



16731  
February 02, 2009

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

RE: Case No. 1777539  
[REDACTED]  
[REDACTED]  
\$100.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 1777539, which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$400.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 67.313	Failure of person in command of a documented vessel to have on board the original Certificate of Documentation currently in effect.	\$100.00
46 CFR 25.30-20(a)(1)	Required number of Coast Guard approved fire extinguishers were not on board.	\$100.00
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.	\$200.00

The violations are alleged to have been observed on November 21, 2002, when Coast Guard boarding officers boarded the [REDACTED] while it was underway on the Chesapeake Bay near Baltimore, Maryland.

On appeal, although you do not deny the violations, you ask that I "reconsider" the Hearing Officer's decision in Civil Penalty Case No. 177539. To that end, you contend that when you "failed the Coast Guard exam the water business was the worst it has been in...[your]...life."

You further note that, after the violation, you “had to quit the water business and try to pursue a land job.” You note that, at the time, you were “unable to pay...[your]...bills or maintenance on...[your]...boat.” In addition, you contend that you have worked outside the maritime industry since January 2003 and add that you are “trying to make a new life for...[your]...family and...[yourself].” At the same time, you contend that your vessel “has been tied up since January 2003” and assert that “money has been very tight” since then. Finally, you state that you have a “two-year old daughter” and that “[t]he majority of...[your]...money goes to providing for her.” Your appeal is granted, in part, and denied, in part, for the reasons discussed below.

The record shows that you do not now, nor have you ever, denied that the violations occurred. Therefore, based upon the evidence contained in the case file, including the evidence contained in the Coast Guard Commercial Fishing Industry Boarding Report and the Supplemental Boarding Report, I do not find that the Hearing Officer erred in finding the violation proved. That said, the sole issue presented before me is whether mitigation of the assessed penalty is appropriate under the circumstances of the case. After a thorough review of the record, I believe that it is.

As I have already stated, the record shows that the boarding occurred on November 21, 2002. Thereafter, on December 4, 2002, the Supervisor, Violations Processing Center, CWO D. B. Tucker, sent you a Letter of Inquiry, which afforded you the opportunity to provide evidence of compliance and, ultimately, avoid civil penalty action in the case. The record shows that although you received the Letter of Inquiry on February 10, 2003, (as is evidenced by a return receipt slip contained in the case file, signed by [REDACTED]) you did not respond to that letter and, as a result, the case file was forwarded to the Hearing Office for further civil penalty action. Thereafter, on October 8, 2003, the Hearing Officer sent you a Preliminary Assessment Letter, which informed you of the assessed violations, the maximum penalties allowed under law, the penalty initially assessed by the Hearing Officer, and that you had the right to either request a hearing in the matter, submit written evidence in lieu of a hearing, or to pay the penalty initially assessed by the Hearing Officer. On October 29, 2003, you submitted a letter to the Hearing Officer. In that letter, although you did not deny the violations, you asserted that your vessel had, on that same date, been issued a Commercial Fishing Vessel Safety Decal. At the same time, you provided a copy of the Coast Guard Commercial Fishing Vessel Safety Examination report, which showed that, as of that date, your vessel was in compliance with all applicable regulations. The record shows that although the Hearing Officer considered your subsequent efforts at compliance in reaching his Final Decision in the case, he did not find that evidence sufficient to justify mitigation of the initially assessed penalty. Indeed, in his Final Letter of Decision, dated November 14, 2003, the Hearing Officer stated that you offered “no explanation for your failure to respond to the letter of inquiry when you received it or why you are only now having the vessel inspected.” As a result, because the Hearing Officer did not consider your attempts at compliance to be undertaken in a timely fashion, he did not believe that mitigation of the assessed penalty was appropriate under the circumstances of the case. While I do not believe that the Hearing Officer erred in so concluding, given that the record contains substantial evidence to support a conclusion that the violations have been corrected, I will mitigate the \$100.00 penalty assessed for the alleged violation of 46 CFR 67.313 and the \$200.00 penalty assessed for the alleged violation of 33 CFR 88.05 to Letters of Warnings. Given the particular

February 02, 2009

safety issues associated with failures to maintain adequate numbers and types of fire extinguishers, however, I will not mitigate the \$100.00 penalty assessed for the alleged violation of 46 CFR 25.30-20(a)(1).

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 that the violations occurred was neither arbitrary nor capricious and is hereby affirmed. For the reasons discussed above, I find a total penalty of \$100.00, rather than the \$400.00 penalty assessed by the Hearing Officer, or \$22,000.00 maximum permitted by statute to be appropriate in light of 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 **\$100.00** 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 1.00% 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