



16780
JUN 27 2007

[REDACTED]
[REDACTED]
[REDACTED]

RE: Case No. [REDACTED]
[REDACTED]
[REDACTED]
\$425.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. [REDACTED], which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$425.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.27(a)(2)	Failure to have vessel's number in plain vertical block characters of not less than 3 inches in height.	\$0
33 CFR 173.27(a)(4)	Failure to have vessel's number with spaces or hyphens equal to width of a letter between letter and number groupings.	\$50.00
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	\$100.00
46 CFR 25.30-10(g)	Failed to maintain and/or inspect dry chemical or stored pressure fire extinguishers not fitted with pressure gauges or indicating devices.	\$200.00

33 CFR 175.125(a)	Use of boat with signals not in serviceable condition and/or past the life of service.	\$75.00
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The violations are alleged to have occurred on August 14, 2005, when Coast Guard boarding officers boarded the [REDACTED] while it was underway near the Holland Channel in Lake Macatawa, near Holland, Michigan.

On appeal, you do not deny that the violations occurred. Instead, you seek “relief” and “compassion” because you are “all about safety and acknowledge the fact that...[you were]...in violation of the two important safety concerns.” To that end, you express your “willingness to pay the fine for Charge 4 and 5” (46 CFR 25.30-10(g)—failure to inspect/maintain fire extinguishers & 33 CFR 175.125(a)—expired flares). With regard to the remaining violations—improperly sized and displayed vessel numbers and failure to have vessel’s Certificate of Number on board—you again do not deny that the violations occurred but assert that if you had “known the charges were clearly violations or would be lessened” if you had fixed them, you “would have done so.” In addition, you assert that it is clear from the Hearing Officer’s Final Letter of Assessment that the Hearing Officer is “more about fines than the safety of the waters” and add that you “see no compassion or truth to his convictions, only a need to punish.” You further state that you “do not feel it is fair or right to fine for charge 2 and 3...[because]...these are not safety concerns” that were, in fact, caused by the party from whom you purchased the vessel, not yourself. Your appeal is denied for the reasons discussed below.

Since you do not deny charges 4 and 5 and because the record contains clear evidence to support the Hearing Officer’s conclusion that the violations occurred, I will neither dismiss nor mitigate the violations and associated monetary penalties. Accordingly, this decision will focus on your assertions with respect to the remaining violations.

The Coast Guard’s civil penalty program is a critical element in the enforcement of numerous marine safety and environmental laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. The Coast Guard’s civil penalty procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded maximum due process during informal adjudicative proceedings.

The Coast Guard’s regulations regarding the size and spacing of vessel numbers apply to anyone who is in “use” of a vessel as required by 33 CFR 173.15. In this context, 33 CFR 173.3(i) states that the term “use” means “operate, navigate, or employ.” The record shows that you do not deny operating the [REDACTED] at the time of the boarding. As such, you are an appropriate party to be charged with the violation. Therefore, given the evidence contained in the record, I find that the Hearing Officer did not err in finding the violation proved. In addition I note that although you indicate that you are in possession of a valid certificate of number, you do not deny

that the Certificate was not aboard your vessel at the time of the boarding. Since 33 CFR 173.21(a)(1) makes clear that a valid Certificate of Number or temporary certificate must be maintained aboard a recreational vessel in operation, I find the violation proved. Therefore, the sole issue remaining is whether the penalties assessed by the Hearing Officer for these violations are appropriate under the circumstances of the case.

The record shows although you assert that you intend to ensure that your vessel achieves compliance with all applicable regulations, you have not provided any evidence in your appeal to show that you have made any effort to comply with the regulations. In addition, as I discussed above, you casually dismiss important boating safety violations because you do not believe that they are "safety concerns." At the same time, you attack the Hearing Officer for being "more concerned about fines than safety of the waters." The record shows that, in his Final Letter of Decision, after finding the violations proved and noting that you had not provided any evidence of compliance, the Hearing Officer assessed a total penalty of \$425.00. The maximum penalty available for the violations is \$10,900.00. Given both the fact that you have not, at any time during these proceedings, provided any evidence to indicate that you have achieved compliance with the applicable regulations and your cavalier attitude toward the regulations that you consider to be not "safety concerns," I find the assessed penalty to be not only appropriate, but warranted.

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 decision of the Hearing Officer was neither arbitrary nor capricious and is hereby affirmed. I find a total penalty of \$425.00 instead of the maximum penalty of \$10,900.00, to be reasonable in light of the circumstances of the violations.

Payment of **\$425.00** 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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties
P.O. Box 70945
Charlotte, NC 28272

Interest at the annual rate of 1% accrues from the date of this letter but will be waived if payment is received within 30 days. In accordance with 33 USC 1321(b)(6)(H), if payment is not received in 30 days, in addition to the interest, an administrative charge of \$12.00 per month for the cost of collecting the debt will be assessed. Furthermore, if the debt remains unpaid for over 3 months, and for every 3 months thereafter, an additional quarterly nonpayment penalty of 20% of the aggregate amount of the assessed penalty and all accrued quarterly nonpayment penalties will be added to the debt, and you will be liable for all attorney's fees incurred and all other costs of collection.

In accordance with the regulations governing civil penalty proceedings, 33 C.F.R. § 1.07, this decision constitutes final agency action.

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