



16780
March 17, 2003

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV01004060
[REDACTED]
M/V [REDACTED]
\$625.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01004060, which includes your appeal as owner/operator of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$625.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 159.7	Vessel's installed Marine Sanitation Device not labeled (159.16) or certified (159.12 or 159.12a) or operable, or on board.	\$500.00
33 CFR 151.59	Failure to properly display Annex V Placard.	\$25.00
33 CFR 88.05	Failure of operator of self propelled vessel 12 meters or more in length to carry on board and maintain for ready reference copy of rules.	\$100.00

The violations were observed on August 26, 2001, when Coast Guard boarding officers boarded the M/V [REDACTED] while it was underway in Barnegat Bay near Barnegat Light, New Jersey.

March 17, 2003

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.

In accordance with the provisions contained in 33 CFR 1.07-70(a), only issues that have been properly raised before the Hearing Officer and jurisdictional questions will be considered on appeal. Since the record evidences that you did not respond to the Hearing Officer until after his final decision was issued on April 10, 2002, you are considered to have waived your right to an appeal. Therefore, I consider the violations proved.

Moreover, a careful review of the record reveals that, on appeal, you do not deny that the violations occurred. Instead, your letter dated May 1, 2001, reveals that you "had just purchased the boat and...[were]...unaware of problems that existed." You further note that, at the time of the boarding, the Coast Guard boarding officers gave you a warning to "fix the existing problems." These assertions are not sufficient reason to mitigate the penalty assessed by the Hearing Officer. Regardless of the length of your ownership of the vessel, as a vessel owner, you are responsible for compliance with the regulations affecting your vessel. Furthermore, as the rebuttal comments of the Commander of the Coast Guard Atlantic Area, dated June 4, 2002, indicate, "the 4100 [boarding report] clearly shows that [the] [l]aw enforcement action was taken with an "N," meaning 'Notice'" of the charged violations was given to you at the time of the initial boarding. Furthermore, I note that the record does not evidence that you have ever achieved compliance with the Coast Guard's regulations. There is simply no proof in the record that holding tanks have been placed on the vessel to prevent waste from entering the navigable waters of the United States, no proof that a garbage placard has been posted on the vessel and no proof that the vessel now has a copy of the Coast Guard's navigation rules onboard. Given the lack of proof of compliance contained in the record and your acknowledgement that the violations occurred, I will neither mitigate nor dismiss the 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 violations 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 \$625.00 assessed by the Hearing Officer appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$625.00** 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

CIVIL PENALTY MV01004060

16780

March 17, 2003

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

March 17, 2003

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