



16731
May 10, 2006

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

RE: [REDACTED]
[REDACTED]
[REDACTED]
\$2,000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty [REDACTED], which includes your appeal on behalf of [REDACTED], Inc, owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$4,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 182.530	Vessels 7.9 meters (26 feet) in length must have visual and audible alarm to high water level in unmanned spaces specified in this subpart.	\$2,000.00
46 CFR 180.71	Failure to ensure there are appropriate number of life jackets for persons on board and that life jackets comply with 180.71(a)-(e).	\$2,000.00

The violations were observed on May 23, 2003, when a Coast Guard Marine Inspector conducted an unannounced in-service inspection of the [REDACTED] at Riverfront Park in Salem, Oregon.

On appeal, you deny the violations and contend that the "accusations" contained in the case file are "outright false and disturbing." You further contend that "the given reason that this civil penalty was sought in the first place was based on a falsehood" and add that a "gross injustice" has occurred in this case because your company has been "wrongly attacked." In addition, you note both that your company has an excellent reputation in the City of Salem, Oregon, and that the imposition of a \$4,000.00 penalty on your company would cause a "financial hardship" that could "force...[you]...out of business." You conclude by asserting that you would like to get

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your “day in court in front of an impartial judge to get a fair hearing” in this case. Your appeal is granted, in part, and denied, in part, for the reasons discussed below.

First, I will address your request that you be afforded your “day in court in front of an impartial judge to get a fair hearing.” Your request fails to acknowledge the administrative nature of the Coast Guard’s civil penalty process. While the applicable procedural rules, at 33 CFR 1.07, *et seq.*, afford parties the opportunity to request a hearing before a Coast Guard Hearing Officer following the initiation of civil penalty action, the regulations do not provide for a formal trial at any time during the proceedings or any form of a hearing while the case is on appeal to the Commandant. These rules do, however, satisfy administrative due process by providing you with notice of any violation, an opportunity to present evidence on your behalf, adjudication by an impartial Hearing Officer, and a right of appeal to the Commandant, United States Coast Guard. Based upon a review of the case file, I am satisfied that the Hearing Officer complied with the applicable procedural rules during the administration of your case. To that end, the record shows that you were given the appropriate notice of the initiation of the Coast Guard’s civil penalty action, advised of your right to request a hearing, provide any written evidence and argument in lieu of a hearing, or pay the amount specified in the notice as being appropriate. The record shows that rather than requesting a hearing, you submitted written evidence that you believed was relevant to the issues at hand. In addition, in accordance with 33 CFR 1.07-65(b), you also were advised of your right to appeal the Hearing Officer’s decision, which the record shows you have done. As I have already stated, under 33 CFR 1.07, there are no provisions for a hearing on appeal. Furthermore, since the penalty at issue is administrative in nature, and not criminal, you have no right to a formal court proceeding with respect to the violations. Nevertheless, in response to your appeal, I have carefully reviewed the record to determine whether there is substantial evidence to support the Hearing Officer’s final decision.

I will now address the violations, beginning with the alleged violation of 46 CFR 182.530. The record shows that, at the time of the relevant inspection, you were observed installing a fuse for your vessel’s bilge alarm after you were asked to test the alarm. The Coast Guard Enforcement Activity Summary Report further states that you admitted that you had intentionally disabled the alarm because it was unnecessarily going off and was, as a result, alarming your passengers. In correspondence to the Hearing Officer, you addressed the violation as follows:

On the evening of May 22nd the day before the USCG inspector visited our vessel the high level alarm went off on the port side of our #4 void. It did not go off because of any water in the void but simply due to a non functioning float switch. I had passengers on board and it was so loud that they were getting scared. It also was running the pump constantly and once I was able to determine there was not water or danger or any kind in that compartment, I disconnected the fuse to save the pump from burning out and the alarm. My intentions were to replace the malfunctioning float switch as soon as I could procure a replacement. The next day when the inspector discovered that this one alarm was not working I told him what I did and why. He informed me that disabling this one alarm no matter what the reason was still a violation. I told him it was to be replaced as soon as the new one was delivered and that I also felt that I really hadn’t put the passengers, crew

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or vessel at any risk by what I did. I pointed out to him that this #4 void had no thru hull opening/fittings what so ever plus it has 3 other functioning bilge pumps. Furthermore, the average depth of water that our vessel cruises in on this narrow river is only 5'. Our entire cruising route is only 1.5 miles long...If any water was ever to enter this #4 watertight void it would have to be from some kind of major collision. Our distance from the nearest bank is never more than 100 yards so reaching a bank in any emergency could be accomplished in two to three minutes.

After the Hearing Officer reviewed your assertions regarding this case, he requested rebuttal comments from the unit responsible for initiating the instant civil penalty case. Although the Hearing Officer requested clarification of numerous points, he did not ask the marine inspector for any additional information as to the bilge alarm or alarms that were disabled at the time of the boarding. Accordingly, the rebuttal comments simply reiterated the same information as the Enforcement Activity Summary, that "the bilge alarms had been disconnected." Notably, the Inspector's comments did not address your assertions with respect to the disarming of the alarm in the number 4 void. Nonetheless, the Hearing Officer found the violation proved and, in so doing, stated as follows:

...[Y]ou do not deny that a violation occurred and based on the evidence in the case file, I find that the violation was proved. In your response you state that you disabled the alarm because it has gone off due to a malfunction and was scaring you passengers. You go on to state that for any water to enter the void in question it would have to be from some kind of major collision. I disagree with your reasoning about the possible intrusion of water into the void. The void could be easily punctured by debris in the river...or by corrosion if the hull material is metal. Furthermore, I disagree with your reasoning regarding the depths of water you traverse and the lengths of your trips. The regulations do not allow for this type of rationalizing away the strict requirements for the proper operation of safety alarms. No matter what the depth of water, or the length of the trip, you are required to ensure that all required alarms are operating correctly and are not disabled.

While I agree with the Hearing Officer's conclusions with respect to the operation of a vessel's safety alarms, I do not agree with the contention that you did not contest the violation or that the record contains substantial evidence to support a conclusion that the disabled alarm was "required" by Coast Guard regulation.

In relevant part, 46 CFR 182.530 states:

On a vessel of at least 7.9 meters (26 feet) in length, a visual and audible alarm must be provided at the operation station to indicate a high water level in each of the following normally unmanned spaces:

- (1) A space with a through-hull fitting below the deepest load waterline, such as a lazarette;
- (2) A machinery space bilge, bilge well, shaft alley bilge, or other spaces subject to flooding from sea water piping within the space; and
- (3) A space with a non-watertight closure, such as a space with a non watertight hatch on the main deck.

In your letter to the Hearing Officer, you expressly stated that only one of the vessel's bilge alarms was disabled, the alarm for the vessel's number 4 void space. You further stated that the number 4 void not only has 3 other functioning pumps, but also that it has no thru-hull fittings. As I have already stated, the Coast Guard's file only states that the vessel's alarm was disabled. It does not address exactly what space the alarm was for. As you implied in your letter to the Hearing Officer, the fact that the vessel had an alarm in the space does not necessarily mean that alarm was required by Coast Guard regulation. Given the lack of specificity in the record as to the space that the disabled alarm monitored, I do not find sufficient evidence in the record to support a conclusion that the disabled alarm was required by 46 CFR 182.530. Accordingly, I will dismiss the \$2,000.00 civil penalty assessed by the Hearing Officer for the violation.

Next, I will address the alleged violation of 46 CFR 180.71. The record shows that on May 23, 2003, at the time of the relevant inspection, although you had 43 passengers aboard your vessel who were children, you only had 24 child-sized life preservers. In correspondence to the Hearing Officer, although you did not deny that the violation occurred, you asserted that the violation was largely the result of a "difference in...judgment" between yourself and the Inspector. To that end, you asserted that while you believed that the children aboard your vessel were large enough to properly fit in adult-sized life preservers, the Inspector felt that they required smaller child-sized life preservers. At the same time, you noted that after the violation was observed, you purchased "extended size" life preservers that better fit larger children and seniors, alike, and, in so doing, implied that similar violations would not occur in the future.

In relevant part, 46 CFR 180.71(b) requires that a vessel have enough child-sized life preservers on board to "provide a life jacket for each person being carried that is smaller than the lower size limit of the adult life jackets provided." In Coast Guard civil penalty proceedings, it is the Hearing Officer's responsibility to decide the reliability and credibility of evidence presented and to resolve any conflicts in the evidence. In this case, the Hearing Officer found the Inspector's version of the events—that the children onboard your vessel required child-sized life preservers—to be persuasive. I do not believe that the Hearing Officer abused his discretion in so concluding. Accordingly, I find the violation proved. In addition, because the record shows that the Hearing Officer considered the mitigating evidence that you presented, including the fact that you purchased additional life preservers after the incident, when he reduced the initially assessed penalty from \$4,000.00 to \$2,000.00, I will not disturb the penalty assessed by the Hearing Officer for the violation.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that a violation of 46 CFR 180.71 occurred and that you are an appropriate party to be charged with the violation. For the reasons discussed above, I find the \$2,000.00 penalty assessed by the Hearing Officer, rather than the \$4,000.00 penalty initially assessed or \$5,500.00 maximum permitted by statute to be appropriate under the circumstances of the case. In addition, for the reasons discussed above, I have dismissed the alleged violation of 46 CFR 182.530.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$2,000.00** 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 1.00% 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