



[REDACTED]
[REDACTED]
[REDACTED]

16780
November 03, 2008

RE: Case No. 2532172
[REDACTED]
[REDACTED]
\$200.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2532172, 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 \$200.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.27(a)(3)	Failure to have vessel's number, required by 33 CFR 173.15, contrast with the color of the background & be distinctly visible and legible.	Warning
33 USC 2009(g)(Rule 9)	Anchoring in a narrow channel when such is avoidable.	\$200.00

The violations were first observed on October 21, 2005, when Coast Guard boarding officers boarded your vessel while it was anchored in the Gallants Channel, near Beaufort, North Carolina.

On appeal, although you do not deny that the violations occurred, you specifically question whether it was appropriate for the Hearing Officer to assess a monetary penalty for the alleged violation of 33 USC 2009(g)(Rule 9). In that regard, you question what you view as a "lack of a uniform system to deal with the fall fishing frenzy that takes place every year in the coastal [w]aters in Morehead City...and Swansboro." In that regard, you state that you "feel it is unfair to ticket anyone for any infraction until they have had at least one warning." You further note that although there were "several" vessels lined up fishing in the area, only you and one other vessel were "ticketed." As a result, you assert that you were "singled out of a group of over 25 boaters and ticketed and fined when...[you]...should have received a warning." To emphasize your assertion that there is a "problem and [a] lack of a uniform system in place to deal with...[the]...problem," you note that during a subsequent trip to the area with your family, you observed numerous vessels committing the exact same violation with which you were charged

and add that although your vessel did not obstruct vessel traffic in the channel at the relevant time, the vessels that you observed were doing so. As a result, you contend that until the situation is made “right for everyone,” “folks should receive warnings first” because it is not “fair” for the Coast Guard to enforce a regulation that the public, at large, is clearly not aware of. 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 found proved. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded administrative due process during informal adjudicative proceedings. The rules have been both sanctioned by Congress and upheld in 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 now address the violations, beginning with the alleged violation of 33 CFR 173.27(a)(3). This regulation makes clear, in relevant part, that a vessel's numbers “must...[c]ontrast with the color of the background and be distinctly visible and legible.” The “Details of Violation” portion of the Coast Guard's Enforcement Summary Report, contained within the record, shows that at the time of the boarding, your vessel's “state numbers [were] non-contrasting to [your] vessel's hull.” Because the record shows that you do not now, nor have you ever, denied that the violation occurred, and in light of the evidence contained in the case file, I find that the Hearing Officer did not err in either finding the violation proved or in assessing a warning for it.

I will now turn my attention to the violation upon which your appeal focused, the alleged violation of 33 USC 2009(g)(Rule 9). Rule 9 states, in relevant part, that “[e]very vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.” The Coast Guard's Enforcement Summary Report shows that the alleged violation resulted from the fact that your vessel was “anchored in the middle of the channel fishing and had other places to anchor.” Although you have not, at any time during the course of these proceedings, denied that the violation occurred, you have implied that the boating public operating in the vicinity where the violation is alleged to have occurred is unaware of the requirements of Rule 9. In addition, you have noted that other boaters who have committed similar violations have been given warnings for the same conduct for which you have been charged. As I have already stated, you contend that this factor shows not only that there is a lack of uniform enforcement in the area, but also that the assessment of warnings for first time violators would be appropriate. Given both the evidence contained in the case file and the fact that you do not deny that the violation occurred, I find substantial evidence in the record to support the Hearing Officer's conclusion that the violation occurred. Having so determined, I must now consider whether the Hearing Officer was either arbitrary or capricious in assessing a \$200.00 penalty for the violation under the circumstances of this case.

As I have already stated, the record shows that a violation of Rule 9 clearly occurred in this case. Based on that fact, the assessment of a monetary penalty is appropriate. The record further

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shows that while the matter was pending before the Hearing Officer, you not only mentioned your ignorance of the law, but also raised concerns that other violators were given warnings for similar violations. The record shows that in response to your allegations, the Hearing Officer mitigated the initially assessed penalty of \$500.00 for the violation to \$200.00. Since the maximum penalty that may be assessed for the violation is \$6,500.00, I do not find that the Hearing Officer was either arbitrary or capricious in assessing the penalty at issue here. As such, I do not believe that further mitigation of the penalty is appropriate.

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. For the reasons discussed above, I find a total penalty of \$200.00, rather than the \$550.00 initially assessed by the Hearing Officer or \$7,600.00 maximum permitted by statute to be appropriate under the circumstances of this case.

Payment of **\$200.00** 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

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.

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