida. During the boarding, the vessel was tied to the F/V [REDACTED], which was experiencing electrical problems on the day of the incident. At the time of the boarding, [REDACTED] was serving as master of the F/V [REDACTED]. During a cursory inspection, the Coast Guard determined that the vessel's EPIRB registration had expired on May 31, 2001. Following the discovery of marijuana on board the F/V [REDACTED], a close inspection was made of the F/V [REDACTED]. Thereafter, a ¾ ounce bag of marijuana was found in the master's pilothouse bunk. The Coast Guard seized the contraband and destroyed it at sea.

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I will begin by addressing your contention that the Hearing Officer incorrectly considered the presence of marijuana onboard the F/V [REDACTED] in assessing the monetary civil penalty in issue. The record evidences that the Coast Guard did not elect to bring charges against [REDACTED] for the illegal substances found aboard the F/V [REDACTED] during the instant boarding. Contrary to your assertion, the record makes clear that the Hearing Officer did not consider the presence of marijuana in finding a violation of the Coast Guard's EPIRB regulations. Indeed, although the Hearing Officer's Final Letter of Assessment, dated January 16, 2002, noted that he found the presence of illegal substances aboard the F/V [REDACTED] "distressing," he nonetheless made clear that he "did not consider this information in determining whether or not to impose a penalty." Therefore, I am not persuaded by your assertion.

I will now address the violation in issue. 46 CFR 28.150 makes clear that "[e]ach vessel must be equipped with an emergency position indicating radio beacon (EPIRB) as required by 46 CFR part 25, subpart 25.26." The note to the regulation adds further clarity, stating: "[e]ach vessel which uses radio communication equipment must have a Ship Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 80." As I have already indicated, the record indicates that the F/V [REDACTED]'s EPIRB registration expired on May 31, 2000, approximately 25 days before the boarding in issue. Since you do not deny that the EPIRB was expired during that time, it is clear that a violation occurred.

However, you contend that you applied for an EPIRB registration before the boarding and that the registration that you were given was valid for "two to three weeks." Therefore, you contend that, given the short period of effectiveness of the registration, a penalty should not be assessed in the instant case. I do not agree. I note that EPIRB registrations are normally valid for one year. Indeed, in his rebuttal comments, LTjg [REDACTED] stated that he has "never heard of" a circumstance where the FCC issued a registration that was valid for less than one year. Since you have not provided a copy of the expired registration to support your assertion, I do not find it persuasive.

Although you contend that you have done nothing wrong and seem to believe that you have already "spent a thousand dollars that wasn't even necessary" in purchasing a new EPIRB as a result of a previous Coast Guard boarding, you fail to acknowledge the importance of the regulation in issue. The Coast Guard's primary purpose in enforcing its regulations is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. Compliance with Coast Guard regulations helps prevent environmental damage, loss of life, personal injury and property damage. Nowhere is this more true than in the Coast Guard's regulation of EPIRB's. The EPIRB aboard the F/V [REDACTED] is meant to help rescuers locate the vessel in the event of an emergency. The proper registration of that EPIRB is intended to save lives and is mandated by the Federal Communications Commission regulations enforced by the Coast Guard. The information contained in the registration form is imperative in determining that a distress situation exists and in arranging the appropriate rescue efforts. This situation is exacerbated by the fact that the vessel has a history of EPIRB violations. Indeed, on March 2, 2001, the F/V [REDACTED] was found to have violated 46 CFR 25.26. Although the record is not clear as to the precise nature of the violation, your initial letter to the Hearing Officer, received on November 15, 2001, is quite telling as to the cause; you stated that you replaced the vessel's EPIRB because you were "told that the old EPIRB wasn't any good as the

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batteries were dead.” The record is replete with your contentions that, because of the initial boarding, you needlessly purchased a new EPIRB. These contentions further evidence your inability to grasp the true import of the Coast Guard’s EPIRB regulations. The bottom line is that the EPIRB is meant to save lives. To ensure its maximum utility, it must be registered and maintained in accordance with both Coast Guard and FCC regulations.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violation occurred and that [REDACTED] is the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. I find a penalty of \$250.00 rather than the \$5,000.00 maximum permitted by statute.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$250.00** 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, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center