



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

16780
March 17, 2003

RE: MV01001742
[REDACTED]
Recreational Vessel ([REDACTED])
\$500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01001742, which includes your appeal as owner/operator of the recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2302(a)	Operation of a vessel in a negligent manner or interfering with the safe operation of a vessel so as to endanger the life, limb or property of a person.	\$500.00

The violation was observed on April 28, 2001, when Coast Guard boarding officers witnessed you operating your Kawasaki jetski in a designated swim area on the Atlantic Ocean near Atlantic City, Maryland.

On appeal, you do not raise any specific issues. Therefore, I have reviewed the file for substantial evidence to support the Hearing Officer's conclusions. Your appeal is denied for the following reasons.

First, I believe a brief recitation of the facts is in order. On April 28, 2001, at approximately 3:00 p.m., Coast Guard boarding officer [REDACTED] observed you operating your jetski near 15th Street, in Ocean City, Maryland. As I have already mentioned, the boarding officer observed you operating your vessel in a "designated swim area." During your operation of the vessel, you were seen "jumping waves in the area of swimmers." Following a Coast Guard boarding of your vessel, you were cited for negligently operating that vessel.

46 USC 2302(a) states that "[a] person operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, a property of a person is

March 17, 2003

liable for a civil penalty.” As used in 46 USC 2302(a), negligence is a failure to use that care which a reasonable person would exercise under similar circumstances. It is the operator’s breach of that standard of care that endangers the life, limb, or property of a person and constitutes a violation of the law. It is beyond question that operation of a recreational vessel in a designated swim area and jumping waves near swimmers is not something that a reasonably prudent person would do. Likewise, it is beyond question that such behavior endangered the lives of the swimmers present and could, ultimately, have lead to drastic consequences for either yourself or those present in the swimming area. Since you have provided no evidence to support your presumed assertion that the violation did not occur, I find the violation proved and will not mitigate that penalty assessed by the Hearing Officer.

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 \$500.00 assessed by the Hearing Officer, rather than the \$1,100.00 maximum permitted by statute to be appropriate in light of the seriousness of the violation.

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 4.25% 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