

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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Washington, DC 20593-0001
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Phone: (202) 372-3796
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16780

[REDACTED]
[REDACTED]
[REDACTED]

RE: Case No. 2821129
[REDACTED]
[REDACTED]
\$500.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2821129, which includes your appeal as owner/operator of the unnamed recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 USC 2020(c) (Rule 20)	Failure to comply with rules concerning lights and shapes (daylight/restricted visibility; other circumstances).	\$200.00
33 CFR 175.125	Use of a boat with signals required by 175.110 not in serviceable condition and/or past the life of service.	\$100.00
33 CFR 175.21(a)	Each Coast Guard approved personal flotation device was not in a serviceable condition.	\$100.00
33 USC 2033(b) (Rule 33)	Failure to have some means of making an efficient sound signal for vessel less than 12 meters in length.	\$100.00

33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	Warning
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The violations are alleged to have been observed on November 14, 2006, when Coast Guard boarding officers boarded the [REDACTED] while it was underway on Lake Erie near Lorain, Ohio.

On appeal, although you do not expressly address the violations, you state that you would like to “appeal the decision made” by the Hearing Officer. At the same time, because you “have been very busy...and out of town many times,” you “request a continuance so that...[you]...have time to address the situation properly.” Your appeal is denied for the reasons described 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).

The record shows that the Hearing Officer issued his Preliminary Assessment Letter in this case on November 15, 2007. A review of that letter shows that, in accordance with the applicable procedural regulations, at 33 CFR Part 1.07, the Hearing Officer informed you of the alleged violations, the maximum penalty available for the violations, the amount of the preliminarily assessed penalty, and that you would have 30 days within which to either request a hearing, provide written evidence in lieu of a hearing, or to pay the preliminarily assessed penalty. The record further shows that although the Hearing Officer allowed the case file to remain open for at least 60 days, you never responded to the Hearing Officer’s Preliminary Assessment Letter. As a consequence, on January 23, 2008, the Hearing Officer issued his Final Letter of Decision in the case. In that decision, the Hearing Officer found the violations proved based on the evidence contained in the case file and assessed the penalty at issue in this proceeding. In addition, in accordance with the applicable procedural rules, the Hearing Officer informed you that you would have 30 days from the date of receipt of the Hearing Officer’s letter to appeal the matter to the Commandant, United States Coast Guard. The record shows that you first addressed the matter at issue here via a letter to the Hearing Officer dated February 19, 2008, wherein you informed the Hearing Officer, in effect, that you had been too busy to respond to his initial correspondence in the matter and requested a “continuance” to allow you to properly address the violations. Although the Hearing Officer reopened the matter for an additional 45 days to allow you to submit evidence in response to the alleged violations via a letter dated March 4, 2008, the

record shows that you did not avail yourself to the Hearing Officer's offer. As a result, your request for continuance—your sole response in the matter—was treated as your appeal of the Hearing Officer's decision.

Under 33 C.F.R. 1.07-70(a), only issues that have been properly raised before the Hearing Officer and jurisdictional questions may be raised on appeal. As I have indicated, the record shows that you did not raise any issues before the Hearing Officer and that, indeed, your first and only correspondence with the Hearing Officer occurred after he issued his Final Letter of Decision in the case. At the same time, the record shows that other than asserting, in effect, that you had been too busy to respond to the matter, you did not raise any issues or offer any argument with regard to the alleged violations. Irrespective of that fact, as I have already discussed, the Hearing Officer elected to reopen the matter for an additional 45 days to ensure that you were accorded every opportunity to respond to the alleged violations. You failed to avail yourself to this opportunity and, as such, you have provided no evidence to either contest the alleged violations or show that you have achieved compliance with those violations. In the case at hand, the record shows that, at the time of the relevant boarding, your vessel was being operated without navigational lights, your flares were expired, your type IV (throwable) personal flotation device had rips and punctures, your air horn could not make a "sufficient sound," and your registration was expired. Since you have neither contested these allegations nor offered evidence to show that you have corrected any or all of the violations, I find that the Hearing Officer did not err in finding the violations proved.

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 was neither arbitrary nor capricious and is hereby affirmed. I find the \$500.00 penalty assessed by the Hearing Officer, rather than the \$15,200.00 maximum penalty permitted by statute to be appropriate under the circumstances of this case.

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. 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 1.0% 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.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 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