



REDACTED
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16780
18 April 2008

RE: Case No. 2175197
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\$500.00

Dear REDACTED:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2175197, which includes your appeal as owner/operator of the 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>
33 CFR 162.240	Failure to comply with the navigation requirements for Tongass Narrows, Alaska.	\$500.00

The violation is alleged to have taken place on July 28, 2004, when Coast Guard personnel allegedly observed the REDACTED being operated at an excessive speed, well over 20 knots, in a zone that required that the vessel be operated at a speed of no more than 7 knots. The violation was observed while the vessel was underway in Tongass Narrows, near Ketchikan, Alaska.

On appeal, you deny the violation and contend that the Hearing Officer "misunderstood" your "defense" to the violation. To that end, you assert that although you did not deny that you were traveling at a speed over 7 knots, you "dispute that...[you]...were within the speed zone when...[you]...were paced by the Coast Guard vessel" and add that you were "in the process of slowing...[your]...vessel down as...[you were]...coming up on the buoy" that marked the beginning of the restricted speed zone. To support your assertion, you contend that because the buoy "is close in proximity to the USCG station...[n]o one would knowingly violate the speed zone." You further assert that "the position [of your vessel] given on...[your]...violation was not a true position taken at the exact moment that...[you were]...pulled over by the USCG vessel" and, instead, state that the position noted on the violation charge sheet "was taken more than thirty to forty minutes after...[you were]...boarded by USCG personnel," after your vessel had drifted into the restricted speed zone. In addition, you assert that you were incorrectly "charged under the Inland Rules of the Road," even though the "COLREGS...clearly state that all Alaskan waters fall under the jurisdiction of the International Rules of the Road." You conclude by asserting that the penalty imposed by the Hearing Officer is "unnecessarily harsh and punitive" and request that I dismiss the violation and associated monetary penalty. Your appeal is denied for the reasons discussed below.

The Coast Guard's civil penalty program is a critical element in the enforcement of numerous marine safety and environmental protection 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. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded due process during informal administrative proceedings. The procedures in 33 CFR 1.07 have been sanctioned by Congress and upheld in the Federal courts. *See* H. Rep. No. 95-1384, 95th Cong., 2d Sess. 27 (1978); S. Rep. No. 96-979, 96th Cong., 2d Sess. 25 (1980); H. Rep. No. 98-338, 98th Cong., 1st Sess. 133 (1983); *United States v. Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D.N.Y. 1979).

I will begin by addressing the jurisdictional issue that you raise on appeal. On appeal, you note that you were “charged under the Inland Rules of the Road,” even though “all Alaska waters fall under the jurisdiction of the International Rules of the Road [the COLREGS].” After a thorough review of the record, I do not find your assertion in this regard to be persuasive. The Coast Guard’s Inland Waterways Navigation Regulations are set forth in, among other places, 33 CFR Part 162. The regulations in 33 CFR Part 162 were promulgated pursuant to the authority of 33 USC 1231, the Ports and Waterways Safety Act (PWSA). The PWSA allows the Secretary of the Department in which the Coast Guard is operating to “control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by...establishing vessel size, speed, draft limitations and vessel operating conditions.” *See* 33 USC 1223(a)(4). 33 CFR 162.240(b) establishes special navigation requirements for Tongass Narrows. In that regard, 33 CFR 162.240(b) states, in relevant part, as follows:

No vessel, except for public law enforcement and emergency response vessels, floatplanes during landings and take-offs, and vessels of 23 feet registered length or less, shall exceed a speed of 7 knots in the region of Tongass Narrows bounded to the north by Tongass Narrows Buoy 9 and to the south by Tongass Narrows East Channel Regulatory Marker...and Tongass Narrows West Channel Regulatory maker....respectively.

The record shows that your vessel is 24 feet in length and that, at the time of the relevant Coast Guard boarding, the vessel was being operated in the Tongass Narrows. As such and, indeed, irrespective to the applicability of the COLREGS, the regulations issued under the PWSA apply. Therefore, the jurisdictional argument you raise on appeal is not persuasive.

I will now address the violation, itself. As I have already noted, 33 CFR 162.240(b) requires all vessels exceeding 23 feet in length to operate at a speed no greater than 7 knots in the buoyed area of the Tongass Narrows. On appeal, although you note that you “do not categorically deny...[your]...speed...[you]...dispute that...[you]...were within the speed zone when...[you]...were paced by the Coast Guard vessel.” At the same time, you note that at the

time that the violation was allegedly observed, you were “in the process of slowing...[your]...vessel down” because you were aware that you were “coming up to the buoy.” The Coast Guard’s Enforcement Activity Summary Report indicates that Coast Guard personnel “paced” your vessel operating at a speed of 23 knots within the operative speed restriction zone. While the matter was pending before the Hearing Officer, you stated that, on the date of the alleged violation, you were heading home in “drizzle and light rain” and that, as a result of the conditions, you were “focused on the water ahead, watching for dead heads, logs and debris.” You further indicated that when you “believed” that you were “in the approximate location of the slow down buoy,” you “began to pull...[your]...throttle back and slow to the required 7 knots.” In his Final Letter of Decision, the Hearing Officer addressed the violation as follows:

You do not categorically deny that you were in excess of the speed limit; rather you offer what you consider to be mitigating factors. I find sufficient evidence to support the allegation; accordingly, I find the violation proved. The report indicates that you were traveling at 23 knots when paced by the Coast Guard vessel. Oddly, you never give an estimate of your speed, you simply indicate that you pulled the throttle back and slowed to 7 knots. I am inclined to accept the report.

In Coast Guard civil penalty proceedings, it is the Hearing Officer’s responsibility to decide the reliability and credibility of evidence and to resolve any conflicts presented within the evidence. On appeal, as when the case was before the Hearing Officer, you contend that you were in the process of slowing down when you were “paced” by the Coast Guard and imply that your speed was observed prior to your actually entering the speed restricted zone. The Coast Guard’s case file presents a decidedly different picture of the incident and includes several charts which clearly identify your location as well within the restricted speed zone. Moreover, I note that in referring to the relevant buoy as a “slow down buoy,” you seem to misunderstand the buoy’s intent. Rather than indicating that it marks the location where a “slow down” should occur, it marks the location where vessels in excess of 23 feet are prohibited from exceeding 7 knots. It is wholly conceivable that if you used the buoy as your reference point for speed reduction, you would exceed the maximum speed within the speed restriction zone. Given both this notion and the evidence contained within the case file, I do not find that the Hearing Officer erred in finding the violation proved.

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 that the violation occurred was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find the \$500.00 penalty assessed by the Hearing Officer, rather than the \$32,000.00 maximum permitted by statute to be appropriate under the circumstances of the case.

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 70945
Charlotte, NC 28272

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.0% 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